

**Central Administrative Tribunal
Principal Bench**

OA No. 4303/2014

Order Reserved on: 12.01.2016
Order Pronounced on: 16.02.2016

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

Dr. H.C. Gupta (59 years)
S/o late Shri O.P. Gupta,
R/o C-49-50, Ganesh Nagar,
Pandav Nagar Complex,
Opposite Mother Diary Plant,
Delhi-110 092

-Applicant

(By Advocate: Shri K.C. Mittal)

VERSUS

1. Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, IP Estate,
New Delhi

2. Principal Secretary,
Ministry of Health & Family Welfare,
Govt. of NCT of Delhi,
Delhi Secretariat, IP Estate,
New Delhi

3. Principal, Ayurveda and Unani Tibbia College,
Ajmal Khan Road,
Karol Bagh, New Delhi

4. Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi-110003

-Respondents

(By Advocate: Shri N.K. Singh)

O R D E R**Dr. B.K. Singh, Member (A):**

The applicant, in the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, nurtures a grievance against the respondents for not regularizing his ad hoc appointment despite a decision to this effect from the respondent no.1.

2. The case of the applicant, in brief, is that he had been initially appointed as Lecturer in Ayurvedic Medicine with Ayurveda and Unani Tibbia College, New Delhi (hereinafter referred to as 'the College') in September, 1998. This College was an autonomous body constituted under the Tibbia College Act, 1952 with its own Recruitment Rules. Later, in May 1998, the College had been taken over by the respondent – Government of NCT of Delhi, which framed Recruitment Rules 2002. Subsequently, an open advertisement was issued in July, 1998 for the post of Lecturer in Kaya Chikitsa (Ayurvedic Medicine) against regular vacancy, but on ad hoc basis. The applicant was selected against the said post under consideration and has been working regularly and continuously since then. The applicant along with others filed OA No. 1479/2003 seeking regularization of their services on the basis of erstwhile Recruitment Rules.

3. The OA No. 1479/2003 was dismissed vide the order dated 01.04.2004, against which the applicant moved Writ Petition bearing WP(C) No. 10920/2004 before the Hon'ble High Court. The Hon'ble High Court of Delhi was pleased to grant a stay against the order of the Tribunal. The above Writ Petition was withdrawn by the applicant with liberty to seek legal remedy if the order dated 07.10.2008 recommending his case to the respondent no.4 (UPSC) for regularizing 20 ad hoc/contract teachers of the ISM stream, is not taken to its legal conclusion.

4. However, in October, 2005, the respondent-organization had advertised 18 posts of Lecturers in Ayurveda under Directorate of ISM&H in the Tibbia College but actually recruited only seven posts, one post of ST remaining unfilled and ten posts of Lecturers having been withdrawn vide corrigendum dated 07.10.2008. The respondents, the applicant contends, duly protected his services by providing regularization of such 20 ad hoc contract Teachers of ISM Stream, who had rendered about 8 to 10 years of service subject to (i) satisfactory work and conduct report (ii) vigilance clearance and (iii) satisfactory assessment of performance by UPSC. Further in the year 2011, since the College did not have sufficient number of higher faculty as per CCIM (Central Council for Indian

Medicine) norms, there was requirement of Associate Professors/Readers in the College. To meet the requirement, the applicant along with others was redesignated as Reader/Associate Professor on the basis of seniority and experience in the College being appointed in the year 1998 and holding more than 13 years of service and has been continuing on the post of Associate Professor since 2011. In 2013, the respondents notified Delhi Health Service – Teaching Cadre of Indian System of Medicine (Ayurved and Unani) – Rules, 2013. The applicant claims to fulfill all the requirements/qualifications for the post of Associate Professor. The respondents further directed the applicant to submit his requisite documents vide their order dated 11.06.2013, but no action has been taken till so far to submit the papers to the UPSC for clinching the process despite several representations.

5. The applicant has relied upon several grounds in his Application. He submits that he has been regularly appointed following the due process through open advertisement and has been discharging the duties of Associate Professor since 2011, even though he was appointed on ad hoc post. Despite Cabinet Decision No.1403 dated 12.05.2008 and the fact that the applicant

fulfills all qualifications for appointment to the post of Associate Professor, no steps have been taken for regularization and confirmation of services of the applicant against the post of Associate Professor from the date of his initial appointment.

6. The applicant, therefore, prayed for the following reliefs:-

- “(a) Direct the respondents to regularize the applicant in view of the Cabinet decision dated 12.05.2008 and office order dated 07.10.2008 and grant seniority from the date of initial appointment and to take necessary steps for the same.
- (b) Direct the respondents to include and consider the case of the applicant in the list sent for DPC for the post of Associate Professor.
- (c) Hold and declare that no promotion that no promotion to the post of Associate Professor can be made without considering the case of the applicant for the post of Associate Professor reckoning his seniority from September, 1998.
- (d) Direct respondents to take immediate steps in terms of the Recruitment Rules, 2013 for constitution of initial cadre to regularize applicant from initial date of appointment and also to grant all benefits including seniority from initial date of appointment being September 1998.
- (e) To pass any other order and/or direction as this Hon’ble Tribunal may deem fit and appropriate.”

7. The respondents have filed a counter affidavit admitting the factual matrix of the case. The applicant was appointed to the post of Lecturer on ad hoc basis in

the year 1998 in A&U Tibbia College. The Government of NCT of Delhi, vide its Cabinet Decision No. 1139 dated 13.11.2006, approved the formation of Delhi Health Service wherein the individuals who were appointed by the Government of Delhi on contract basis against the ex-cadre posts from 1995-96 onwards were proposed to be included in the initial constitution of Delhi Health Service. The respondents further admit the Cabinet Decision No. 1403 dated 12.05.2008 and submit that as far as issue pertaining to regularization of service of these 10 Vaids/Lecturers (Ayurveda) of ISM/AYUSH cadre working on ad hoc/contractual basis in A&U Tibbia College, is concerned, the said process is at a very advance stage and the same will attain its logical conclusion after assessment of the performance of these 10 Vaids/Lecturers (Ayurveda) of ISM /AYUSH cadre whose services stand protected vide aforesaid Cabinet Decision No. 1403 dated 12.05.2008 by UPSC. The respondents also submit that 7 Vaids had been appointed in 2009 and have now become eligible for appointment as Associate Professor. As per the Recruitment Rules, 2013, in order to be promoted as Associate Professor, one must have served as an Assistant Professor in the concerned subject with five years of regular service. The respondents also submit that the dossiers of the applicant were

submitted to the respondent no.4 which have been returned. Re-designation of the applicant as Associate Professor confers no right on the concerned faculty members for seeking promotion (whether ACP) or for regular appointments. The applicant has accepted re-designation with open eyes and was aware of the consequences. The crux of the argument of the respondents is contained in the following terms:-

“It is further submitted that as now the exercise is under process and is yet to complete, these Asstt. Professors who are working strictly on adhoc/contractual basis are yet to be inducted on regular service meaning thereby as they are still working on adhoc/contractual basis it is obvious that their names won’t be included in the seniority list. It is submitted that as and when the assessment of their services would be completed and after the said assessment they are declared as FIT and suitable by the assessing authorities they will be subsequently regularized and the consequential benefits which would follow as a result of the said process will be extended to these contractual or adhoc employees as per the provisions made in the rules.”

8. We have carefully perused the pleadings of the parties and have patiently listened to the oral submissions made by the learned counsel appearing on behalf of the respective parties.

9. With the facts being admitted by the rival parties, it is clear that the applicant had been appointed in the year 1998, which was subsequently taken over by the Govt. of

NCT of Delhi, under due process prescribed in the recruitment rules and has rendered continuous service since then. The applicant had also approached Tribunal and subsequently Hon'ble High Court for regularization of his services and had also procured a stay order. However, the Government, in the meantime, came out with a scheme for regularization which reads as follows:-

"Department of Health & Family Welfare
A-Wing, 9th level, Delhi Secretariat, IP Estate, New Delhi

No. F.DISMH/1/07/79/AY/553-566 Dated 07/10/2008

OFFICE MEMORANDUM

Subject: To modify: (1) the proposed regulations for teachers of ISM/AYUSH stream of medicine; and (2) the duly notified regulations for doctors of the GDMO sub-cadre of Homoeopathy.

The issue regarding regularization of 20 teachers in ISM/AYUSH (Ayurveda and Unani) stream, and 10 Medical Officers (Homoeopathy), who continue to serve on ad-hoc/contract basis for the last 8-10 years was under consideration of the Government for some time past.

Now the Government of NCT of Delhi vide Cabinet decision No. 1403 dated 12/5/2008 has decided to recommend their case to Union Public Service Commission (UPSC) for regularizing the 20 ad-hoc/contract teachers of ISM stream and 10 ad-hoc/contract GDMOs of Homoeopathy stream as part of initial constitution under the service regulations for the respective stream, subject to (i) satisfactory work and conduct report (ii) vigilance clearance, and (iii) satisfactory assessment of performance by UPSC.

The Government of NCT of Delhi (Department of Health and Family Welfare) would take consequential steps of modifying (1) the proposed regulations for teachers of ISM/AYUSH stream of medicine after consultation with Services Department; and (2) the duly notified regulations for doctors of the GDMO sub cadre of Homoeopathy, and held consultation with the Union Public Service Commission (UPSC) for assessment of the suitability of persons to be appointed under the initial constitution.

The regularization shall be subject to the approval of Union Public Service Commission (UPSC).

Sd/
(H.R. Sharma)
Deputy Secretary-I (Health)"

The Hon'ble High Court has also taken a note of the situation with liberty to approach the same in the following terms:-

"2. Learned counsel for the petitioners states that in view of the above office memorandum the petitioners do not desire to litigate any further and hence pray that the writ petitions may be dismissed as not pressed.

3. As desired by learned counsel for the petitioners liberty is granted to the petitioners to not press the petition with right that if the order dated 7.10.2008 is not taken to its logical conclusion they may seek remedy as per law.

4. Petitions stand disposed of as withdrawn."

10. In view of the admission of the Govt. of NCT of Delhi that they are committed to regularize the services of the applicant, there is not much left for us to do. However, we would like to place our considered view on the issue in this order. Considering the fact that the applicant was appointed in the year 1998 following due process against regular vacancy and commitment of the State Government to regularize his services had been issued in the form of order on 07.10.2008, we are aghast to note that the process is still not complete even after a period of 8 years from the date of decision. The speed at which the

respondent – organization has been moving would even put a snail to shame. One must appreciate the anxiety persisting in the mind of the applicant, who continues to serve through uncertainty on ad hoc appointment without having been regularized and mental torture which he must have suffered. Therefore, we strongly deprecate the inability of the respondent- organization to take the process of regularization committed by them way back in 2008 to its logical conclusion. We also note that both the UPSC and the GNCTD are parties to this proceeding. We, therefore, direct them to convene DPC to consider the process of regularization of services of the applicant from the date of their initial appointment, within a period of three months from the date of receipt of a certified copy of this order positively. Impediments, if any, should be removed by the process of consultation and not by undertaking lengthy and convoluted correspondence.

11. With the above directions, the OA is allowed. No order as to costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

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