

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. MA 351/881/2017
OA 351/1421/2017
CA - 351/1421/17
Date of order : 30.11.2017
Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

DR. RACHNA KUMARI
W/o Shri Sanjeev Lal
R/o Haddo, Port Blair,
Working as Medical Officer,
Under Directorate of Health Service,
A&N Administration,
Port Blair.

...APPLICANT

VERSUS

1. Union of India through
The Secretary,
Ministry of Home Affairs,
North Block,
UT Division,
Central Secretariat,
New Delhi - 110001.
2. Union of India through
The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi - 110001.
3. Union Public Service Commission,
Service through
The Secretary,
UPSC, Dholpur House,
Shahjahan Road,
New Delhi - 110069.
4. Lt. Governor (Administrator),
Raj Niwas,
A&N Islands,
Port Blair - 744101.
5. The Chief Secretary,
A&N Administration,
Secretariat Building,
Port Blair - 744101.
6. The Principal Secretary (Health)
A&N Administration,
Secretariat Building,
Port Blair - 744101.



7. The Director of Health Services,
A&N Administration,
Secretariat Building,
Port Blair - 744101.

RESPONDENTS.

For the applicant : Mr.P.C.Das, counsel
Mr.R.Singh, counsel

For the respondents: Mr.S.K.Ghosh, counsel
Mr.A.K.Chattopadhyay, counsel

O R D E R

Per Ms. Manjula Das, Judicial Member

Mr.R.Singh, ld. Counsel assisted by Mr. P.C.Das, ld. Counsel appeared for the applicant and Mr.S.K.Ghosh, ld. Counsel along with Mr.A.K.Chattopadhyay, ld. Counsel appeared for the respondents.

2. MA 351/881/2017 is filed for an order upon the respondent authorities to extend the ad hoc appointment of the applicant.

3. Being aggrieved by the non-action of the respondent authorities the applicant has approached this Tribunal by filing the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- a) An order do issue setting aside the letter being F.No.4/12(1)/2014-AP-3 dated 18.3.2015 (Annexure A/14), letter being F.No.4/12(1)/2014-AP-3 dated 8.2.2017 (Annexure A/15) and the memorandum No. 24-16(225)/2015-MPH dated 27.2.2017 (Annexure A/16);
- b) An order do issue directing the respondent authorities to regularize the services of the applicant with effect from 6.10.1995 as the case of the applicants is fully covered by OM dated 11.12.2006 and the directions of the Hon'ble Apex Court in Uma Devi's case subsequently explained in M.L.Kesari's case.

OR

Alternatively do issue directions for regularization of the service of the applicant as regularized in the case of 15 doctors vide order No. 3885 dated 23.12.2014 (Annexure A/8);

- c) Any such order or orders be passed and or direction or directions be given as this Hon'ble Tribunal may deem fit and proper;
- d) Cost and incidentals to this application.

4. The applicant was appointed on ad hoc basis in the post of Dental Surgeon, Gr-II for a period of six months purely on temporary short term basis on 6.10.1995. Since then she is working on ad hoc basis without any break for about 20 years and her service has been extended from time to time. Her appointment was purely ^{on} ad hoc and in the order of engagement it was clearly mentioned that the applicant will have no right to regularization.

On 15.12.2004 the applicant made a representation before the respondent authorities seeking regularization of her ad hoc service. The same was disposed of by the respondents stating that at that time there was no post of Dental Surgeon Gr-II vacant in the department. It was also stated that the post which she was holding was a temporary post created under the delegated powers of Hon'ble Lt. Governor, for the plan period which could not be filled on regular basis. Being aggrieved by such action of the respondents, the applicant approached this Tribunal in OA 351/18/2015 which was disposed of vide order dated 16.12.2015, the operative part of which is as under :

“Therefore we direct the respondents to take up this matter with the UPSC as done in the case of the applicants in the OA within two months., The case of the present applicant would be governed by the stand to be taken by UPSC. The OA is accordingly disposed of. No order is passed as to costs.”

Accordingly the Administration took up the matter with the UPSC vide letter dated 18.3.2016. The UPSC examined the proposal and decided not to accede to the said proposal on the ground that the case of the applicant is not to be covered by DOP&T guidelines dated 11.12.2006 and for other reasons as recorded in their letter No. 4/12(1)/2014-AP-3 dated 8.2.2017. The Administration duly apprised the applicant about the decision of the UPSC.

Hence the applicant has filed this Original Application.

5. We have heard both the ld. Counsels, perused the pleadings and materials placed before us.

6. Ld. Counsel for the applicant has submitted that the applicant was appointed against the sanctioned post of Dental Surgeon Grade-II based on the recommendations of the duly constituted selection committee. Ld. Counsel further stated that after completion of more than 10 years of continuous



service on 10.4.2006, on which date Umadevi's decision (Secretary, State of Karnataka & Ors. -vs- Umadevi & Ors.) was rendered, the applicant did not get any benefit or protection whereas she is liable to be regularised in terms of para 53 of the Constitution Bench judgment. Para 53 of the said judgment is quoted hereinbelow :

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

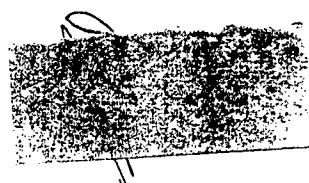
It was also stated by the 1st Counsel for the applicant that UPSC has not stated a single reason as to how the applicant's case is not covered by the DOP&T Guidelines dated 11.12.2006. As such the 1st Counsel for the applicant submitted that the letter dated 8.2.2017 and the impugned memorandum dated 27.2.2017 are bad in law and liable to be quashed.

7. In the above backdrop of the case we think it fit and proper to dispose of the OA by directing the respondent authorities to consider the case of the applicant as per the decision laid down by the Apex Court in the case of Umadevi (supra). The above exercise be completed within a period of 4 months from the date of receipt of the copy of this order. The decision so arrived at shall be communicated to the applicant forthwith.

8. The OA is therefore disposed of. No order is passed as to costs.



(DR. NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER



(MANJULA DAS)
JUDICIAL MEMBER