

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.4402/2015
With
C.P.No.753/2015

Reserved on 25th January 2016
with
O.A.No.4237/2015

Reserved on 29th January 2016

Pronounced on 3rd February 2016

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

O.A.No.4402/2015

1. Mr. Raj Kumar Yadav, aged 24 years
Son of Mr. Budh Ram Yadav
r/o Village Amarpura, Post Raikaranpura
Tehsil Kotputli, Distt. Jaipura-303105 - Staff Nurse
2. Kim Gracy Mate, aged 24 years
d/o Mr. Jangkholum Mate
r/o Tuibuong, Bazar Veng, Churachandpur
Manipura-795128 - Staff Nurse
3. Ms. Geeta, aged 28 years
d/o Mr. Ajit Singh
r/o C-2/9, MCD Flats, First Floor
New Usman Pur
Delhi-53 - Staff Nurse
4. Ms. Priyanka, aged 25 years
d/o Mr. Radhey Shyam
r/o House No.3923, Gali Barna Basti Imliwali
Sadar Bazar, Delhi-6 - Staff Nurse
5. Ms. Sakshi, aged 23 years
d/o Mr. Shiv Kumar
r/o D-525/1A, Street No.9
Ashok Nagar, Shahdara
Delhi-93 - Staff Nurse
6. Ms. Shobhi, aged 23 years
d/o Mr. Ramesh Chand
r/o House No.2A, Khasra No.79/25

Gali No.2, Chanchal Park
Near Bakkarwala, Village Najafgarh
Nangloi Road, New Delhi-421
Staff Nurse

7. Mr. Aavesh, aged 25 years
s/o Mr. Narender Singh Dhama
r/o 1449/218A, Gali No.3, Gali No.3
Shahdara, Delhi-93
Staff Nurse
8. Ms. Chitra Rani, age 25 years
d/o Mr. Rajender Kumar
r/o A/194, East Gokalpur, Loni Road
Shahdara, Delhi-94
Staff Nurse
9. Ms. Mamta aged 27 years
w/o Mr. Jaideep and d/o Mr. Kishan Lal
r/o House N.E-11, Laxmi Park
Nangloi, Delhi-41
Staff Nurse
10. Ms. Akanksha Choudhary, aged 23 years
d/o Mr. Sushil Kumar
r/o House No.78-A, Pocket-C2
Janta Flat, Mayur Vihar, Phase III
Delhi-96
Staff Nurse
11. Ms. Garima Sharma, aged 25 years
d/o Mr. Balraj Sharma
r/o House No.219, Kewal Park
Bhagat Singh Marg
Azadpur, Delhi-33
Staff Nurse
12. Ms. Hema Kumari, aged 27 years
d/o Mr. Satish Kmar
r/o House No.57, Vadh Pana
Village Mundheli Kalan
Najafgarh, Delhi-73
Staff Nurse
13. Ms. Poonam Grewal, aged 26 years
d/o Mr. Badlu Ram Grewal
r/o House No.A-266, Gali No.1
Rama Garden, Karawal Nagar
Delhi-94
Staff Nurse

14. Ms. Priyanka, aged 24 years
d/o Mr. Ram Kishan
r/o Village Majri, PO Gubhana
Tehsil Bahadur Garh, Distt. Jhajjar
Haryana-124507
Staff Nurse
15. Ms. Barkha, aged 24 years
d/o Mr. Kamaljeet
r/o WP-248, Wazirpur Village
Ashok Vihar, Delhi-52
Staff Nurse
16. Km. Sweta, aged 23 years
d/o Mr. Chandra Bhushan
r/o House No.189, Naipura, Loni Ghaziabad
Opp. New Diamond Public School
Staff Nurse
17. Ms. Jyoti Rani, aged 23 years
d/o Mr. Bhagwan
r/o House No.378, Ward No.1
VPO Pipli, Tehsil Kharkhoda
Sonipat, Haryana-131402
Staff Nurse
18. Ms. Indu Sanyal, aged 24 years
d/o Mr. Ravi Sanyal
r/o House No.1315, Tulsi Niketan
Ghaziabad, UP, Staff Nurse
19. Ms. Kamlesh, aged 24 years
d/o Mr. Vijay Singh
r/o RZ/75-A Nanda Enclave
Khera Road, Najafgarh
Delhi-43, Staff Nurse
(Working as Staff Nurse in Veer Savarkar Arogya Sansthan
Hospital (EDMC) Karawal Nagar, Delhi-94

..Applicants
(Mr. Ajesh Luthra and Ms. Kamlakshi Singh Chauhan, Advocates)

Versus

1. Government of National Capital Territory of Delhi
Through its Chief Secretary
Delhi Secretariat, Players Building
ITO, New Delhi-2
2. East Delhi Municipal Corporation
Through its Commissioner (MCD)
Udyog Sadan, Patparganj, Delhi

3. East Delhi Municipal Corporation
Through hits Director of Health Administration
(MCD), Udyog Sadan

4. Medical Superintendent
Veer Savarkar Arogya Sansthan
Karawal Nagar, Delhi-94

..Respondents

(Mrs. Rashmi Chopra, Advocate for respondent No.1 –
Mr. K.K. Rai, Senior Advocate (Ms. Sangita Rai, Advocate with him) for
respondent Nos. 2 to 4)

O.A.No.4237/2015

1. Ms. Sheetal Wadhwa, aged 27 years
d/o Mr. Anil Kumar Sharma
r/o House No.282, Group -1
Hastal Janta Flats
Uttam Nagar, New Delhi- Staff Nurse

2. Swati Handa, aged 27 years
d/o Mr. Shyam Sunder Handa
r/o RZ-1C, Upper Ground Floor
Street No.6, Indra Park, Palam Colony
New Delhi, Staff Nurse

3. Manju, aged 27 years
d/o Mr. Bhagirath Mal Gora
r/o V & PO Bhilunda, Tehsil Laxman Garh
Distt. Sikar, Rajasthan, Staff Nurse

4. Ms. Gurpreet Kaur, aged 28 years
d/o Mr. Charanjit Singh
r/o Parashar Electricals, Shop No.110
Shiva Market, Pitampura
Rohini, Delhi-34, Staff Nurse

5. Arti Sharma, aged 28 years
d/o Mr. Jagat Singh Sharma
r/o House No.225-C, Street No.10,
Near Green Valley School
Deepak Vihar, Najafgarh
New Delhi-43, Staff Nurse

6. Jyoti Yadav, aged 24 years
D/o Mr. Raj Kumar
r/o Near Budh Ram Master Wali Gali
Badli Village, Delhi - Staff Nurse

7. Punjala Rahi, aged 27 years
d/o Mr. Nagender Prasad
r/o RZB-188, Phase I, Roshan Vihar

Najafgarh, New Delhi, Staff Nurse

8. Harpreet Kaur, aged 25 years
d/o Mr. Ravinder Singh
r/o D-4, Sham Nagar
PO Tilak Nagar
New Delhi-18, Staff Nurse
9. NG Kaini Moyon, aged 28 years
d/o Mr. N.G. Koha Moyon
r/o Komlathabi Vill. PO Pallel, Chandel
Distt. Manipur – 795135, Staff Nurse
10. Meenakshi, aged 25 years
d/o Mr. Bhagwan Shokeen
r/o H.No. 338, Near Pole No.82
VPO Dichaon Kalan
New Delhi-43 Staff Nurse

(working as Staff Nurse in Girdhari Lal Maternity Hospital
(North Delhi Municipal Corporation), Kamla Market, New Delhi)

11. Angeli Marlyn Sen, aged 29 years
d/o Mr. Virender Sen
r/o 217, Civil Lines
PWD Colony, Boudary Road
Meerut, UP, Staff Nurse
12. Moni, aged 26 years
d/o Mr. Ajit Singh
VPO Dulhera, Tehsil Bahadurgrah
Distt. Jhajjar, Haryana, Staff Nurse
13. Beena K, aged 28 years
d/o Mr. Kunjumon
r/o Flat No.52, FF, Janta Flats
Group 1, Pocket – C, Hastsal, Uttam Nagar
New Delhi-59 Staff Nurse
14. Sonia Kumari, aged 26 years
d/o Mr. Jai Kanwar Singh
r/o H.No.112-A, Ishwar Colony Extn.
Phase-III, Bawana
Delhi-39 Staff Nurse
15. Lamneilhing Khongsai, aged 32 years
d/o Mr. Doukhotil Khongsi
r/o Lajangveng Saikul, Senapati
Manipur, Staff Nurse
16. Linse K.J., aged 29 years
s/o Mr. K.V. Joseph

r/o B-60/UG-4, Dilshad Colony
New Delhi-95, Staff Nurse

17. Thalukattu Sijin Varghese, aged 27 years
s/o Mr. Varghese K.T.
r/o J-42, UG-3, Dilshad Garden
New Delhi, Staff Nurse
18. Gyanesh Kumar Sharma, aged 29 years
s/o Mr. Murari Lal Sharma
r/o Madhav Nagar, Balaji Road, Saithal Mod
Dausa, Rajasthan, Staff Nurse
19. Durgawati, aged 26 years
d/o late Mr. Ambika Sahani
r/o H.No.209, Ganga Jamuna Samini
Village of Hope, Tahirpur, Shahdara
Staff Nurse
20. Savitri Bai, aged 31 years
d/o Mr. Mool Chand Saini
r/o 9/7, Gali No.4, Swaroop Nagar
Delhi-42, Staff Nurse
21. Sajjana Kumari, aged 27 years
d/o Mr. Hira Lal
r/o VPO Daulat Pura, Via-Katrathal
Distt. Sikar Rajasthan, Staff Nurse
22. Manju Rani, aged 29 years
d/o Mr. Dharambir Singh
r/o H.No.159, Vill. Madanpur Dabas
PO Rani Khera, Near Balaji Mandir
Delhi, Staff Nurse
23. Swati, aged 25 years
d/o Mr. Chander Dev Mahto
r/o 22/A, Kureni, Narela
New Delhi-40, Staff Nurse
24. Jeetu, aged 27 years
d/o Mr. Mani Ram
r/ - A-72, PTS Colony, Malviya Nagar
New Delhi-17, Staff Nurse
25. Toshi, aged 29 years
d/o late Mr. Sobha Ram
r/o 590, Roshan Building
Gali Girjawali
Subzi Mandi, Delhi-7, Staff Nurse

26. Suman Devi, aged 27 years
 d/o Mr. Daya Ram Yadav
 r/o Vill. Aspura, Post Raghunath Pura
 Tehsil Kotputli, Distt. Jaipur
 Rajasthan, Staff Nurse

27. Suman Suneja, aged 26 years
 d/o Mr. Darshan Lal
 r/o Ward No.6, Barrack No.22
 House No.1, Gandhi Nagar
 Rohtak-124001, Staff Nurse

28. Varsha, aged 24 years
 d/o Mr. Bhupender Singh
 r/o H.No.312, VPO, Kanjhawla, Delhi Staff Nurse

29. Shripal Singh Gurjar, aged 28 years
 Mr. Prabhu Dayald Gurjar
 r/o Village Guwara (Huna ki Dhani)
 Post Choola, Teh.Bansur, Distt. Alwar,
 Rajasthan, Staff Nurse

30. Navneet Bajar, aged 29 years
 s/o Mr. Ganga Dhar
 r/o Village Bishanpura, Post Shekeshar
 Distt. Jhunjunu, Rajasthan, Staff Nurse

(Working as Staff Nurse in Kasturba Hospital,
 (North Delhi Municipal Corporation)
 Darya Ganj, New Delhi-2)

31. Priti, aged 27 years
 d/o Mr. Hazari Singh
 r/o E-33, Aali Vihar
 New Delhi-76, Staff Nurse

32. Neeraj Arya, aged 25 years
 s/o Mr. Sachinder Kumar
 r/o C-89, Main Gopal Nagar
 Opposite Ortho Plus Hospital
 Najafgarh, Delhi, Staff Nurse

33. Anju Rani, aged 27 years
 d/o Mr. Jagdish Chander
 r/o 3562, Gali No.4
 Narang Colony, Tri Nagar
 Delhi, Staff Nurse

34. Sunita Saini, aged 25 years
 d/o Mr. Gopi Ram Saini
 r/o M-117, Gali No.8
 Shastri Nagar, Delhi-52 Staff Nurse

35. Renu, aged 28 years
 d/o Mr. Ashwani
 r/o H.No.219, HBC, Sector 23
 Sonipat, Haryana, Staff Nurse

36. Sangeeta, aged 25 years
 d/o Mr. Suraj Bhan Panchal
 r/o T-695B/3, Gali No.21A
 Baljit Nagar, Delhi-8, Staff Nurse

37. Rinka Kumari, aged 28 years
 d/o Mr. Hari Singh Yadav
 r/o Vill. Kankar Ki New Dhani
 Post Kutina, Teh. Behror, Alwar
 Rajasthan 301709, Staff Nurse

38. Poonam, aged 27 years
 d/o Mr. Satywan
 r/o H.No.1821/31, Gali No.2
 Shastri Colony, Sonipat
 Haryana, Staff Nurse

39. Sangeeta Davis, aged 28 years
 d/o Mr. KO Davis
 Karekatt, Attokaran (H), Nalukettu,
 PO Koratty, Thrissur Distt.
 Kerala, Staff Nurse

40. Nimmy Josepha, aged 28 years
 d/o Mr. K V Joseph
 r/o 7G, Pkt-A3, Mayur Vihar III
 Delhi, Staff Nurse

41. Om Prakash Bairwa, aged 28 years
 s/o Mr. Gopi Lal Bairwa
 r/o Vill. PO Mahendiwas, Distt. Tonk
 Rajasthan, Staff Nurse

42. Bhupendra Singh, aged 28 years
 s/o Mr. Puran Singh
 r/o VPO Muhari, Teh. Weir
 Distt. Bharatpur 321408
 Rajasthan, Staff Nurse

43. Rupesh Kumar Siraswa, aged 28 years
 s/o Mr. Prem Chand Siraswa
 r/o B-42, Ashok Vihar, Phase III
 New Delhi-52, Staff Nurse
 (working as Staff Nurse in RBIPMT Hospital
 (North Delhi Municipal Corporation), Kingsway Camp, Delhi)

44. Manisha Sagwan, aged 29 years
 d/o Mr. Rishal Singh
 r/o M-32, Vijay Nagar
 Bawana, Delhi, Staff Nurse

45. Sonia Arya, aged 28 years
 d/o Mr. Ajit Kumar
 r/o 40/1, Delhi Camp
 Sonipat, Haryana, Staff Nurse

46. Aakriti, aged 28 years
 d/o Roop Lal
 r/o G-60, MCD Colony
 Dhaka, Kingsway Camp
 Delhi, Staff Nurse

(Working as Staff Nurse in MVID Hospital
 North Delhi Municipal Corporation), Kingsway Camp, Delhi)

47. Sunil Kumar, aged 27 years
 s/o Mr. Ram Kumar
 r/o A-1/45-A, Janta Flats, Maa Shakti Apartment
 Paschim Vihar, New Delhi-63, Staff Nurse

48. Lintu Verghese, aged 27 years
 d/o Mr. Verghese (UR)
 r/o H.No.35, BM Block, Poorvi East
 Shalimar Bagh, Delhi, Staff Nurse

49. Ajay Kumar Bhuradia, aged 32 years
 s/o Mr. Laxmi Narain
 r/o C-614, Camp No.2, Nangloi
 Delhi-41, Staff Nurse

(Working as Staff Nurse in Hindu Rao Hospital
 North Delhi Municipal Corporation), Hindu Rao Hospital, Delhi)

50. Ved Prakash, aged 27 years
 s/o Mr. Ram Pratap
 r/o Naresh Park, Nangloi
 New Delhi, Staff Nurse

51. Ashok Kumar Jatav, aged 27 years
 s/o Mr. Jagmohan Jatav
 r/o Vill. Bahadurgah
 Post Jatnagla
 Teh. Hindaun City, Distt. Karauli
 Rajasthan, Staff Nurse

(Working as Staff Nurse in MCD Ayurvedic Hospital)
 Haiderpur, Delhi)

..Applicants
 (Mr. Ajesh Luthra and Ms. Kamlakshi Singh Chauhan, Advocates)

Versus

1. Government of National Capital Territory of Delhi
Through its Chief Secretary
Delhi Secretariat, Players Building
ITO, New Delhi-2
2. North Delhi Municipal Corporation
Through its Commissioner (MCD)
Civic Centre, Minto Road
New Delhi
3. North Delhi Municipal Corporation
Director of Health Administration
(MCD), Civic Centre
Minto Road, New Delhi
4. Medical Superintendent
Girdhari Lal Maternity Hospital
(North Delhi Municipal Corporation)
Kamla Market, New Delhi
5. Medical Superintendent
Kasturba Hospital,
(North Delhi Municipal Corporation)
Darya Ganj, New Delhi-2
6. Medical Superintendent
RBIPMT Hospital
(North Delhi Municipal Corporation)
Kingsway Camp, Delhi
7. Medical Superintendent
MVID Hospital
(North Delhi Municipal Corporation)
Kingsway Camp, Delhi
8. Medical Superintendent
Hindu Rao Hospital
Malka Ganj, Delhi
9. Medical Superintendent
MCD Ayurvedic Hospital
Haiderpur, Delhi

..Respondents
(Mr. Manjeet Singh Reen, Advocate)

O R D E R

Mr. A.K. Bhardwaj:

O.A. No.4402/2015 & C.P. No.753/2015

The prayer made in the Original Application under Section 19 of the Administrative Tribunals Act, 1985 read thus:-

“In view of the above, it is, therefore most respectfully prayed that the Hon’ble Tribunal may kindly be pleased to direct the respondent nos.2 to 4 to follow the policy framed by respondent no.1 or to formulate a policy to regularize the services of the applicants by considering the judgment of the Hon’ble High Court and this Hon’ble Tribunal and further by considering the decisions of the other states who have regularized the services of the contractual employees.”

2. Though the applicants have taken several grounds pervaded in paragraph 5 (a) to (f) of the Original Application, but during the course of arguments, learned counsel for applicants espoused:
 - i) Once in **Sonia Gandhi & others v. Govt. of NCT of Delhi & others** (W.P. (C) No.6798/2002 with connected petition) decided on 06.11.2013 Hon’ble High Court of Delhi ruled that the Government of NCT of Delhi should carry out manpower requirement assessment, keeping in view the facts that the population has crossed 1.7 crore persons and frame one-time policy, the respondents herein should frame a policy regarding regularization of services of the applicants.
 - ii) The aforementioned Order passed by Hon’ble High Court could be followed by this Tribunal in a number of cases, including the one in **Ramesh Chand Yadav & others v. National Capital Territory of Delhi & another** (O.A.No.1679/2014) decided on 01.08.2014.

- iii) In terms of letter No.F.19(01)/2014/S-IV/223-224 dated 16.02.2015 (Annexure A-7), Government of NCT of Delhi could provide that the services of the contractual employees engaged by the Department should not be terminated till further instructions in the matter and if any terminations are likely to take place, the same should be stopped till further orders.
- iv) In **Dr. Renu Patel & others v. Govt. of NCT of Delhi & others** (O.A.No.48/2014 with connected cases) decided on 27.08.2014, this Tribunal could lay down certain guidelines regarding fate of services of contractual employees and their regularization.

3. On the other hand, Mr. K.K. Rai, learned senior advocate for respondent Nos. 2 to 4 (East Delhi Municipal Corporation) submitted:

- i) The decision taken by the Government of NCT of Delhi for its own Departments is not applicable to the employees of EDMC.
- ii) As has been ruled by Hon'ble Supreme Court in **Secretary, State of Karnataka & others v. Umadevi & others**, (2006) 4 SCC 1, the regularization cannot be one of the modes of recruitment and induction to any service through such mode amounts to backdoor entry.
- iii) In view of the law declared by the Apex Court in **Nand Kumar v. State of Bihar & others** (2014) 5 SCC 300, the individuals not appointed through proper procedure cannot even invoke the theory of legitimate expectation for being confirmed in the post.

4. Mrs. Rashmi Chopra, learned counsel for respondent No.1 – Government of NCT of Delhi supported the plea raised by learned counsel for EDMC and submitted that it is not for the Government of NCT of Delhi to interfere in recruitment to various services of MCD. She also submitted that recruitment as well as the recruitment rules / policy are made by the Corporation itself and the Delhi Government has only limited role of coordination in between various Corporations.

5. Rejoining the submissions, learned counsel for applicants submitted that the Delhi Municipal Corporation (Amendment) Act, 2011 was passed by the Legislative Assembly of National Capital Territory of Delhi in the Sixty-Second Year of Republic of India and it was in terms of this that three different Corporations were created. He further submitted that in terms of Section 484A of DMC Act, 1957, inserted vide DMC (Amendment) Act, 2011 (Delhi Act 12 of 2011), the Director of Local Bodies is competent to frame the recruitment rules for various posts. In sum and substance, his plea is that the recruitment and recruitment rules for various posts in different categories in Corporation is the function of Govt. of NCT of Delhi through its Director of Local Bodies and once a policy decision had been taken by the Govt. of NCT of Delhi regarding regularization of service of contractual employees, the same should be made applicable to the employees of MCD also.

6. Finally, learned counsel for applicants referred to various orders/ office memoranda issued by the MCD to espouse that there are number of posts of Staff Nurse vacant in different hospitals of MCD and the services of

the Nurses, employed on contract basis, should be utilized against such vacant posts.

7. Rebutting the submissions, learned senior advocate for respondent Nos. 2 to 4 submitted that the Staff Nurses, employed on contract basis, are still continued and only to accommodate the regularly selected candidates, only the few Nurses, employed on contract basis, are disengaged following the principle of 'last come first go'.

8. We heard the learned counsels for the parties and perused the record.

9. The Notification was published to fill up 225 vacant posts of Post Code No.21/13. In the selection, total 164 candidates were selected out of which 62 were forwarded to EDMC. Against the sanctioned strength of 244 posts of Staff Nurse, 98 incumbents are employed on regular basis and 136 are on contract basis. In the selection process, the Nurses, employed on contract basis, were also given an opportunity to participate and many of them actually participated. In order to accommodate the regularly selected candidates, services of the applicants herein, who were at the bottom of the list of contractual employees (so employed last), were discontinued.

10. As has been noted hereinabove, the salient contention put-forth on behalf of the applicants is that in view of the law declared by the Hon'ble High Court of Delhi in **Sonia Gandhi's** case (supra), the respondents should frame a policy for regularization of Staff Nurses. As can be seen from the judgment, the same was passed in the backdrop that with the passage of time (in two decades) the population of Delhi has increased and need of para-medical staff is to be assessed with reference to such factual

developments. Even in the said judgment also, the judgment of Hon'ble Supreme Court in **Umadevi's** case (supra) was taken note of and it could be viewed that the irregularly appointed staff, who have worked for 10 years, should be considered for regularization as one time measure.

Paragraphs 17, 18, 20, 21 and 22 of the judgment read thus:-

“17. On the subject of regularization the undisputed position which emerges is that over the last two decades i.e. 20 years the Government of NCT of Delhi has not assessed the man power requirement in its various departments and offices resulting in large scale contract appointment being resorted to.

18. With reference to para-medics, as the writ petitioners inform us, more than 50% para-medics working in the hospital to which the writ petitioners are attached are contract appointed para-medics.

xx xx xx xx

20. The Constitution Bench decision of the Supreme Court reported as 2006 (4) SCC 1 Secretary State of Karnataka & Ors. Vs. Uma Devi & Ors. held that creation of posts falls within the domain of the executive and Courts cannot issue directions to create post. The Bench also observed that in respect of irregular appointees who have worked for more than 10 years, as a one time measure, the Government should consider regularization.

21. Dealing with a camouflage appointment ostensibly through NGOs, but on lifting the veil, found to be a case of direct appointment by the Government of NCT Delhi of Laboratory Technicians and Radiographers at the Central Jail Tihar, a Division Bench of this Court of which one of us: Pradeep Nandrajog, J. was a Member of had directed the Government to assess requirement of para-medics at Tihar Jail keeping in view the fact that the Original Cadre was sanctioned when in the year 1996 Tihar Jail had a stated capacity of 3600 inmates which grew to 11000 inmates as of the year 2010. The Division Bench directed a one time scheme of regularization to be brought into force on the subject of age bar, the Division Bench noted that the contract appointed employees could not be visited with a disability due to unfair labour policies adopted by the Government.

22. Accordingly, we issue another direction and simultaneously dispose of the two writ petitions. The direction would be that the Government of NCT Delhi would carry out a manpower requirement assessment in all its departments keeping in view the fact that the population in Delhi has crossed 1.7 crore persons. Such number of posts shall be sanctioned as are necessary to provide services to the citizens of Delhi. A one time policy of regularization shall be framed and existing rules pertaining to service in different departments shall

be amended. Existing contractual employees shall be considered for appointment to these new posts as per a policy framed.”

(emphasis supplied)

11. Besides the aforementioned, the judgment of Hon’ble High Court of Delhi was also founded on the factual backdrop that in the case of doctors the Government of NCT of Delhi had framed such policy. Paragraph 23, wherein the judgment in **U.P.S.C. v. Dr. Akshay Bahadur & others** (Writ Petition (C) No.6260/2013) dated 28.10.2013 could be taken note of, reads thus:-

“23. We note that as recent as on October 28, 2013, deciding W.P.(C) No.6260/2013 UPSC Vs. Dr.Akshay Bahadur & Ors., we had taken note of the fact that the Government of NCT of Delhi had tackled the problem of 529 contract appointed Junior Specialists and Doctors by repealing the existing Delhi Health Services (Allopathy) Rules with the Delhi Health Services (Allopathy) Rules, 2009. In the Schedule of Posts, in addition to the existing sanctioned posts 529 posts were added and Rule 6 of the new Rules stipulated that said posts would be treated as on the date of the constitution of the cadre and that 529 contract appointed Junior Specialists and Doctors would be appraised for purposes of their suitability by UPSC and appointment made to the cadre post.”

12. In the case of **Dr. Renu Patel** (supra), the directions were issued after taking note of the aforementioned judgment of Hon’ble High Court and Rule 6 (2) of Delhi Health Service (Allpathy) Rules, 2009. After the said judgment, the position has substantially changed inasmuch as vide letter No.F.19(01)/2014/S-IV/223-224 dated 16.02.2015 (ibid), the Government of NCT of Delhi could provide that the services of the contractual employees engaged by the Department should not be terminated till further instructions in the matter. The letter reads thus:-

“The Government of N.C.T. of Delhi would like to take a view on the existing policy regarding status of contractual employees engaged in various departments and organizations under this Government.

Therefore, services of Contractual employees engaged by the departments should NOT be terminated till further instructions in the matter. If any terminations are likely to take place, the same should be stopped till further orders.”

13. Thereafter the Government of NCT of Delhi issued letter No.F. 19(11)/2015/S.IV/1890-96 dated 19.10.2015 regarding regularization of services of contractual employees working in various departments of Government of NCT of Delhi and approved the general policy for regularization of the contractual employees vide Cabinet Decision No.2223 dated 06.10.2015. The said letter reads thus:-

“Order

The Government of National Capital Territory of Delhi has considered the issue of regularization of the Contractual employees working in various departments of Govt. of N.C.T. of Delhi and approved the following general policy for regularisation of the contractual employees vide Cabinet Decision No.2223 dated 06.10.2015:-

In line with the Uma Devi Judgement, Government of National Capital Territory of Delhi makes the following policy for contractual employees working against regular posts:-

1. Every department should formulate a scheme to fill up all vacant posts.
2. Contractual employees working against these posts should be allowed to apply with following conditions:-
 - (a) They should be given age relaxation.
 - (b) They should be given appropriate and adequate weightage of experience for that post in evaluation.
 - (c) Any contractual employee, whose service was terminated due to unsatisfactory work during their contractual employment, shall be treated as ineligible, under the scheme.

3. Policy in para-2 shall also be applicable to the contractual employees who have worked against these posts for an aggregate period of 6 months or more after 01.04.2013.

It is, therefore, requested that the necessary action with regard to implementation of above decisions may be initiated at the earliest."

14. As can be seen from the aforementioned policy order, the contractual employees could be allowed to apply for their regular appointment with certain conditions mentioned in paragraph 2 of the aforementioned order. Thus after the Orders passed by the Hon'ble High Court and this Tribunal, the Government of NCT could frame a policy and it is not in dispute that the applicants herein could be considered for their regularization as per the conditions in paragraph 2 of the said policy decision. It is *stare decisis* that it is not open for the Tribunal / Courts to issue direction to the Executive to frame policy far less time and again. Once the Government of NCT of Delhi could frame a policy in consonance with the judicial precedents on the subject, no fault can be found with the same. Besides, as it may, once the policy order is not even challenged before us, we cannot comment upon the same.

15. In **State of Andhra Pradesh v. V. Sadanandam**, AIR 1989 SC 2060, the Apex Court could categorically rule that it is not for judicial bodies to sit in judgment over the wisdom of the Executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the Executive. Relevant excerpt of the said judgment reads thus:-

"We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old Rule and for personnel belonging to either zones being transferred on promotion to offices in other zones. In drawing such conclusion, the Tribunal has

travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive".

16. In **Nand Kumar's** case (supra), following the law declared by their Lordships in **UmaDevi's** case (supra), it could be ruled that the regularization/absorption is not a matter of course. Relevant excerpt of the judgment reads thus:-

"23. We have heard learned counsel for the parties. We have also perused the records placed before us. We find that the status of the appellants was continuing to be as daily wagers. They cannot be treated as permanent Government employees. They all worked as employees of the Board. We have also found that no steps were followed by the Board to safeguard the service of these appellants. We have not been able to find out whether any advertisement was issued by the Government to regularise them. In these circumstances, in view of the submission which has been advanced on behalf of the appellants, we do not find that there is any substance in the matter/arguments put forwarded before us on behalf of the appellants as we have been able to find out that the appellants have served as daily wagers and we do find that Section 6(i) makes it clear that after the repeal of the Agriculture Produce Act, 1960, all officers and employees of the Board are to continue in employment and they shall continue to be paid what they were getting earlier as salary and allowance till such time the State Government takes an official decision as per the further provisions of Section 6. Such provision certainly allows continuance of the officers and employees of the Board to continue in employment in the same status. The status of the daily wage employees and regular employees of the Board is eminent from the said provision. It cannot be said that the status of the daily wage employees can enjoy or acquire the same status as that of the regular employees. In these circumstances, we do not find that there was any discrimination between the daily wage employees and the regular employees as is tried to be contended before us. Therefore, such submission has no substance, in our opinion, for the reason that the difference continues and is recognised under the said provision of the Repeal Act. So far as the power of the Committee of Secretaries constituted in terms of section 6(ii) of the Repeal Act is concerned, it is to prepare a scheme of absorption as well as of retirement, compulsory retirement or voluntary retirement and other service

conditions of officers and employees of the Board. In our opinion, the scheme which was prepared by the Committee of Secretaries is only in the nature of recommendation and the State has the power either to accept, modify or amend the same before granting its official approval. Therefore, after the sanction is granted by the Government in respect of the said scheme, it would gain the status of statutory scheme framed under the said Act and would be enforced within the time to be indicated in section 6(iii) of the Repeal Act, 2006.

24. Therefore, in the light of the said provision, we do not find that the Committee of Secretaries can be faulted in treating the daily wage employees on a different footing and deciding for removal of their services.

25. We have consciously noted the aforesaid decisions of this Court. The principle as has been laid down in Umadevi (*supra*) has also been applied in relation to the persons who were working on daily wages. According to us, the daily wagers are not appointees in the strict sense of the term 'appointment'. They do not hold a post. The scheme of alternative appointment framed for regular employees of abolished organisation cannot, therefore, confer a similar entitlement on the daily wagers of abolished organisation to such alternative employment. [See *Avas Vikas Sansthan v. Avas Vikas Sansthan Engineers Association* (2006 (4) SCC 132)]. Their relevance in the context of appointment arose by reason of the concept of regularisation as a source of appointment. After Umadevi (*supra*), their position continued to be that of daily wagers. Appointment on daily wage basis is not an appointment to a post according to the rules. Usually, the projects in which the daily wagers were engaged, having come to an end, their appointment is necessarily terminated for want of work. Therefore, the status and rights of daily wagers of a Government concern are not equivalent to that of a Government servant and his claim to permanency has to be adjudged differently.

26. In these circumstances, in our considered opinion, the regularisation/absorption is not a matter of course. It would depend upon the facts of the case following the rules and regulations and cannot be de hors the rules for such regularisation/absorption.

27. Accordingly, we do not find any substance with regard to the arguments advanced before us on behalf of the appellants. We do not find any merit in the appeals. Accordingly, we uphold the decision of the High Court and affirm the same, dismissing these appeals."

17. As far as the plea regarding control of Government of NCT of Delhi about recruitment to be taken by the MCD put-forth by learned counsel for applicants is concerned, as has been contended by the learned counsel for Government of NCT of Delhi, the power of appointing the municipal

officers and other municipal employees whether temporary or permanent shall vest in the Commissioner. Section 92 of Delhi Municipal Corporation Act, 1957 reads thus:

“92. Power to make appointments

(1) Subject to the provisions of section 89, the power of the appointing municipal officers and other municipal employees whether temporary or permanent shall vest in the Commissioner:

Provided that the power of appointing officers and other employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor to category B posts or category C posts shall vest in the Standing Committee:

Provided further that the Standing Committee may delegate to the Municipal Secretary or the Municipal Chief Auditor the power of appointing officers and other employees immediately subordinate to the said Secretary or Auditor, to category C posts.

(2) The claims of the members of the Scheduled Castes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments of municipal officers and other municipal employees.”

18. The role of the Director in framing the recruitment rules arise only when the proposal is mooted by the concerned Commissioner. We do not find any procedure in terms of which the Director of Local Bodies can take initiative to frame the recruitment rules or policy for Corporation at his own. His role is also commented upon by this Tribunal in **Surendra Kumar v. South Delhi Municipal Corporation & others** (O.A.No.603/2015) decided on 12.08.2015. As has been viewed in paragraphs 21 and 22 of the Order, the DLB has to act in consultation with Commissioner of the Corporation. The paragraphs read thus:-

“21. It follows from the above that while the officers functioning up to the ward and zonal level will be allocated to different corporations on ‘as is where is’ basis while those above were to be divided amongst the new corporations by the newly created post of DLB in consultation with the Commissioner of erstwhile Corporation. The

posts above the ward and zonal level eluded in Section 90-A (1)(a) are related to either Group-B or Group 'C', while as per clause 90-A(1)(b), these can be presumed to be relating to Group-A posts.

22. The above provisions imply the following:-

- (i) The allocation at the ward and zonal level, mainly meant by Group 'B' and 'C' category of posts, was made on as is where is basis;
- (ii) In respect of the staff working above the ward and zonal level, that being mainly Group 'A' staff but would also include others, allocation was to be made by the DLB who had also been introduced for the first time in this enactment, at a later date;
- (iii) The DLB would also make allocation/division in consultation with the Commissioner of erstwhile Corporation.”

19. In Section 89 of the DMC Act, 1957, it has been categorically specified that it is the Corporation, which shall appoint the suitable persons, including the Municipal Health Officer, etc. The Section reads thus:-

“89. Appointment of certain officers - (1) The Corporation shall appoint suitable persons to be respectively ***, the Municipal Engineer, the Municipal Health Officer, the Education Officer, the Municipal Chief Accountant, the Municipal Secretary and the Municipal Chief Auditor and may appoint one or more Deputy Commissioners and such other officer or officers of a status equivalent to or higher than the status of any of the officers specified earlier in this sub-section as the Corporation may deem fit on such monthly salaries and such allowances, if any, as may be fixed by the Corporation.

(2) The appointment of the Municipal Chief Auditor shall be made with the previous approval of the *** Government and every other appointment referred to in sub-section (1) except that of the Municipal Chief Accountant and the Municipal Secretary shall be subject to confirmation by that Government:

Provided that the Municipal Chief Auditor shall not be eligible for any other office under the Corporation after he has ceased to hold his office.”

20. In terms of Section 98 of the Act, it is the Corporation, which is empowered to make regulation regarding qualifications and the manner of selection for appointments to posts. The Section reads thus:-

“98. Power of Corporation to make regulations. (1) The Corporation may make regulations to provide for any one or more of the following matters, namely:—

- (a) the tenure of office, salaries and allowances, provident funds, pensions, gratuities, leave of absence and other conditions of service of officers and other employees appointed under this Chapter;
- (b) the powers, duties and functions of the Municipal Secretary;
- (c) the qualifications of candidates for appointment to posts specified in sub-section (1) of section 89 and to posts dealt with in the first schedule of posts referred to in sub-section (2) of section 90 and the manner of selection for appointments to posts dealt with in the second schedule of posts referred to in that sub-section;
- (d) the procedure to be followed in imposing any penalty under sub-section (1) of section 95, suspension pending departmental inquiries before the imposition of such penalty and the authority by whom such suspension may be ordered; the officer or authority to whom an appeal shall lie under sub-section (4) of that section;
- (e) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of persons appointed to services and posts under the Corporation and any other matter for which in the opinion of the Corporation provisions should be made by regulations.

(2) No regulation under clause (c) of sub-section (1) shall be made except after consultation with the Commission and for category ‘C’ posts except with the prior approval of the Commissioner.”

21. In view of the aforementioned provisions of the DMC Act, 1957, there is no scope of any doubt that it is the Corporation, which is competent to make regulation/policy decision for appointment to various posts obviously by following due procedure. It is for the Corporation only to be guided or not to be guided in its policy decision by the decision taken by the Government of NCT of Delhi on similar subjects. We do not find any force

in the plea put-forth by learned counsel for applicants that the decision taken by the Government of NCT of Delhi for its Departments becomes applicable to the MCD automatically. Even in the case of **Dr. Renu Patel** (supra), relied upon by the applicants, the Tribunal had categorically viewed that the contractual employees can always be substituted by the candidates selected for appointment to the post on regular basis in accordance with the recruitment rules.

22. As has been ruled by the Apex Court in **Union of India & others v. Majji Jangammayya & others**, AIR 1977 SC 757, it is for the State to take decision regarding filling up of the vacancies or keeping the same vacant as long as it wishes. The relevant excerpt of the said judgment reads thus:-

“58. The observations of this Court in Bishan Sarup Gupta's case (AIR 1972 SC 2627) (supra) are that if as a result of the fresh seniority list it is found that any officer was eligible for promotion to the post of assistant Commissioner on account of his place in the new seniority list, the department might have to consider his case for promotion on his record as on the date when he ought to have been considered and if he would be selected his position will be adjusted in the seniority list of Assistant Commissioners. The object is to see that the position of such a person is not affected in the seniority list of assistant Commissioners because he is actually promoted later pursuant to the new seniority list although according to the new seniority list itself he should have been promoted earlier. The observations do not mean that although the Committee can meet for the selection of officers for promotion to the post of Assistant Commissioner only after the seniority list is approved by this Court, the selection would be deemed to be made at the time when a vacancy in the post of Assistant Commissioner occurred and the eligibility of officers for selection will be determined by such deemed date of selection. No employee has any right to have a vacancy in the higher post filled as soon as the vacancy occurs. Government has the right to keep the vacancy unfilled as long as it chooses. In the present case, such a position does not arise because of the controversy between two groups of officers for these years. The seniority list which is the basis for the field of choice for promotion to the post of Assistant Commissioner was approved by this Court on 16 April, 1974. Promotions to the post of Assistant Commissioners are on the basis of the selection list

prepared by the Committee and are to be made prospectively and not retrospectively.”

When such is the position regarding the regular vacancies, if the Governmental authorities choose not to make contractual appointment, it is not for the Courts to force them to do so.

23. In the present case, the learned senior counsel for respondent Nos. 2 to 4 (EDMC) himself submitted that in disengaging / discontinuing the services of the applicants to accommodate the regularly selected candidates the Corporation has already followed the principle of ‘last come first go’. He further submitted fairly that the Corporation would have no difficulty in complying the directions contained in paragraph 26 (i), (ii), (vi), (vii) and (viii) issued by this Tribunal in the case of **Dr. Renu Patel** (supra). For easy reference, the directions are reproduced hereinbelow:-

“26. In the aforementioned factual and legal backgrounds, it is concluded and held:

- i) The respondents are entitled to replace the services of contractual doctors, including the applicants herein by regularly selected appointees.
- ii) Merely because they have rendered contractual service, the applicants would not acquire any right for regularization.
- iii) In view of the observations made by this Tribunal in the case of Vijay Dhankar (supra) and the directions given by the Hon’ble High Court in the case of Sonia Gandhi (supra), the respondents would make an assessment regarding requirement of General Duty Medical Officer (GDMO) and Junior Specialist (Specialist Grade III - non-teaching) in the Delhi Government Health Services and if as a result of such assessment more posts of General Duty Medical Officer (GDMO) and Junior Specialist (Specialist Grade III - non-teaching) are created, the benefit of the directions given in paragraphs 22, 23 and 24 of the judgment of Hon’ble High Court in Sonia Gandhi’s case (supra) would be made available to the applicants herein also.

iv) While giving such benefits, the respondents would either frame fresh policy, as directed by the Hon'ble High Court or they can extend the benefit of Rule 6 (2) of Delhi Health Service (Allopathy) Rules, 2009 to the contractual doctors.

v) Till the services of the applicants are substituted by regularly appointed General Duty Medical Officer (GDMO) and Junior Specialist (Specialist Grade III - non-teaching), they would be continued on contract basis.

vi) While discontinuing the services of the applicants, the respondents would resort to the principle of 'last come first go', i.e., the contractual doctor appointed last would be discontinued first.

vii) The names of such contractual doctors, who cannot be continued in service any more on account of regular appointment, would be kept in a separate pool and in case of requirement of contractual doctors in future, they will be given preference for such engagement and till last contractual doctor from the pool is utilized, no fresh contractual appointment in the category of General Duty Medical Officer / Junior Specialist (Specialist Grade III - non-teaching) in the discipline to which the applicants belong would be made by the respondents.

viii) In the event the available vacancies in a particular unit/hospital are filled up on regular basis but the same remain unfilled in different unit/hospital, the respondents would explore the possibility of engaging the applicants herein for their contractual appointment in the hospital/unit where vacancies remain unfilled."

24. When we do not find any merit in the Original Application of the applicants, in view of the fair stand taken by Mr. K.K. Rai, learned senior counsel for respondent Nos. 2 to 4 (EDMC), we dispose of the same with the following directions:-

- i) The respondents are entitled to replace the services of contractual doctors, including the applicants herein by regularly selected appointees.
- ii) Merely because they have rendered contractual service, the applicants would not acquire any right for regularization.

- iii) While discontinuing the services of the applicants, the respondents would resort to the principle of 'last come first go', i.e., the contractual Staff Nurse appointed last would be discontinued first.
- iv) The names of such contractual doctors, who cannot be continued in service any more on account of regular appointment, would be kept in a separate pool and in case of requirement of contractual Staff Nurse in future, they will be given preference for such engagement.
- v) In the event the available vacancies in a particular unit/hospital are filled up on regular basis but the same remain unfilled in different unit/hospital, the respondents would explore the possibility of engaging the applicants herein for their contractual appointment in the hospital/unit where vacancies remain unfilled.

No costs.

In view of the aforementioned, interim Order 03.12.2015 stands vacated.

C.P.No.753/2015 in O.A. No.4402/2015

25. On 03.12.2015, this Tribunal made the following Order:-

“MA NO.4023/2015 is allowed and applicants are permitted to join together in the OA.

Learned counsel for the applicants has relied on various judgments of Hon'ble High Court and orders of this Tribunal to contend that the applicants who are working as contractual employees should not be disengaged till the policy is framed for regularization or for recruitment. Reliance has also been placed on letter dated 16.2.2015 and the order dated 19.10.2015 issued by the Government of NCTD in this regard.

Notice of the OA be issued to the respondents.

Till then, respondents are directed not to disengage the applicants, except on the ground of unsatisfactory performance or misconduct, etc.

List on 17.12.2015.

Issue dasti.”

26. The complain in the present Contempt Petition is that despite the aforementioned interim Order, the respondents have discontinued the services of the applicants in the Original Application. The Application was heard finally on 25.01.2016 and in terms of the aforementioned Order, the interim Order dated 03.12.2015 has been vacated.

27. Once there was a direction issued to the respondents by this Tribunal not to discontinue / disengage the applicants, except on the ground of unsatisfactory performance or misconduct, the respondents ought to have abided by the Order.

28. In the circumstances, we are of the view that irrespective of their retention in service on contract basis, the applicants would be entitled to salary till the date of vacation of interim Order, i.e., 29.01.2016.

29. Contempt Petition stands disposed of. Notices issued to the respondent stand discharged. No costs.

O.A. No.4237/2015

30. Learned counsels for the parties were *ad idem* that the controversy involved in the present Original Application is, in all fours, of the O.A. No.4402/2015 and requested that the present Original Application may also be disposed of in terms of the Order passed therein.

31. In view of the statement made by the parties, O.A. No.4237/2015 is disposed of. No costs.

Let a copy of this Order be placed in their respective files.

(V. N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

/sunil/