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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9816/2015

% *Judgment dated 16th October, 2015*

ALL INDIA INSTITUTE OF
MEDICAL SCIENCES

..... Petitioner

Through : Mr.R.K. Gupta, Adv.

versus

RUCHIKA MADAN

..... Respondent

Through : Mr.C. Hari Shankar, Sr. Adv. with
Mr.Jagdish N., Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CAV. 1102/2015

1. Mr.C. Hari Shankar, learned senior counsel, on instructions from Mr.Jagidsh, Advocate, enters appearance on behalf of the respondent.
2. Accordingly, caveat petition stands disposed of.

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3. Exemption allowed subject to all just exceptions.
4. Application stands disposed of.

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5. Challenge in this writ petition is to the order dated 23.7.2015 passed by Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*') whereby the Original Application being No.748/2015 was allowed by the Tribunal.
6. Rule DB. With the consent of counsel for the parties, present writ petition

is set down for final hearing and disposal.

7. As per the petition, the respondent was working as a Junior Physiotherapist with the petitioner/AIIMS on contract basis. Pursuant to the advertisement dated 22.12.2013 published by the petitioner for recruitment to various posts in Group 'B' and Group 'C' posts, including the post of Junior Physiotherapist/Occupational Therapist, the respondent made an application for recruitment to the post of Junior Physiotherapist/Occupational Physiotherapist. In one of the columns of the application form, the respondent portrayed herself to be an employee of AIIMS. The respondent was called for an interview and declared successful but subsequently she was declined employment as she was overage.
8. Reliance was placed before the Tribunal on para 9 of the "General Conditions", according to which, since the respondent was a contract employee, she cannot fall in the definition of an employee, and, thus, not entitled to age relaxation, as relaxation upto 40 years of age is applicable only to a permanent employee of AIIMS. Para 9 reads as under:

"9. Upper age limit is relaxable by 5 years for SC/ST candidates and Government Servants, 3 years for OBC and 10 years for the Physically Handicapped Persons. (*Government Servants means Permanent (Regular) employees of Central/State Government.) Relaxable upto 5 years (at S.No. 1, 2, 3 and 13) and upto 40 years (at Sl.No.4, 5, 8, 9, 14, 15, 16 & 17 in case of employees of AIIMS. The upper age limit shall be determined as on last date of receipt of applications."*

9. We may notice that the Tribunal has, while considering the rival submissions, decided the O.A. in favour of the respondent based on a decision rendered by the Supreme Court of India in the case of ***Union Public Service Commission v. Dr.Jamuna Kurup and Others***, reported at

(2008) 11 SCC 10.

10. Mr.Gupta, learned counsel for the petitioner, submits that the aforesaid judgment does not apply to the facts of the present case and in fact the judgment rendered in the case of **UPSC V. Girish Jayanti lal Vaghela**, reported at (2006) 2 SCC 482 would apply. Counsel further submits that in the case of **Girish Jayanti lal Vaghela** (supra) it was held that the persons working on short-term contract basis cannot claim the status of a Government employee and, thus, by the same analogy the respondent cannot be given benefit of age relaxation.
11. Mr.Shankar, learned senior counsel appearing on behalf of the respondent, submits that the present case is fully covered in fact and in law by the subsequent judgment rendered by the Supreme Court of India in the case of **Dr.Jamuna Kurup** (supra), which is a judgment rendered by a Bench of Three Judges.
12. We have heard learned counsel for the parties and considered their rival submissions. We are unable to accept the submissions made by learned counsel for the petitioner for the reason that the case of **Girish Jayanti lal Vaghela** (supra) was discussed by the Three Judges Bench of the Supreme Court of India in the case of **Dr.Jamuna Kurup** (supra) in para 16, which reads as under:

“16. The learned counsel for appellant submitted that the advertisement granted age relaxation to employees of MCD and employees of government of India, and that the words 'permanent' or 'regular' were not used either with reference to 'employees of government' or 'employees of MCD'. It is pointed out that in Vaghela (supra), this Court while dealing with persons employed in identical circumstances, that is 'engaged for a period of six months from the date of joining or till a candidate selected by UPSC joined on regular basis', held that the term 'government servant' did not

refer to or include persons employed on contract basis. It is argued that on the same principle, the term 'employees of MCD' cannot include a contract employee of MCD. We cannot agree. Vaghela (Supra) related to contract employment by a government whereas in this case the contract employment is by a Municipal Corporation. The reason that weighed with this Court in Vaghela to hold that a contract employee was not a government servant, was in view of the special connotation of the term 'government servant'. This Court after referring to the decision of the Constitution Bench in Roshanlal Tandan vs. Union of India 1968 (1) SCR 185, and the decision in Dinesh Chandra Sanpma vs. State of Assam 1977 (4) SCC 441, held that employment under the government is a matter of status and not a contract even though acquisition of such a status may be preceded by a contract; and that contract employees of the government were governed by the terms of contract and did not possess the status of government servants nor were governed by rules framed under Article 309 of the Constitution, nor enjoyed the protection under Article 311. But a Municipal Corporation is not 'government', and municipal employees are not government servants governed by Article 309 to 311. Though permanent employees of municipal corporation or other statutory bodies may be governed by statutory rules, they do not enjoy the status of government servants. Therefore, the decision in Vaghela, rendered with reference to government servants may not be of any assistance in interpreting the term 'employees of MCD'. In fact, for that very reason, these matters were de-linked from the hearing of Vaghela.”

13. In the case of **Dr. Jamuna Kurup** (supra) it has been explained that if the intention is only to restrict any benefit to a regular or permanent employee, the contract employee would have been qualified by a suitable expression. This has not been done in the advertisement, which was published by the petitioner. Had the intention of the petitioner been to restrict the age relaxation only to permanent employees, the advertisement would have said so.

14. Paras 9, 10, 14 and 15 of **Dr. Jamuna Kurup** (supra) read as under:

“9. The UPSC contended that the term “age is relaxable for employees of Municipal Corporation of Delhi” in the advertisement dated 13-3-2004, is intended to refer only to regular and permanent employees of MCD. It was also contended that being short-term contract employees, the respondents cannot claim to be “employees of MCD”. For this purpose reliance was placed on the decision of this Court in UPSC v. Girija Jayantilal Vaghela, 2006 (2) SCC 482, wherein this Court held that persons working on short-term contract basis cannot claim the status of Government Servants. UPSC submitted that on a similar interpretation, “employees of MCD” will not include contract employees.

10. The learned counsel appearing for the respondents submitted that the decision in Vaghela did not apply to the respondents as they did not claim to be government servants. He submitted that the respondents claimed age relaxation as employees of MCD which was specifically provided in the advertisement. We have already noticed that the UPSC advertisement (No. SPL-03-2004) clearly specified that the age-limit of 35 years was relaxable for employees of Municipal Corporation of Delhi, up to five years. Therefore, the only question that arises for consideration is whether the word “employees of MCD” should be construed as referring only to permanent or regular employees of MCD as contended by UPSC or to all employees of MCD including contract employees, as contended by respondents.

14. The term “employee” is not defined in the Delhi Municipal Corporation Act, 1957, nor is it defined in the advertisement of UPSC. The ordinary meaning of “employee” is any person employed on salary or wage by an employer. When there is a contract of employment, the person employed is the employee and the person employing is the employer. In the absence of any restrictive definition, the word “employee” would include both permanent or temporary, regular or short term, contractual or ad hoc. Therefore, all persons employed by MCD, whether permanent or contractual will be “employees of MCD”.

15. The respondents who were appointed on contract basis initially for a period of six months, extended thereafter from time to time for

further periods of six months each, were therefore, employees of MCD, and consequently, entitled to the benefit of age relaxation. If the intention of MCD and UPSC was to extend the age relaxation only to permanent employees, the advertisement would have stated that age relaxation would be extended only to permanent or regular employees of MCD or that the age relaxation would be extended to employees of MCD other than contract or temporary employees. The fact that the term “employees of MCD” is no way restricted, makes it clear that the intention was to include all employees including contractual employees. Therefore, we find no reason to interfere with the judgment of the High Court extending the benefit of age relaxation.”

15. In our view, the judgment rendered in the case of ***Dr. Jamuna Kurup*** (supra) is fully applicable to the facts of the present case. This writ petition is without any merit and the same is accordingly dismissed. No costs.

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16. In view of the order passed in the writ petition, application stands dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

October 16th, 2015

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