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NO 2145/2003

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USTICE V.S

- ## ... Applicants

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- ### ... Respondents

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ORDER

Justice V.S. Aggarwal:-

Applicants applied in response to an advertisement of the Directorate of Health Services. They were invited for recruitment to the post of Plaster Assistant on contract basis. The applicants were selected and found suitable to be so appointed. The appointment letter was issued wherein it had been indicated that it was for 89 days or till the appointment of regular officials, whichever is earlier. After expiry of the initial period of 89 days, their services were continued after certain breaks.

2. Services of the applicants were stated to have been dispensed with on 12.9.2002. They filed OA 2444/2002 and this Tribunal on 9.12.2002 held:

"Having regard to the facts of this case, the judgment of the Tribunal in Lalit Kumar Vimal's case (supra) is applicable to this case. The office order issued by the respondents in the present case dated 4.5.2002 offering the posts of Plaster Assistants to the applicants purely on contract basis for 89 days, till the date of joining of persons on regular basis, whichever is earlier, is similar to the office order dealt with by the Tribunal in that case. The only major difference is that in the present case, as contended by the learned counsel for the respondents, no recruitment rules have been framed and issued by the respondents for reasons best known to them, even though it was submitted that the posts have been sanctioned as far back as 1995 and they had more than seven years to do so. In the circumstances of the case, we see force in submissions made by Shri R.S. Singh, learned counsel that the services of the applicants may not be terminated, except in accordance with the relevant provisions of law and rules and should not be replaced by other similarly situated persons on contract basis for

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other periods of say 89 days. If, as contended by the learned counsel for the respondents, there are a number of complaints against some of the applicants for misconduct or their work is unsatisfactory or for any other reason, it is open to the respondents to take such action as they deem fit in accordance with law.

7. In the facts and circumstances of the case, the O.A. partly succeeds and is disposed of with the following directions:

(i) In case the respondents are considering appointments of candidates on regular basis and the applicants apply against those vacancies, they may be considered along with other eligible candidates, subject to fulfilment of the prescribed eligibility conditions, except giving them age relaxation, if necessary, to the extent of their past service in that post:

(ii) Till regular appointments are made by the respondents, if the services of Plaster Assistants are required in the G.T.B. Hospital, the applicants may be continued. However, their services can be terminated by the respondents in accordance with the provisions of law and rules. No order as to costs."

3. After disposed of the said application, the respondents are stated to have still terminated the services of the applicants. Applicants' grievance is that immediately after terminating their services, the respondents had written a letter to Additional Secretary, Ministry of Health Department for filling up the posts of Plaster Assistants. Thus, according to the applicants, they required the work. The work and conduct of the applicants was found to be satisfactory. In these circumstances, the applicants contend that termination of their services is illegal. They seek a direction to continue them in service without any break and direct the respondents to appoint them on regular basis.

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4. To keep the record straight, some of the other facts can also be delineated. The applicants had filed Contempt Petition No.52/2003. During the course of argument, there was controversy with respect to the fact if the work and conduct of the applicants was satisfactory or not?. The rule was discharged permitting the applicants, if so advised, to challenge the order that has been passed by the respondents. The order that was passed by the respondents is dated 14.2.2003. In pursuance of the directions of this Tribunal, the respondents supplied a copy of the termination order to the applicants. The said order reads:

"Whereas the Hon'ble Central Administrative Tribunal (Principal Bench) vide its order dated 09-12-2002 directed that till regular appointments are made by the respondents, if the services of Plaster Assistants are required in GTB Hospital, the applicant may be continued. However, their services can be terminated by the respondents in accordance with the provisions of law and rules.

Whereas the Hon'ble Central Administrative Tribunal vide its orders dated 29-01-2003 in the CP 52/2003 in OA 2444/2003 directed that:-

"The respondents to supply a copy of termination order, if any, within 15 days from the receipt of this order."

Whereas the petitioners have claimed that their services have been terminated by an oral order, in a subsequent CP in Central Administrative Tribunal.

Whereas no such termination order is required for tenure posts. In the present instance, the tenure of the Contract appointment of these petitioners (Plaster Assistants) was only for a specific period, (i.e. 89 days from the date of joining) but continued beyond their contract period due to status quo order of the Central Administrative

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Tribunal and till final decision received by this office in the third week of December 2002. Since the contract period including status quo was over as such no order were required for their termination.

Whereas during the course of the court proceedings it was found that the RRs for the said posts are not approved by the competent authority. The matter has, therefore, been referred to the GNCT, Delhi for approval of RRs.

Whereas these posts have been kept in abeyance till the RRs are approved by GNCT, Delhi.

However keeping in view the Hon'ble Central Administrative Tribunal order dated 29-01-2003 received on 03-02-2003 the present speaking order are being issued.

Whereas the services of the petitioners (Plaster Assistants) automatically expired thereafter, following the final Court judgement.

Whereas the petitioners shall have the option to apply against fresh advertisement for these posts, as soon as the RRs are approved, provided they fulfil the RRs.

Whereas continuation of these Plaster Assistants on contract and emergent basis leading to regularisation on permanent basis would be unfair and unjust to many other eligible and meritorious applicants who may be waiting for such an opportunity.

5. Application has been contested.

6. At the outset, it must be mentioned that the basic question that applicants can be regularised or not had already been adjudicated in the earlier OA. It was made clear that till regular appointments are made, if services of the Plaster Assistants are required, the applicants may continue. The services could be terminated in accordance with the provisions of law and rules. Thus, question of regularising the applicants de hors the rules, does not arise.

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7. Learned counsel for the applicants urged that the services of the applicants have been terminated in mala fide manner because respondents are required the work. Reliance was being placed on the letter of 4.1.2003 written from the Office of Medical Superintendent to Principal Health-cum-Additional Secretary which clearly indicates that the respondents needed the services of the Plaster Assistants besides other officials. It was requested:

"Further you are requested to take up the matter with concerned Deptt. i.e. Planning, Legal Cell, etc. as related to fill these vacant post latest by 31.5.2003. Filing which patients care will be suffered as day by day work load is increasing in this hospital and in the shortage of manpower it will not be possible to render the best care to the increasing no. of patients."

8. This clearly shows that the contention of the respondents that they do not require the services of the applicants or Plaster Assistants, is basically an incorrect fact.

9. That is not the end of the matter. In the earlier OA, i.e. OA No.2444/2002, it was specifically directed that the services of the applicants could be dispensed with if their work and conduct was not satisfactory. They could only continue till regular appointments were made.

10. Either side was relying upon different certificates and office notings. On behalf of the applicants, it was asserted that from August to October, 2002, their work and conduct was reported


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satisfactory while from the office files, the learned counsel appearing on behalf of the respondents has shown complaints made pertaining to their work and conduct. As such, according to the respondents, the applicants' work is not satisfactory.

11. The said complaints are of the period December, 2002. It is within the domain of the respondents to hold as to if the work and conduct of the persons was satisfactory or not. In the order passed on 6.5.2003, it was specifically noted further that work and conduct of the applicants was not satisfactory. Therefore, in these circumstances, we find little ground to interfere.

12. There is another way of looking at the matter. Learned counsel for the respondents pointed that the meeting for regular appointment is likely to take place and the regular appointments shall be made very shortly. Though we have recorded above that there is no ground to interfere, but still when regular appointments are likely to be made, in face of the earlier order in OA 2444/2002, it may become an exercise in futility because regular appointees may join very shortly.

13. For the reasons recorded above, OA being without merit must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman