

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

O.A. No.1836 of 2014

This the 23rd day of October, 2018

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

1. Mrs. V. Rani aged 43 years,
W/o Shri J. Venkatesan,
247-G, MIG Green Flats,
Rajouri Garden,
New Delhi
Senior Scientific Assistant Chemistry
.....Applicant
(None present)

VERSUS

1. Govt. of NCT of Delhi,
Department of Health and Family Welfare,
Through its Principal Secretary (Health),
Delhi Secretariat,
Delhi.
2. Drug Testing Laboratory,
Drug Control Department,
Through, Drug Controller,
F-17, Karkardooma,
New Delhi.
3. Delhi Subordinate Services Selection Board,
Through, it's Secretary,
F-18, Institutional Area, Karkardooma,
Delhi-92.
4. Govt. of NCT of Delhi,
Through Chief Secretary,
I.P. Estate, Delhi Secretariat,
Delhi.
.....Respondents
(By Advocate : Shri Vijay Pandita)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

None for the applicant today. Since this case is of the year 2014, we proceed to decide this case by invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987. Accordingly, we heard Shri Vijay Pandita, learned counsel for the respondents and also perused the material placed on record.

2. By filing this OA, the applicant is seeking the following reliefs:-

- “i. Quash the advertisement dated 27/01/2014 and all further proceeding emanating therefrom for the post of Sr. Scientific Assistant (Chemistry) to which the Applicant stands appointed way back in 2001-2002.
- ii. Hold the Applicant as regularly appointed employee working for the respondent Laboratory as Sr. Scientific Assistant as per the ratio of Uma Devi (supra) and Ashish Chanana (Supra).
- iii. In the alternative direct the respondent No.3 i.e., Delhi Subordinate Staff Selection Board, New Delhi, to hold a special qualifying examination for the applicant herein, treating her as a separate class, giving due weightage to the fact that she has been working on the said post for over 12 years.
- iv. Direct the respondent to regularize the services of the applicant with all consequential benefits like they have done in the case of Junior Specialist and Doctors by amending the Delhi Health Services (Allopathy) Rules, 2009.
- v. In the alternative direct the respondent to allow the applicant to participate in the ongoing recruitment process even though she does not fulfill the age criteria.

vi. Pass such other and further order(s) and /or give direction(s) as deemed fit and proper in the facts and circumstances of the case.

3. Brief facts of the case as stated in the OA are that pursuant to an advertisement given in the Employment Newspaper dated 4-10.08.2001 by the respondents inviting applications as a stop gap arrangement for appointment to various sanctioned posts, including five posts of Sr. Scientific Assistants (Chemistry), (hereinafter referred to as 'SSA (C)') the applicant applied for the said post and got selected. She was appointed in January 2002. Since then the applicant has been discharging her duties to the best of her competence and to the utmost satisfaction of their employer.

3.1 The applicant made several representations to the respondents for regularizing her service but to no avail. However, in the month of December 2003, the respondents issued another advertisement in the newspaper inviting applications for filling up above-mentioned posts of SSA (C) and Sr. Scientific Assistant (Microbiology). Only an SC candidate was selected and no other candidate was selected. However, none of those appointed under the advertisement of 2001 on stop gap arrangement were asked to leave.

3.3 The applicant also averred that being aggrieved by the said Advertisement of 2003, he along with others working on the post in question had earlier filed OA No. 1818/2004

seeking relief of regularization on the said post as also for equal pay for equal work. However, this was not heeded to by the Tribunal and she was given a partial relief wherein the Tribunal held vide Order dated 23.4.2004 that the applicants of that OA should be given equal pay protection. Aggrieved by the said Order of this Tribunal, the applicant along with others has also filed Review Application No.147/2004, which was also dismissed by this Tribunal. Thereafter Writ Petition (Civil) No.10098/2004 was filed against the said Orders of this Tribunal, which was also dismissed by the Hon'ble Delhi High Court vide Order dated 30.7.2004 giving liberty to the applicants therein to approach this Tribunal for being allowed to participate in the selection process which was already in process at that time. The applicants at that time approached this Tribunal praying that they should be treated as a separate class and be regularized to the said post accordingly. However, this Tribunal did not find merit in their application and dismissed the same. Thereafter applicants therein once again approached the Hon'ble Delhi High Court vide Writ Petition (C) No.6613-18 of 2005 which was dismissed vide Order dated 15.4.2005 stating that there was no prayer in the application with regard to the applicants therein (including the present applicant) to be allowed to continue in the said post till such time regular appointments are made and therefore, the Hon'ble Delhi High Court did give a direction with regard to such a prayer.

3.2 Applicant further stated that the respondents issued another advertisement in October 2011, which was later quashed by the Hon'ble Delhi High Court.

3.3 The applicant has placed reliance on the judgment of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka Vs. Umadevi & Ors.**, (2006) 4 SCC 1, as also of Hon'ble Delhi High Court in the case of **Ashish Chanana and others vs. Govt. of NCT of Delhi and others** in Writ Petition (Civil) No.1045/2013 dated 3.5.2013.

3.4 By filing the instant OA on 19.5.2014, the applicant is seeking the reliefs as quoted above.

4. Pursuant to notice, the respondents have filed their reply in which they stated that the relief regarding regularization of contractual staff and formulating a policy to consider their regularization cannot be granted in view of the judgments of the Hon'ble Supreme Court and the relief regarding declaring them recruited in accordance with RRs cannot be granted as they were appointed on contract basis as Sr. Scientific Assistant (Chemistry) vide Order dated 5.2.2002 and their services have been extended on contract basis and they were not selected through regular selection, i.e., through DSSSB. The respondents have vide requisition/letter dated 19.4.2010 requested the DSSSB to fill up the post of SSA (Microbiology), SSA (Pharmacology), SSA (Chemistry), Lab Assistant (Microbiology) and Lab Assistant (Chemistry).

4.1 The respondents further stated that regularization of the temporary/contract employees cannot be made in view of following submissions:-

- (i) The Court could decide the cases on legal principles and not on the basis of emotions and sympathies.
- (ii) Before making appointment on regular basis, there should be creation and sanction of the post and even the employees not appointed against a sanctioned post are not entitled to release of their pay.
- (iii) Creation and abolition of posts and regularization are purely the functions of Executive and the Courts cannot create post where none exists.
- (iv) The Court must exercise judicial restraint and not encroach into the Executive or legislative domain.
- (v) The Court and Tribunal cannot direct regularization of temporary appointee dehors the Rules, in view of the following judgments of the Hon'ble Supreme Court and Hon'ble High Court:-

(a) ***Indian Drugs & Pharmaceuticals Ltd. vs. Workmen***, (2007) 1 SCC 408, referred to paras 16, 18, 37, 40, 43 and 44.

(b) Hon'ble High Court of Delhi in ***Balbir Singh vs. Govt. of NCT of Delhi*** in Writ Petition (Civil) No.6120/2013 has after considering the Apex Court's judgments of Apex Court

in the cases of **Uma Devi** (supra) and Indian Drug and Pharmaceuticals Limited (suspra), has held as follows:-

“9. In fact, Supreme Court as per the ratio in the case of Umadevi (supra) entitled and permitted in necessary circumstances the Government and instrumentalities of the State to have casual labourers, contractual workers or temporary employees and therefore relief prayed in para (c) of the prayer cannot be granted. In the case of Umadevi (supra) Supreme Court said that Government cannot be denuded of its power as per circumstances existing to have casual labourers or have contractual employees or temporary workers. This is stated in the following paragraphs in the case of Umadevi (supra):-

“12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature

by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.”

10. Therefore, in my opinion, the writ petition is completely and wholly misconceived. Firstly, the contractual employees do not fall in the exception carved out in para 53 of the judgment of the Supreme Court in the case of Umadevi (supra) inasmuch as such contractual employees are not appointed against sanctioned posts. The only exception as per para 53 was that employees who were appointed against vacancies in sanctions posts, were duly qualified and they had worked for 10 years prior to passing of the judgment in the case of Umadevi (supra), only such persons were to be regularized on the employers drawing out schemes.

11. In the present case, I do not find that there is any specific averment of any specific person having worked for 10 years prior to passing of the judgment in the case of Umadevi (supra) for claiming that such person will as per the relevant facts fall within the exception carved out in para 53 of Umadevi’s case (supra). In view of the above, if I allow the prayers in the writ petition I would in fact be violating the categorical ratio of the Constitution Bench judgment of the Supreme Court in the case of Umadevi (supra).

12. The Writ petition therefore being without any merit whatsoever is accordingly dismissed with costs of 25,000/-. Costs can be recovered by the respondents in accordance with law.

4.2 The respondents have relied upon the judgment of the Hon’ble Apex Court in the case of ***Uma Devi*** (supra) and also ***B.T. Krishnamurthy vs. Basaveswara Education Society***, (2013) 4 SCC 490 wherein the Apex Court clearly held that adhoc appointment does not create any entitlement to/legitimate expectation of regularization. The relevant paras of the said judgment are as follows:-

“21. It is also not in dispute that on 19.06.1995, the Society issued advertisement in the newspaper for appointment on the post of Lecturer in History and pursuant to that respondent No.1 along with other candidates participated in the interview conducted by the College. After the selection process and interview, respondent No.1 was not selected rather one T.S. Malleshappa was selected for the said post. The said Malleshappa joined and continued for about a year and thereafter he left service and joined M. Phil Course. Thereafter, the Society issued another advertisement dated 03.05.1996 inviting applications from eligible candidates for the post of lecturer and one R. Siddegora was appointed as Lecturer in History on probation for a period of two years. Curiously enough, respondent No.1 did not challenge the selection and appointment of the above-named two candidates, Malleshappa and Siddegora. Instead a writ petition was filed by the respondent No.1 seeking regularization of his services on the post of Lecturer in History with all consequential benefits. The respondent No.1 ultimately approached the Tribunal. As noticed above, the Tribunal on the basis of some entries made in the registers maintained by the College passed the impugned order for regularization of the services with all monetary benefits. It is worth to mention here that the Tribunal although came to the conclusion that the certificate produced by respondent No.1 goes to show that he was in the College as temporary and part-time employee even then the Tribunal held that due to passage of time the Court will be justified in directing the College/Society to regularize his services. The Tribunal although directed regularization as mentioned hereinabove but in the subsequent paragraph the Tribunal further directed reinstatement of the respondent in service.

22. Para 43 of the order passed by the Tribunal is quoted herein below:-

“The other aspect is that the appellant is out of service. The date of his retrenchment is shown as 22.7.1995, by the appellant, whereas the management disputes that aspect. On the basis of the material discussed above, I am constrained to hold that the appellant was in service till 22.7.1995, on which date he was asked not to come to the college again. Thus that become the material date for decision about his reinstatement. The appellant will be entitled to reinstatement retrospectively from that date and as it is shown that such a situation was created due to acts of the management, the management cannot absolve itself from discharging its consequential liabilities. The consequential liabilities to pay are loss of pay to the appellant from that date. Thus, the appellant would also be entitled to reinstatement in service as a lecturer in history from 23.7.1995 and he will also be entitled to emoluments, which he was entitled to receive.”

23. In our considered opinion, the Tribunal completely misdirected itself in passing such an order of regularisation and reinstatement in a case where the respondent allegedly worked in the College as part- time Lecturer without any appointment letter and without any selection process. Since the Society never issued any letter of appointment a letter of termination was also not served upon the respondent.

24. As stated above, in the absence of any appointment letter, issued in favour of the respondent as he was temporary/part-time lecturer in the College, there cannot be any legitimate expectation for his continuing in the service.. This was the reason that when in the years 1995and 1996, two persons were appointed one after the other on the post of Lecturer in History, the respondent did not challenge the said appointments. Even assuming that the respondent was permitted to work in the College as part-time lecturer for some period, the action of the management of the college asking him to stop doing work cannot be held to be punitive. The termination simplicitor is not *per se* illegal and is not violative of principles of natural justice.”

4.3 The respondents further stated that applicant of the instant OA was appointed purely on contract basis to the post of SSA (Chemistry) in the year 2002 against vacancies advertised in 2001 through an advertisement for appointment on contract basis in Drugs Control Department. The applicant was selected to the said post after open advertisement through constituted Board and not by the DSSSB. The applicant completed one year of continuous service and thereafter her services have been extended from time to time without any break. The applicant and other similarly situated sent representations after completion of minimum of one year of initial engagement for regularization initially in 2010. The applicant is seeking regularization on the basis of judgment Sonia Gandhi as she is similarly situated employees. The applicant also apprehend her services may be terminated since the respondents have made advertisement for appointment on regular employees against the vacant posts, if the services of the applicant are

terminated at this stage she shall suffer irreparable loss and injury. They further stated that judgment of Sonia Gandhi, that the deptt. is in the process of filing SLP before the Hon'ble Supreme Court.

4.4 They further stated that in the offer of appointment as well as in the subsequent orders regarding extension of the period of contractual appointment from time to time that her appointment is purely on contract basis for a period of one year or till regular appointment is made whichever is earlier. They also annexed a copy of latest order dated 28.2.2015 for a further period of one year w.e.f. 1.3.2014 to 28.2.2015. They have also stated the status of regular recruitment of SSAs through DSSSB is as under:-

- > There are 04 sanctioned posts of SSAs (Chemistry) in the Department in the Pay Band of Rs.9300-34800 with Grade Pay of Rs.4200/- as per the Recruitment Rules.
- > Out of these 04 posts, 01 post of SSA (Chemistry) is already filled up on regular basis and 03 posts are lying vacant.
- > As per the provisions of Recruitment Rules, 5% posts are to be filled up by direct recruitment and 25% by promotion from amongst the Lab. Assistants, which is the feeder post for promotion to SSA.
- > The Department in the year 2010 sent a requisition to DSSSB for filling up 03 posts of SSAs by direct recruitment.
- > The DSSSB advertised these 03 posts of SSAs for filling up by direct recruitment.
- > The written test for the same has already been conducted by DSSSB in May, 2014.

4.5 They also stated that Health & Family Welfare Department, Govt. of NCT of Delhi vide their letter dated 5.5.2010 has conveyed the decision of the Hon'ble Lt. Governor of Delhi to the Chairman, DSSSB to grant age relaxation upto 05 years to all contractual staff nurses working in Hospitals/Medical Institutions under Govt. of NCT of Delhi for appearing in the written examination to be conducted by the DSSB for direct recruitment to the post of Staff Nurses. Accordingly, consequent upon the issue of advertisement by the DSSSB for the post of SSAs in Drug Control Department and requests/representations received from the contractual staff of Drug Testing Lab for grant of age relaxation to them to appear in the aforesaid examination, a proposal was sent to Health & Family Welfare Department for grant of similar age relaxation to them on the same analogy as granted to the Staff Nurse. However, it is gathered that applicant and other three similarly situated appeared in the written test conducted by the DSSB in May, 2014.

5. In the rejoinder, the applicant has reiterated the averments made by her in the OA.

6. Shri Vijay Padita, learned counsel for the respondents, also reiterated the submissions made in the counter affidavit.

7. After going through the records as also having heard learned counsel for the respondents, this Court is of the view that by filing the OA the applicant is seeking quashing the Advertisement dated 27.1.2014, this relief cannot be entertained by this Tribunal as the applicant has participated in the examination which was conducted pursuant to the aforesaid advertisement, as stated by the respondents in their counter affidavit, as it is settled legal

position that once a candidate has participated in the selection process initiated in pursuance of an advertisement, the said candidate is estopped to challenge the same.

8. Further the applicant has placed reliance on the judgments of the Hon'ble Apex Court in the case of ***Uma Devi*** (supra) as also of Hon'ble Delhi High Court in the case of ***Ashish Chanana*** (supra). This Court perused the said judgments have found that the case of the applicant is not covered by the said judgments. As in the ***Uma Devi*** case (supra), the following ratio has been laid down:-

“(I) The questions to be asked before regularization are:-

(a)(i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of calling all possible persons and which process involves inter-se competition among the candidates

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.

(II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14,16,309, 315, 320 etc is violated.

(III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality(except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular recruitment process

outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization.

(IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process.

(V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure.

(VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of *Uma Devi* is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution”.

9. Therefore, in our opinion, the present Application is completely and wholly misconceived. Firstly, the contractual employees do not fall in the exception carved out in para 53 of the judgment of the Supreme Court in the case of ***Uma Devi*** (supra) inasmuch as such contractual employees are not appointed against sanctioned posts. The only exception as per para 53 was that employees who were appointed against vacancies in sanctions posts, were duly qualified and they had worked for 10 years prior to passing of the judgment in the case of ***Uma Devi*** (supra), only such persons were to be regularized on the employers drawing out schemes. In the present case, this Court do not find that there is any specific averment of having worked for 10 years prior to passing of the judgment in the case of ***Uma Devi*** (supra) for

claiming that such person will as per the relevant facts fall within the exception carved out in para 53 of **Uma Devi's** case (supra). In view of the above, if this Court allows the prayers in the present Application, this Court would in fact be violating the categorical ratio of the Constitution Bench judgment of the Supreme Court in the case of **Uma Devi** (supra).

10. Further reliance is placed on the judgment of the Hon'ble Delhi High Court in the case of **Ashish Chanana** (supra). However, the same is of no help to the applicant as in that case the Hon'ble High Court opined that the selection of the petitioner was made through regular recruitment process which is not the position in the case in hand.

11. It is also relevant to mention here that earlier the applicant filed OAs before this Tribunal and Writ Petitions before the Hon'ble Delhi High Court, as the applicant herself stated in the OA, in which more or less the same prayer might have been sought by the applicant but the copies of the same have not been placed on record by the applicant for the reasons best known to her. However, this Court got the Order of the Hon'ble Delhi High Court by its website in Writ Petition No.10098/2004 decided on 30.7.2004 in which applicant is one of the petitioners which reads as under:-

“ CM 8626/2004

While this application is taken up for consideration it was deem appropriate to consider merit of this petition.

W.P.(C) 10098/2004

Petitioners are working as Senior Scientific Assistants in Drug Control Department. They were

appointed on contract basis. They filed OA 1818/2004 before CAT, Delhi seeking equal pay for equal work and regularisation of their services. Tribunal has granted them part relief by directing respondent to consider their case on the principle of equal pay for equal work. **Tribunal has also directed that their case be considered in accordance with the recruitment rules. They feel dissatisfied with this and ant that they should be treated as a separate class for filling up posts of Senior Scientific Assistants in accordance with the recruitment rules. We have examined the tribunal judgment and we find nothing wrong in it because petitioners would have to enforce rights in accordance with the recruitment rules.**

At this stage counsel submitted that respondent has started a fresh recruitment process in which they had applied but they could not take the examination because of some unavoidable circumstances. He prays that respondent be directed to allow them to participate in the selection process.

This request of the Petitioners' cannot be entertained by us at this stage as they will have to approach the tribunal again.

Writ petition is dismissed with liberty to petitioners to seek appropriate remedy under law for their fresh grievance. Dasti."

(emphasis supplied)

12. In the above facts and circumstances of the case and for the foregoing reasons, this Court does not find any merit in this case and the same is accordingly dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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