CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.1591 of 2014

This the 24th day of August, 2018

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

Smt. Prabha Abhey (Staff Nurse) aged 60 years
w/o Sh. Sudesh Rampaul,
R/o Qr. No.3, Atul Grove Road,
Janpath, New Delhi-110001.

....Applicant

(Applicant in person)

VERSUS

1. Govt. of NCT of Delhi
   Through its Chief Secretary,
   New Secretariat, I.P. Estate,
   New Delhi-110002.

2. The Director [Admn.]
   Office of Medical Superintendent,
   Govt. of NCT of Delhi, Lok Nayak Hospital,
   Establishment III, New Delhi-110002.

3. The Joint Secretary [Health]
   Government of N.C.T. of Delhi
   1, Jawahar Lal Nehru Marg,
   New Delhi.

.....Respondents

(By Advocate : Shri Vijay Pandita)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

> "I] It is, therefore, prayed that the Hon'ble Tribunal may be pleased to pass orders thereby directing

the respondents to employ the applicant as Staff Nurse, on contractual basis, till her attaining age of 60 years., in terms of order dt. 8.11.2013, passed by the Hon'ble Tribunal, in T.A. No.49/2012.

II] Any other order(s)/relief(s) which the Hon'ble Tribunal may deem fit and proper, in the facts and circumstances of the case, may also be passed in favour of the applicant and against the respondents, with costs throughout."

2. Brief facts of the case are that the applicant, who was working as Staff Nurse on contractual basis and had filed this OA after attaining the age of 60 years.

2.1 The applicant had earlier filed Writ Petition(C) No.689/2012 before the Hon'ble High Court, which was later on transferred to this Tribunal and registered as TA No.49/2012 in which the applicant's grievance was that in the Advertisement (Annexure A of the said TA) it was provided that the qualified Nurses below 65 years of age and having approved Certificate/Diploma Nursing from an approved institution were eligible to attend walk-in-interview in the office of PHC-cum-Joint Secretary (Health), thus when the applicant participated in the interview in response to the said advertisement and got selected, she was entitled to be retained in service as contract Nurse till attaining the age of 65 years. She was aggrieved by her disengagement w.e.f. 31.5.2012 on attaining the age of 60 years.

2.2 This Tribunal vide Order dated 8.11.2013 dismissed the said TA No.49/2012 (CWP No.689/2012) with the following observations:-

> "5. In the circumstances, the T.A. is dismissed. Nevertheless it would be open to the respondents to utilize the services of the applicant as contractual Nurse on same terms and conditions, which were made applicable at the time of her initial employment, if they so chose. No costs."

2.3 Thereafter the applicant submitted her representation dated 17.12.2013 to the respondents. The respondents vide there letter dated 23.1.2014 informed the applicant that the said Hospital is not currently in need of your services any further, as the Department of Health and Family Welfare is sending dossiers of Staff Nurse for recruitment on regular basis and further vide letter dated 21.2.2014 reiterated the same stand taken them by earlier letter.

2.4 Feeling aggrieved by the aforesaid letters of the respondents, the applicant has filed this OA seeking the reliefs as quoted above.

3. Pursuant to notices issued to the respondents, they have filed their counter affidavit stating therein that the applicant has not come to this Court with clean hands as she submitted a wrong affidavit in the court claiming her age to be 52 years whereas as per the official records available with the Lok Nayak Hospital, she has already attained the age of 60 years on 11.5.2012, which is evident from the High School

certificate submitted by the applicant having sl. No.14886 dated 8th June, 1979. She passed the Higher School Examination of the Board held in April, 1970 from St. Anthony Girls Higher Secondary School, New Delhi and she also submitted her PAN No.ARFPA963A, which also shows her date of birth as 12.5.1952.

3.1 The applicant served the Lok Nayak Hospital on contract basis and her services were disengaged w.e.f. 31.5.2012 on attaining the age of superannuation (60 years). Therefore, vide Order dated 25.5.2012, the applicant was disengaged on attaining the age of 60 years.

4. The applicant has also filed her rejoinder in which she stated that the age 52 instead of 62 mentioned in the affidavit was just due to typographical error and reiterated the averments made in the OA.

5. We have heard applicant, who present in person, and Shri Vijay Pandita, learned counsel for the respondents and have perused the material placed on record.

6. Applicant, who appeared in person, submitted that she was working as Staff Nurse on contract basis and sought for her continuation upto the age of 65 years in view of the observation of this Tribunal in the Order dated 8.11.2013 in TA No.49/2012 but her request was turned down by the respondents vide impugned letters dated 23.1.2014 and

21.2.2014 on the ground that there is no need of her services as the Department of Health and Family Welfare is sending dossiers of Staff Nurse for recruitment on regular basis. Further once the contract is terminated, fresh contract can be made by TRC, Health & Family Welfare Department and not by the said hospital, which stand of the respondents is discriminatory and legally not sustainable.

6.1 Applicant also admitted that as on today, she has already attained the age of 65 years.

7. Shri Vijay Pandita, learned counsel for the respondents submitted that the issue raised in the instant OA has already been agitated by the applicant in TA No.49/2012 and this Tribunal vide Order dated 8.11.2013 dismissed the said TA. However, this Tribunal in the last para of the said Order stated that "Nevertheless it would be open to the respondents to utilize the services of the applicant as contractual Nurse on same terms and conditions, which were made applicable at the time of her initial employment, if they so chose. On the basis of the said observations of this Tribunal, applicant preferred her representation, which was considered by the respondents. However, the same was rejected by letters which are impugned by the applicant in the present OA. He further submitted that as per FR 56 (a), every Govt. servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years and further as

per FR 56 (d), no Government servant shall be granted extension in service beyond the age of retirement of 60 years.

8. After hearing the arguments of both the parties, we are of the opinion that the grievance of the applicant that she should have been allowed to continue in service as contractual Staff Nurse till the attaining the age of 65 years is an issue, which has already been raised by the applicant in TA 49/2012 and the same was adjudicated by this Tribunal by Order dated 8.11.2013 and this Tribunal held as follows:-

> "3. We find force in the stand taken by the learned counsel for respondents that once the applicant was granted minimum of the pay band (ibid) admissible to regular Nurse, (there was certainly a change in condition of her employment and such change was pari materia to those applicable to regular Nurses). She cannot be given the tenure of employment as contractual Nurse till attaining the age of 65 years.
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> 4. Besides merely because the maximum age limit of the qualified Nurses, who could offer their candidatures for contractual employment, was mentioned as 65 years, it cannot be presumed that those who were selected and appointed in such capacity had acquired right to continue in service till attaining the age of 65 years. Prescription of maximum age limit in invitation of candidature for contractual appointment does not create any right in favour of contractual appointee to continue in service till he reaches the age prescribed as maximum age limit for eligible candidates. The term of contractual appointee and his / her right to continue in service in such capacity has been commented upon by the Hon'ble Supreme Court in **Secretary, State of Karnataka & others v. Umadevi (3) & others**, (2006) 4 SCC 1 in great detail. Relevant excerpt of the said judgment reads as under:-
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> > "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.

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43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the

> expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

Thus, being a contractual appointee, the services of the applicant could be discontinued at any time. The respondents could show enough grace by continuing her services till attaining 60 years, i.e., the age of superannuation prescribed for regular Nurses."

9. From the above, we do not find any justifiable reason to interfere in the matter. Accordingly, the instant OA is dismissed being devoid of merit. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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