

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 3650/2016

This the 5th day of October, 2018

Hon'ble Ms. Aradhana Johri, Member (A)

1. Abhinav Bhatnagar, Age-29 years,
Prosthetist & Orthotist,
S/o. Sh. Anoop Bhatnagar,
H. No.-465, VPO-Begumpur,
Near MCD School, Opposite Rohini Sector-22,
Delhi – 110 086.
2. Ms. Chitra Tiwari, Age-31 years,
Prosthetist & Orthotist,
D/o. Sh. N. K. Sharma,
R/o. -2956/221, Vishram Nagar,
Trinagar, Delhi-110 035.
3. Abhinav Kumar, Age-28 years,
Workshop Worker,
S/o. Sh. Prem Kumar,
R/o.-1427A/13, Govindpuri Kalkaji,
New Delhi – 110 019.
4. Sh. Sulabh Kumar Kanth, Age-36 years,
Speech Therapist,
S/o. Late Sh. J. N. Kanth,
C/o-Jhunkun Ram,
House No-892, Sector-5,
R. K. Puram, New Delhi.
5. Sh. Sitaram, Age-36 years,
Hospital Attendant,
S/o. Sh. Tek Chand,
R/o-118A, Arjun Nagar,
Near Green Park, New Delhi.
6. Sh. Om Prakash, Age-34 years,
Hospital Attendant,
S/o. Sh. Ram Chander,
R/o. 287, Shapur Jat,
New Delhi – 110 049.

7. Sh. Mahesh Rana, Age-31 years,
Hospital Attendant,
S/o. Sh. Bishamber Rana,
R/o-H. No.-1197, MTNL Exchange,
Near Boys Pre School,
Village- Bijwasan, New Delhi – 61.
8. Sh. Manish Gosain, Age-31 years,
Multi Rehabilitation Worker,
S/o. Late Sh. D. S. Gosain,
R/o-58-E, Sector-4, DIZ Area,
Gole Market, New Delhi – 110 0 01.
9. Sh. Kranti Kumar, Age-31 years,
Multi Rehabilitation Worker,
S/o. Sh. Kishori Lal,
R/o-RZF-762/16, Gali No.-4,
Raj Nagar-II, F-Block,
Palam Colony, New Delhi – 110 077.
10. Sh. Shambhu Kumar Yadav, Age-33 years,
Workshop Worker,
S/o. Sh. Ramchandra Yadav,
H. No.A-2, Second Floor, Lajpat Nagar Part-I,
Opposite Rohini Sector-22, New Delhi – 110 024.
11. Sh. Nanak Chand, Age-38 years,
Workshop Worker,
S/o. Late Sh. Dharm Singh,
R/o-I-137, Lal Kuan, M. B. Road,
New Delhi – 44. ...Applicants

(By Advocate : Mr. Sachin Chauhan)

Versus

1. Union of India through,
The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. Medical Superintendent,
Ram Manohar Lohia Hospital, New Delhi.
3. The Dy. Director (Admn.),
Ram Manohar Lohia Hospital,
New Delhi. ...Respondents

(By Advocate : Mr. Gyanendra Singh with Mr. S. K. Tripathi)

O R D E R (O R A L)

Aradhana Johri, Member (A) :

The case is being argued by Mr. Sachin Chauhan, learned counsel for applicants and Mr. Gyanendra Singh with Mr. S. K. Tripathi, learned counsel for respondents.

2. It is the contention of the applicants that they have been working in Dr. R. M. L. Hospital, New Delhi in the Physical Medical and Rehabilitation Department as contractual staff on different positions since 2008 to 2010.

The exact position is given below :-

Sl. No.	Name of Applicant	Date of appointment	Post
1.	Abhinav Bhatnagar	01.04.2010	Prosthetist & Orthotist
2.	Chitra Tiwari	01.04.2010	Prosthetist & Orthotist
3.	Abhinav Kumar	09.04.2010	Workshop Worker
4.	Sulabh Kumar Kanth	01.02.2008	Speech Therapist
5.	Sitaram	12.02.2008	Hospital Attendant
6.	Om Prakash	28.02.2008	Hospital Attendant
7.	Mahesh Rana	14.02.2008	Hospital Attendant
8.	Manish Gosain	28.01.2008	Multi Rehabilitation Worker
9.	Kranti Kumar	28.01.2008	Multi Rehabilitation Worker
10.	Shambhu Kumar Yadav	01.04.2010	Workshop Worker
11.	Nanak Chand	10.05.2010	Workshop Worker

3. They have contended that they have discharged their duties satisfactorily and been given extensions since

then. The cause of action has arisen with the extension order of respondent no.2 dated 17.10.2016 by which their contractual period has been extended till 31.10.2016 but, which clearly states that no further extension will be granted. They have filed the case of **Abhinav Chaudhary V. Delhi Technological University and Anr.** in W.P (C) No. 3512/2014. The operative part of the judgment reads as under :-

“5. In view of the above, the case of the petitioners clearly falls within the ratios of the judgments of the Supreme Court in the cases of Piara Singh and Ors., Umadevi and Ors. and Mohd. Abdul Kadir and Anr. (all Supra) and since one contractual employee cannot be replaced by other contractual employee, and which action will show gross arbitrariness on the part of the respondent no.1, the present writ petition is allowed and respondents are restrained from in any manner terminating the services of the petitioners from the contractual posts of Assistant Professors at which they are working with the respondent no.1/employer. Of course, this will not disentitle the respondent no.1 to appoint any additional Assistant Professors with the respondent no.1 in accordance with its applicable rules or issue fresh advertisements having contractually substantially different terms than what the petitioners are presently working at.

6. The writ petition is allowed and disposed of in terms of the aforesaid observations, leaving the parties to bear their own costs.

7. In view of the reasoning given while allowing W.P. (C) No. 3512/2014, this Writ Petition will also stand similarly allowed.

4. On 28.10.2016, they were granted interim orders by this Tribunal and respondents were directed not to disengage the applicants from the contractual appointment

till the next date of hearing. In the operative part of the Tribunal, the order reads as under :-

"The applicants are working at Dr. R.M.L. Hospital on contract basis against the sanctioned posts. They were engaged in the year 2008/2010 on different dates, the details of which are given at para 4.1 of the OA. The respondents vide office order dated 17.10.2016 (Annexure A-1) have notified that the services of these applicants are extended upto 31.10.2016. The applicants apprehend that their services may be dispensed with by the respondents after 31.10.2016.

Argument of learned counsel for the applicants on interim relief was heard. He submitted that the services of the applicants could be dispensed with by the respondents only in the event of regular appointment being made against these posts and not otherwise. In this regard he placed reliance on the judgment of Hon'ble High Court of Delhi in the case of **Abhinav Chaudhary Vs. Delhi Technological University & Anr**, [WP(C) 3834 /2014, judgment dated 20.01.2015]. In the said judgment the Hon'ble Apex Court's judgments in the cases of **State of Haryana & Ors. Vs. Piara Singh and Ors. and Uma Devi and Mohd. Abdul Kadir and Anr. Vs. Director General of Police** have been discussed. Learned counsel also pleaded for the continuation of the contractual employment of the applicants till posts occupied by them are filled up according to the prescribed procedures.

Shri Yogesh Mahur, learned counsel for the respondents on the other hand argued that the respondents have extended the contractual appointments of the applicants on year to year basis. He stated that the applicants have been appointed on contract basis for a prescribed period and they do not have any right for the continuation of their appointments.

After hearing learned counsel for the parties and after going through the records, I feel considerable force in the arguments of the learned counsel for the applicants. Hence, I direct the respondents not to disengage the applicants from the contractual engagements till the next date of hearing.

Respondents may file reply within four weeks. Rejoinder, if any, be filed within a period of two weeks thereafter.

List on 19.12.2016 for final hearing.

Issue **Dasti.**"

5. The counter affidavit of the respondents was taken on record today on payment of cost to the CAT Bar Library.

6. Learned counsel for respondents has contended that the Recruitment Rules have been prepared and submitted to the Ministry of Health and Family Welfare and the process of filling up the post on regular basis will be started once the recruitment rules are approved. He could not say whether the recruitment rules have been approved till today.

7. The fact that the appointment of the applicants has been done on sanctioned posts and that their services are satisfactory, has not been contested. They have shown that they have been in service since years indicated in the table above with short breaks. Respondents have also not contested that these posts are no longer required. In the light of the fact that applicants are working on sanctioned posts for a long time, there is no report of their services not being satisfactory, and the Hon'ble High Court Judgment that one set of contractual staff cannot be replaced by another set of contractual staff, there is merit in the contention of the applicant that their services should not be dispensed with immediately. However, when the

recruitment rules are made, respondents will be free to fill these posts as per the recruitment rules or through any other legal instrument.

8. The O.A is disposed of with the above direction. There is no order as to costs.

(Aradhana Johri)
Member (A)

/Mbt/