

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.4821 of 2015
Date of Decision: March 18, 2015

Union of India and another
.....Petitioners
versus
Central Administrative Tribunal, Chandigarh Bench and
another
.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present:Mr.Rajesh Garg, Senior Advocate with
Mr.Vikrant Sharma, Advocate and
Ms.Nimrata Shergill, Advocate,
for the petitioners.

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1. *Whether Reporters of Local papers may be allowed to see the judgment?*
yes
2. *To be referred to the Reporters or not? yes*
3. *Whether the judgment should be reported in the Digest?*

Surya Kant, J. (Oral)

The order dated 13.11.2014 passed by the Central Administrative Tribunal, Chandigarh Bench, directing the petitioners to regularize services of respondent No.2 on the post of Junior Technician (X-Rays), in the Post Graduate Institute of Medical Education and Research (for short 'PGIMER'), Chandigarh, is under challenge in the instant writ petition.

[2] The facts culminating into the above-mentioned directions are to the following effect.

[3] The second respondent alongwith two other candidates, namely, Ajay Kumar and Ashok Kumar, was appointed as Junior Technician (X-Rays) on adhoc basis in petitioner No.2-Institute vide order dated 14.01.1988 (Annexure A-1). Notwithstanding the word 'adhoc basis', clause-3 of the appointment letter stipulates that the appointees shall be on “probation for a period of two years from the date of their appointment which can be extended further, if found necessary”. The other terms and conditions of the appointment were also similar to those as are incorporated in the case of regular appointments.

[4] The second respondent alongwith four other employees who are also working as Junior Technicians (X-Rays) in petitioner No.2-Institute, were involved in a criminal case registered by the CBI with reference to certain irregularities committed in the PGIMER. It appears that all the five employees were arrested and consequently placed under suspension. The second respondent was suspended on 17.08.1993.

[5] In the criminal case, second respondent as well as other four employees were acquitted by the CBI Court on 29.01.2005 and all of them including second respondent were reinstated in service w.e.f. 09.05.2005. The period of suspension was ordered to be treated as “spent on duty for all intents and purposes”.

[6] It is an admitted fact that while second respondent was facing trial and was under suspension, the services of other employees, who were appointed as Junior Technicians (X-Rays) alongwith him vide the same order, were formally regularized w.e.f. 03.08.1989 retrospectively vide an order

dated 01.09.1992. Not only this, there were other Junior Technicians (X-Rays) appointed much after respondent No.2 on identical terms and conditions, including Balwinder Kumar Thapa and Kamaljit Singh, whose services were also regularized w.e.f. 01.09.1992 and in due course of time, they were promoted as Senior Technicians.

[7] After his acquittal and consequential reinstatement in service, respondent No.2 represented the petitioner No.2-Institute to regularize his services and grant him other service benefits.

[8] Petitioner No.2-Institute accepted the claim of respondent No.2 in principle but forwarded the case to Union of India for approval. The Union of India is said to have rejected the claim of respondent No.2 primarily on the ground that the direct recruitment was made contrary to the recruitment rules. A reference to the decision of the Hon'ble Supreme Court in State of Karnataka versus Uma Devi and others (2006) 4 SCC 1 was made to point out that if the appointment was made in fraction of statutory rules, the same cannot be regularized.

[9] The aggrieved respondent No.2 approached the Central Administrative Tribunal, Chandigarh Bench, who has vide its order dated 13.11.2014, having regard to the fact that respondent No.2 has already served for more than 25 years, directed to regularize his services from the date the similarly placed employees were brought on regular establishment.

[10] The PGIMER-petitioner No.2 though recommended the case of respondent No.2 for regularization but has apparently joined Union of India keeping in view Section 25 of the Post Graduate Institute of Medical Education and Research,

Chandigarh Act, 1966 (hereinafter referred to as 'the Act') which is captioned as "Control by Central Government" and provides that Institute shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

[11] We have heard learned counsel for the petitioners and gone through the record.

[12] In our considered view, no interference in the order passed by the Tribunal is called for. We say so for the reason that firstly the second respondent was appointed on the terms and conditions identical to those applied in the case of Ajay Kumar and Ashok Kumar. Both of these employees were brought on regular establishment by the authorities themselves, hence no different parameter or criteria can be applied in the case of respondent No.2. Secondly, the second respondent as well as Ajay Kumar and Ashok Kumar were appointed on the terms and conditions which are in fact similar to those appointed on regular basis, like on probation for a prescribed period. The second respondent was on probation for two years and there is nothing on record to suggest that his probation period was ever extended. It is, therefore, difficult to accept that he continued to be an adhoc employee. Our inference is further strengthened by the fact that due to his involvement in the criminal case, respondent No.2 was placed under suspension like regular employees and after he earned acquittal, he was reinstated in service and granted all the service benefits again treating him a regular employee. Thirdly, even juniors to respondent No.2, namely, Balwinder Singh Thapa and Kamaljit Singh, who were also appointed on identical terms and conditions, were made

regular in the year 1992. The action of the authorities in denying such a relief to respondent No.2 would thus be contrary to the dictum of equality contained in Articles 14 & 16 of the Constitution. Fourthly, while authorities justifiably denied regularization to respondent No.2 till he was involved in the criminal case as his conduct was under clouds, but after his acquittal in that case there being no domestic enquiry held against him, the authorities could not have denied regularization of services merely because earlier respondent No.2 was involved in a criminal case. Fifthly, the principles laid down in Uma Devi's case (supra) are distinguishable for the reason that the second respondent had already served the petitioner-Institute for more than 25 years and it is not the case of petitioners that there was no regular vacancy available to appoint him on regular basis. Such a plea cannot be entertained for the obvious reason that juniors to respondent No.2 have been admittedly appointed on regular basis. Sixthly, the second respondent, as of now, has completed nearly 27 years of service and by virtue of his age and total length of service, hardly a few years are left in attaining the age of superannuation. In these circumstances, it will be extremely harsh to deny him the status of regular employee. It may be mentioned here that before he was placed under suspension, respondent No.2 was assessed as an 'average' employee but after his reinstatement, the record reveals that he earned 'good' or 'very good' reports. Seventhly, we are satisfied that the power exercisable by the Central Government under Section 25 of the Act does not take into its sweep the internal administrative decisions to be taken by the Competent Authority for running day to day affairs of the Institute.

[13] For the reasons stated-above, we do not find any merit in this writ petition which is accordingly dismissed.

[SURYA KANT]
JUDGE

March 18, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE