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

+ **W.P.(C) 6294/2014**

Date of decision: 25th January, 2016

DR. SHAILLEY JAIN & ORS.

..... Petitioners

Through Ms. Aishwarya Bhati & Ms. Anshul
Sharma, Advocates.

versus

GOVT. OF NCT DELHI & ORS.

..... Respondents

Through Mr. Sanjoy Ghose, ASC & Mr. Yash S.
Vijay, Advocate for GNCTD-respondent Nos. 1
and 2 along with Mr. Kapil, LA (H&FW Deptt.).
Mr. Naresh Kaushik, Advocate for UPSC.

W.P.(C) 6723/2014

RAKESH VERMA & ORS.

..... Petitioners

Through Ms. Aishwarya Bhati & Ms. Anshul
Sharma, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through Mr. Sanjoy Ghose, ASC & Mr. Yash S.
Vijay, Advocate for GNCTD-respondent Nos. 1
and 2 along with Mr. Kapil, LA (H&FW Deptt.).
Mr. Naresh Kaushik, Advocate for UPSC.
Mr. Devesh Singh, Advocate for GNCTD.

W.P.(C) 6955/2014

MANOJ KUMAR & ORS.

..... Petitioners

Through Ms. Aishwarya Bhati & Ms. Anshul
Sharma, Advocates.

versus

GOVT. OF NCT OF DEHLI & ORS. Respondents
Through Mr. Sanjoy Ghose, ASC & Mr. Yash S.
Vijay, Advocate for GNCTD-respondent Nos. 1
and 2 along with Mr. Kapil, LA (H&FW Deptt.).
Mr. Naresh Kaushik, Advocate for UPSC.

W.P.(C) 6957/2014

DR. MONICA KUMARI & ANR. Petitioners
Through Ms. Aishwarya Bhati & Ms. Anshul
Sharma, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through Mr. Sanjoy Ghose, ASC & Mr. Yash S.
Vijay, Advocate for GNCTD-respondent Nos. 1
and 2 along with Mr. Kapil, LA (H&FW Deptt.).
Mr. Naresh Kaushik, Advocate for UPSC.
Mr. Devesh Singh, Advocate for GNCTD.

W.P.(C) 6959/2014

DR. KAUSTUV KIRAN & ORS. Petitioners
Through Ms. Aishwarya Bhati & Ms. Anshul
Sharma, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through Mr. Sanjoy Ghose, ASC & Mr. Yash S.
Vijay, Advocate for GNCTD-respondent Nos. 1
and 2 along with Mr. Kapil, LA (H&FW Deptt.).
Mr. Naresh Kaushik, Advocate for UPSC.

W.P.(C) 7046/2014

GOVT OF NCT OF DELHI & ORS.

..... Petitioners

Through Mr. Sanjoy Ghose, ASC & Mr. Yash S. Vijay, Advocate for GNCTD along with Mr. Kapil, LA (H&FW Deptt.).
Mr. Naresh Kaushik, Advocate for UPSC.

versus

RENU PATEL & ORS.

..... Respondents

Through Ms. Aishwarya Bhati & Ms. Anshul Sharma, Advocates.

W.P.(C) 7203/2014

GOVT OF NCT OF DELHI & ORS.

..... Petitioners

Through Mr. Sanjoy Ghose, ASC & Mr. Yash S. Vijay, Advocate for GNCTD along with Mr. Kapil, LA (H&FW Deptt.).
Mr. Naresh Kaushik, Advocate for UPSC.

versus

MANOJ KUMAR & ORS.

..... Respondents

Through Ms. Aishwarya Bhati & Ms. Anshul Sharma, Advocates.

W.P.(C) 7207/2014

GOVT. OF NCT OF DELHI & ORS.

..... Petitioners

Through Mr. Sanjoy Ghose, ASC & Mr. Yash S. Vijay, Advocate for GNCTD along with Mr. Kapil, LA (H&FW Deptt.).
Mr. Naresh Kaushik, Advocate for UPSC.

versus

DR. RAKESH VERMA & ORS.

..... Respondents

Through Ms. Aishwarya Bhati & Ms. Anshul Sharma, Advocates.

W.P.(C) 7315/2014

GOVT. OF NCT OF DELHI & ORS.

..... Petitioners

Through Mr. Sanjoy Ghose, ASC & Mr. Yash S. Vijay, Advocate for GNCTD along with Mr. Kapil, LA (H&FW Deptt.).
Mr. Naresh Kaushik, Advocate for UPSC.

versus

DR. KAUSTUV KIRAN & ORS.

..... Respondents

Through Ms. Aishwarya Bhati & Ms. Anshul Sharma, Advocates.

W.P.(C) 7888/2014

GOVT. OF NCT OF DELHI & ORS.

..... Petitioners

Through Mr. Sanjoy Ghose, ASC & Mr. Yash S. Vijay, Advocate for GNCTD along with Mr. Kapil, LA (H&FW Deptt.).
Mr. Naresh Kaushik, Advocate for UPSC.

versus

DR. MONICA KUMARI & ANR.

..... Respondents

Through Ms. Aishwarya Bhati & Ms. Anshul Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL):

These are two sets of writ petitions by the contractual doctors and by the Government of NCT of Delhi impugning a common order dated 27th August, 2014 passed in Original Application Nos. 48/2014, 2333/2014,

2716/2014 and 2656/2014.

2. In the operative portion of the order dated 27th August, 2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal, for short), the following conclusions/directions are recorded:

“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 regularisation.
- 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 Speciality (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 judgment of Hon'ble High Court in Sonia Gandhi'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.

The Original Applications stand disposed of accordingly. There shall be no order as to costs.”

3. The contractual doctors are aggrieved by the directions given in paragraphs (i) and (ii), whereas Government of NCT of Delhi is aggrieved by the directions given in paragraphs (iii) to (viii).

4. Factual matrix, which has led to the aforesaid litigation and the present writ petitions, may be noted in brief. Private petitioners herein are contractual doctors who were appointed on or after 23rd December, 2009 on contract as either General Duty Medical Officers (GDMOs) or Junior Specialist (Specialist Grade-III non-teaching) in the Delhi Health Service. Contractual doctors sought regularization and parity with contractual doctors appointed prior to 19th June, 2006. Central Administrative Tribunal has declined the said prayer.

5. Having heard learned counsel for the contractual doctors, we have no hesitation in upholding the conclusions/directions given in sub-paras (i) and (ii). The recruitment and selection to the Delhi Health Service is governed and regulated by the Delhi Health Service (Allopathy) Rules, 2009, which was enacted and enforced on 23rd December, 2009. Thus, the date 23rd December, 2009 is relevant and important. The contractual doctors were not appointed in terms and as per the Delhi Health Service (Allopathy) Rules, 2009. Their selection was not made through a written examination and interview to be conducted by the Union Public Service Commission (UPSC) as mandated and in terms of the said Rules. The contractual doctors were always aware and conscious that their appointment was on contract for the period specified. Failure to appoint regular doctors after following the procedure prescribed in the Recruitment Rules in the present case would not, in our opinion, confer any right on the contractual doctors for regularization. GDMO and Junior Specialists are Group A posts and as per mandate of Article 320 (3) of the Constitution, such appointments must be made through the UPSC. This ensures fairness, transparency and objectivity in the recruitment. The appointments were made as per the Rules in 2014.

6. The contractual doctors before us cannot claim parity with the contractual doctors, who were appointed on or before 19th December, 2006. These contractual doctors were appointed before the Delhi Health Service

(Allopathy) Rules, 2009 were enacted. The date 18th December, 2006 has reference to the date of issue of Government of NCT of Delhi OM No. F.70/49/206/H&FW/SSHFW 463-475, when the "Delhi Health Service for medical practitioners" was notified. Thus a new service with separate cadre came into existence. The contractual doctors appointed on or before 18th December, 2006 were granted an opportunity under Rule 6(2), to be inducted into the service after assessment of suitability by the UPSC, provided they met requisite educational qualification and experience requirement. This relaxation to the contractual doctors appointed on or before 18th December, 2006, was for initial induction at entry level into the newly created service. It is apparent that the contractual appointments in the present cases were made as a stop gap arrangement till selection and appointment of eligible and meritorious doctors was made as per the Recruitment Rules through selection by UPSC. The selection and appointment as per the Rules was made in 2014. The claim of the contractual doctors that there is violation of Article 14, therefore, has to be rejected.

7. In view of the aforesaid finding, we do not think the directions/findings recorded in sub-paras (i) and (ii) can be faulted or requires overruling.

8. Directions (iii) to (viii) are against the Government of NCT of Delhi.

9. During the course of hearing, learned counsel for the Government of

NCT of Delhi has stated that the last cadre review for GDMOs and Junior Specialist (Grade-III non-teaching) was conducted in the year 2006. The total cadre strength of non-teaching Junior Specialist is 634 and GDMOs is 1257 and upon proper selection appointments were made in the year 2014. Some vacancies do exist and they would be filled as per the Recruitment Rules and in accordance with law. He states that as considerable time has lapsed since 2006 and in view of the time gap, the Government would like to undertake an exercise to review the cadre strength in view of the ever increasing needs and requirements of the people of Delhi and of the government's the objective to provide better health care and medical facilities. We appreciate the stand taken by the Government of NCT of Delhi and hope and trust that the said exercise would be undertaken shortly. Counsel appearing for the UPSC has assured the Court that they would process any request, received from the Government of NCT of Delhi in accordance with law and indeed expeditiously. The statement made by the counsel for the Government of NCT of Delhi and UPSC, we feel, substantially takes care of the directions/findings recorded in sub-paras (iii) to (viii). It is also pointed out to us that the term of the contractual doctors, on expiry of their term, has not been extended. Writ petitions filed by the Govt. of NCT of Delhi are allowed in the above terms.

10. Learned counsel for the contractual doctors has submitted that they would like to make a representation to the Government for age relaxation,

as there has been delay in regular recruitment. The regular recruitment in the said grades after initial induction, was undertaken in the year 2014. It will be open to the contractual doctors to make a representation. We do not express any view on the said aspect.

11. The two set of writ petitions are disposed of.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

JANUARY 25, 2016
VKR