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

Date of Decision: 27.05.2016

+ W.P.(C) 4705/2016, Cav. 441/2016 & CM Nos. 19634/2016 & 19635/2016

**NORTH DELHI MUNICIPAL CORPORATION
& ORS**

..... Petitioners

Through: Mr Gaurang Kanth & Ms Biji Rajesh,
Advs.

versus

GANESH BHAMBHU & ORS

..... Respondents

Through: Mrs Avnish Ahlawat & Mr Atul Dewan,
Advs. for R- 1 to 16.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J (ORAL)

1. North Delhi Municipal Corporation (for short NDMC) by this writ petition impugns the order dated 25.02.2016 passed in OA No. 4246/2015, which was filed by 37 contractual employees working as Staff Nurses in different hospitals managed and run by the petitioner.
2. Another group of similarly situated Staff Nurses employed on contracts basis with East Delhi Municipal Corporation had filed OA Nos. 4402/2015 and 4237/2015. The contractual Staff Nurses had prayed for regularization and that their services should not be terminated. The said prayers were given up and the aforesaid OAs

were disposed of, vide order dated 03.02.2016 on the basis of the statement made by the counsel appearing for the East Delhi Municipal Council and the contractual employees, recording as under:

“.... 23. In the present case, the learned senior counsel for respondent Nos.2 to 4 (EDMC) himself submitted that in disengaging/ discontinuing the services of the applicants to accommodate the regularly selected candidates the Corporation has already followed the principle of ‘last come first go’. He further submitted fairly that the Corporation would have no difficulty in complying the directions contained in paragraph 26(i), (ii), (vi), (vii) and (viii) issued by this Tribunal in the case of Dr. Renu Patel (supra). For easy reference, the directions are reproduced hereinbelow:

26. In the aforementioned factual and legal backgrounds, it is concluded and held:

(i) The respondents are entitled to replace the services of contractual doctors, including the applicants herein by regularly selected appointees.

(ii) Merely because they have rendered contractual service, the applicants would not acquire any right for regularization.

(iii) In view of the observations made by this Tribunal in the case of Vijay Dhankar (supra) and the directions given by the Hon’ble High Court in the case of Sonia Gandhi (supra), the respondents would make an assessment regarding requirement of General Duty Medical Officer (GDMO) and Junior Specialist (Specialist Grade III – non – teaching) in the Delhi Government Health Services and if as a result of such assessment more posts of General Duty Medical Officer (GDMO) and Junior Specialist (Specialist Grade III – non-teaching) are created, the benefit

of the directions given in paragraphs 22, 23 and 24 of the judgement of Hon'ble High Court in Sonia Gandh's case (supra) would be made available to the applicants herein also.

(iv) While giving such benefits, the respondents would either frame fresh policy, as directed by the Hon'ble High Court or they can extend the benefit of Rule 6(2) of Delhi Health Service (Allopathy) Rules, 2009 to the contractual doctors.

(v) Till the services of the applicants are substituted by regularly appointed General Duty Medical Officer (GDMO) and Junior Specialist (Specialist Grade III – non-teaching), they would be continued on contract basis.

(vi) While discontinuing the services of the applicants, the respondents would resort to the principle of 'last come first go', i.e. the contractual doctor appointed last would be discontinued first.

(vii) The names of such contractual doctors, who cannot be continued in service any more on account of regular appointment would be kept in a separate pool and in case of requirement of contractual doctors in future, they will be given preference for such engagement and till last contractual doctor from the pool is utilized, no fresh contractual appointment in the category of General Duty Medical Officer/ Junior Specialist (Specialist Grade III – non-teaching) in the discipline to which the applicants belong would be made by the respondents.

(viii) In the event the available vacancies in a particular unit/ hospital are filled up on regular basis but the same remain unfilled in different unit/ hospital, the respondents would explore the possibility of engaging the applicants herein for

their contractual appointment in the hospital/ unit where vacancies remain unfilled.

24. When we do not find any merit in the Original Application of the applicants, in view of the fair stand taken by Mr. K.K. Rai, learned senior counsel for respondent Nos. 2 to 4 (EDMC), we dispose of the same with the following directions:

(i) The respondents are entitled to replace the services of contractual doctors, including the applicants herein by regularly selected appointees.

(ii) Merely because they have rendered contractual service, the applicants would not acquire any right for regularization.

(iii) While discontinuing the services of the applicants, the respondents would resort to the principle of 'last come first go', i.e. the contractual Staff Nurse appointed last would be discontinued first.

(iv) The names of such contractual doctors, who cannot be continued in service any more on account of regular appointment, would be kept in a separate pool and in case of requirement of contractual Staff Nurse in future, they will be given preference for such engagement.

(v) In the event the available vacancies in a particular unit/ hospital are filled up on regular basis but the same remain unfilled in different unit/ hospital, the respondents would explore the possibility of engaging the applicants herein for their contractual appointment in the hospital/ unit where vacancies remain unfilled....”

3. The impugned order, in the present case, dated 25.02.2016 specifically quotes the directions impugned in paragraph 24 of the order dated 03.02.2016 passed in OA Nos. 4402/2015 and 4237/2015. It also records that the order in the said OAs were passed on the basis of the consent of the counsel appearing for the East Delhi Municipal

Committee.

4. The grievance of the petitioner is with reference to the last sentence in paragraph 5 of the impugned order dated 25.02.2016 in the OA, No.4246/2015, which reads:

“.....5. In view of the aforementioned arguments put forth by the learned counsels for the parties, the OA stands disposed of in terms of the order passed in OA No. 4402/2015 dated 03.02.2016 (supra). It is made clear that the 34 sanctioned posts shown as vacant in different hospitals of MCD should be utilised to accommodate the applicants on contract basis with due regard to the order of this Tribunal, relied upon by the respondents. No costs. ..”

We fail to appreciate and understand the reason for the said grievance, for the paragraph 5 merely reiterates directions given in paragraph 24 of the earlier order dated 23.02.2016 passed in OA Nos. 4402/2015 and 4237/2015. The petitioner submits that the impugned order states that 34 sanctioned posts of Staff Nurses shown as vacant in different hospitals of the NDMC, would be utilized to accommodate the applicants on contract basis with due regard to the order of the Tribunal.

5. All the aforesaid line in the impugned order ensures that the vacant posts of Staff Nurses are not left unmanned. Vacant posts of Staff Nurses should not remain vacant. The hospitals perform and provide essential and much needed medical aid to the poor and needy. In no way the direction in paragraph 5 states that the petitioner cannot fill up these posts by way of appointing surplus staff from other hospitals or by making regular appointment. We also have no

hesitation in clarifying that the impugned order does not in any way modify the principle “last come and first to go”. This is clearly recorded in paragraph 24 of the order dated 23.2.2016 which stands incorporated in the impugned order. It is for the petitioner to comply and follow the directions.

6. With the aforesaid observations, we dismiss the present writ petition.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 27, 2016/kk