

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 23rd December, 2011
+ **LPA 1091/2011**

% **GEETA VERMA** Appellant
Through: Mr. Nimish Chib, Adv.
Versus
GNCTD & ORS. Respondents
Through: Ms. Ferida Satarawala & Ms. Rachna
Saxena, Advs. for GNCTD.

+ **AND**
LPA 1097/2011

% **MOHAN LAL** Appellant
Through: Mr. Nimish Chib, Adv.
Versus
GNCTD & ORS. Respondents
Through: Ms. Ferida Satarawala & Ms. Rachna
Saxena, Advs. for GNCTD.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT
RAJIV SAHAI ENDLAW, J.

1. These intra court appeals impugn dismissal more than six years ago i.e. on 12.05.2005 of W.P.(C) No.3512/2003 and W.P.(C) No.3758/2003 respectively preferred by the appellants.

2. The appellants claim to have completed their diploma course in Medical Laboratory Technology and in Operation Theatre Technology

respectively from the respondent No.3 Institute of Public Health & Hygiene (IPHH) and had participated in the selection process for appointment as OT Technicians in the respondent No.2 Govind Ballabh Pant Hospital (GBPH) and though were found successful and issued appointment letters, were not permitted to join on the ground that the respondent No.3 IPHH from which they had obtained their qualification was not recognized by the All India Council for Technical Education (AICTE). The writ petitions aforesaid were filed by the appellants seeking declaration as to the validity of their qualification and direction to the respondent No.2 GBPH to accept the candidature of the appellants and appoint them to the post of OT Technicians in the said Hospital.

3. The aforesaid writ petitions preferred by the appellants were taken up for decision as aforesaid on 12.05.2005 along with several other writ petitions. The writ petitions were dismissed holding that no error could be found in the refusal of the respondent No.2 GBPH to allow appellants to join since the respondent No.3 IPHH from which the appellants had obtained their qualification did not possess approved accreditation and that the respondent No.2 GBPH could not be directed to act on such Diplomas / Degrees as the same would be detrimental to the societal interest as question of public health was involved.

4. Intra court appeals were preferred against the common judgment dated 12.05.2005 (supra) though not by the appellants. Some such LPAs

being LPA Nos.1653-58/2005 were dismissed by the Division Bench of this Court on 01.08.2005. The matter was taken further to the Supreme Court. The Supreme Court vide order dated 16.03.2009 in Civil Appeal Nos.1697-1699/2009, on the argument that AICTE was not authorized to grant recognition to such diplomas / degrees, set aside the judgment of the Division Bench of this Court and remanded the matter to the Division Bench for decision afresh. On a further argument that the Board of Technical Education would be competent authority in this regard, the same was also directed to be impleaded before the High Court.

5. On such remand, LPA Nos.1653-58/2005 along with W.P.(C) Nos.1629/2010, 5396-98/2005 & 18037/2006 entailing similar controversy were taken up together for consideration and disposed of vide common judgment dated 29.11.2010 of the Division Bench. The Division Bench noticed that of the 12 petitioners in the writ petition from which LPA Nos.1653-58/2005 had arisen, only six had joined in the appeal and clarified that the order would enure to the credit of the six appellants only. The Division Bench further noted that the Board of Technical Education had not granted any recognition to the respondent No.3 IPHH or for that matter to any Institute for the purpose of awarding diplomas in the field in question i.e. OT Technicians or as Medical Laboratory Technician. However, it was held that AICTE has no concern in the matter and there was no statutory body charged with any statutory duty and no legislation covering the field requiring such institute to obtain recognition. It was thus held that since the

Government of NCT of Delhi and the Board of Technical Education which is but a department of the Government of NCT of Delhi had not notified any Rules or Regulations pertaining to grant of recognition to institutes awarding diplomas in public health & hygiene, the respondent no.2 GBPH could not have refused joining to the selected candidates for the reason of their qualification being not recognized by the AICTE or the Board of Technical Education. Further finding that the appellants / petitioners therein had for considerable time been working in government hospitals though on *ad-hoc* basis, directions were issued for their employment from the date of their joining on *ad-hoc* basis.

6. The appellants herein claim that they were under the impression that they were also parties to the appeals preferred before the Division Bench and SLPs preferred before the Supreme Court and did not realize that they had not been so impleaded and realized so only when they were denied the benefit of the judgment on the ground of being not parties thereto. They have hence preferred these appeals with an application for condonation of delay. They claim to be similarly placed as the petitioners / appellants in whose favour the judgment dated 29.11.2010 has been passed and claim the same relief. Reliance, for condonation of delay, is placed on (i) ***Haribhai Lakhmanbhai Seedhav v. State of Gujarat*** AIR 2010 SC 599; (ii) ***Ram Bilas Mahto v. Union of India*** 2007 ACJ 2484; (iii) ***N. Balakrishnan v. M. Krishnamurthy*** AIR 1998 SC 3222; (iv) ***Parimal v. Veena @ Bharti*** 2011 (1) CCC 100 (SC); (v) ***Smita Chaudhary v. Uma Devi*** 2008 (100) DRJ 293;

(vi) *Dr. Munjula Krippendorf Pathak v. Vijay Dixit* 146 (2008) DLT 566 (DB); and (vii) *Lajpat Rai v. State of Punjab* AIR 1981 SC 1401.

7. We may notice that notwithstanding the finding in the judgment dated 29.11.2010 of the refusal of the respondent No.2 GBPH to allow the selected candidates to join for the reason of the respondent No.3 IPHH being not a recognized institute being wrong, the directions as issued owe their existence to the appellants / petitioners therein being already employed on ad-hoc basis in OTs in the Government hospitals. This is evident from the Division Bench having observed “This reassures us that as a result of our decision, untrained persons would not be appointed. We note that three persons have been successfully working for the last seven to eight years..... nothing unworthy in their work has been noted.”

8. We are not convinced with the explanation given by the appellants for the delay. The appellants, without signing the Vakalatnama in favour of the Advocate for preferring the appeal / SLP and without paying advocate’s fee could not have presumed that they were parties to the litigation. They are clearly trying to take advantage of the labour of the others in pursuing the matter further; the appellants had accepted the judgment of the learned Single Judge and had not chosen to pursue the matter further.

9. Be that as it may, the appellants having nevertheless filed the writ petitions, we are of the opinion that if similarly situated as the petitioners / appellants in the judgment dated 29.11.2010, ought not to be deprived of the

benefit thereof and if the same were to be permitted, would result in discrimination and arbitrariness within the meaning of Article 14 of the Constitution of India. We have as such with the consent of the counsels heard the matter finally.

10. As aforesaid what prevailed with the Division Bench, in judgment dated 29.11.2010, to issue the directions as aforesaid, was the working since long of the petitioners / appellants therein at the post to which they were held to have been wrongly denied appointment. The appellant in LPA No.1091/2011 has pleaded that she has been working on ad-hoc basis for about two years in the Institute of Liver & Billiary Sciences but has not produced any documents in this regard. It has also not been pleaded as to whether the said Institute is of the Government of NCT of Delhi. We find from the internet that the same was established by the GNCTD as an Autonomous Institute under the Societies Registration Act, 1860. The appellant in LPA No.1097/2010 has pleaded that he has been working on ad-hoc basis for about ten years at Dr. Baba Saheb Ambedkar Hospital of the Government of NCT of Delhi but has again not produced any document in this regard. However, since both appellants plead that they are at par with the petitioners / appellants in judgment dated 29.11.2010 and were considered by their respective employers for grant of benefit of the said judgment and were denied the same only for the reason of being not parties to the said judgment, we dispose of these appeals with a direction to the Institute of Liver & Billiary Sciences (if of the Government of NCT of

Delhi) and to the Dr. Baba Sahib Ambedkar Hospital to consider the case of the appellants for grant of benefit in terms of the said judgment dated 29.11.2010 subject to the appellants being found to be in the same position as petitioners / appellants in judgment dated 29.11.2010 i.e. having not rusted over the years in the qualification obtained by them from respondent No.3 IPHH and if found to have in the interregnum performed the same work for which they were selected in the year 2002. If that is so, they would be entitled to regularization and seniority with retrospective effect as per the seniority position in the select panel and would also be granted increments from the deemed date of regular appointments which would be the date when they had been employed on ad-hoc basis in the hospitals of Government of NCT of Delhi. The appeals are allowed but on the aforesaid terms.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

DECEMBER 23, 2011/‘gsr’