

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

+ **W.P.(C) No.1084/2014 and CM No. 22659/2015**

% **30th March, 2017**

PRACHI JAIN Petitioner

Through: Ms. Neha Kapoor, Advocate

versus

DELHI CANTONMENT BOARD & ORS. Respondents

Through: Mr. Anchit Sharma, Mr. T.S. Nanda and Mr. S. Ghosh, Advs. for respondent no. 1

Mr. Arun Bhardwaj, CGSC for UOI/R-2 with Mr. Sriram and Mr. Nikhil Bhardwaj, Advs.

Mr. Bijender Singh, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. In this writ petition under Article 226 of the Constitution of India, the petitioner sought the following reliefs:-

“(a) Issue a writ of certiorari quashing/setting aside the contractual appointment of physiotherapist made by the respondent no. 1 in pursuance to advertisement dated 3.7.2011;

(b) Issue a writ of certiorari quashing/setting aside the resolution no. 19 for extension of contract in the meeting held on 10.12.2012;

(c) Issue a writ of mandamus directing the respondent no. 1 not to make permanent appointment for physiotherapist during the pendency of the instant petition and direct the respondent no. 1 to hold fresh appointments for the post of physiotherapist in a just and fair manner and not to further extend the period of contract of the selected candidates and not to make them permanent during the pendency of the instant petition. The petitioner should be given an appointment in the same candidature as of respondent nos. 3 and

4 because as per admitted fact total number of posts of physiotherapist i.e. 05 as declared were not filled and vacancy is still there; and
(d) Pass any other further order as this Hon'ble Court may deem fit and proper in the facts of the case."

2. Essentially, the claim of the petitioner as per the writ petition is that the petitioner was wrongly not selected in terms of the advertisement dated 03.07.2011 issued by respondent no. 1 for the post of Physiotherapist on contractual basis for a period of one year.

3. Also, as per the prayer 'c', the petitioner sought the relief of direction to respondent no. 1 not to make permanent appointment for the post of Physiotherapist, which indeed is a very strange prayer because the petitioner herself was only an aspirant seeking appointment on contractual basis for the contractual period, and therefore, there could not be any claim for restraining the respondent no.1 from making regular appointment on permanent basis.

4. It is seen that the contractual period in question would have come to an end on 19.7.2012 in terms of the advertisement, however, since the illegally selected candidates being respondent nos. 3 and 4 herein were given appointment from January-February, 2012 therefore, their contractual periods would have come to an end after one year in January-February, 2013. The present writ petition has been filed later on by 1.2.2014.

5. It is said that this writ petition was filed after an earlier writ petition was disposed of since the petitioner's complaint was under examination by respondent no. 1.

6. Today, counsel for respondent no. 1 states that the CMO, Cantonment General Hospital, Delhi Cantt., who was in charge of the subject recruitment process, has been imposed a punishment of compulsory retirement, on account of illegalities in the recruitment process.

7. In my opinion, nothing survives for consideration in this writ petition which is clearly infructuous because granting of the petitioner's relief of contractual period of service of one year from today would be a very convoluted concept because the contractual appointment in the present case was around for one year commencing from January-February, 2012 and which has ended in January-February, 2013. Even the year extension granted to respondent nos. 3 and 4 has expired in the year 2014.

8. Not only the period in question has come to an end, but petitioner, even assuming could be successful in contending that petitioner, in fact ought to have been appointed, then the petitioner could have at best only be entitled to monetary reliefs, but in my opinion, this Court would not like to exercise its extraordinary

jurisdiction under Article 226 of the Constitution of India for giving monetary reliefs to the petitioner, inasmuch as, the appointed persons have worked with the respondent no. 1 and the respondent no.1 has paid the monetary emoluments to respondent nos. 3 and 4 for the periods such persons have worked. Respondent no. 1 therefore cannot be forced to incur monetary liability for a service period for which payments have been made by the respondent no.1.

9. Also, the present case is not a case where the petitioner has worked, but was illegally removed from service, and consequently, the claim for monetary emoluments during the period of illegal removal. The petitioner has, thus in fact, never been appointed, and so has not worked for even a single day in the said post with the respondent no. 1, whereby the doctrine of 'no work no pay' will apply. Therefore, neither the petitioner can get the relief of contractual service for the period of one year nor the petitioner can get any monetary relief as is prayed before this Court today.

10. (i) Learned counsel for the petitioner has sought to draw the attention of this Court to the orders dated 30.7.2015 and 8.9.2015 passed by a learned Single Judge of this Court. However, an interim order does not create final rights, and more so, when the interim orders were much beyond the scope of revision because they pertain to

appointments made by respondent no. 1 during the later year 2014, and validity of which appointments have never been the subject matter of the present writ petition.

(ii) Writ petitions cannot be continued on and on for various subsequent appointments over various subsequent years inasmuch as the subsequent appointments if illegally made, have to be made a separate matter of a separate writ petition on a separate cause of action and that is also on assuming that petitioner would be entitled to successfully seek the relief of being granted appointments in those posts which were subsequently filled in including on the basis that the petitioner was a candidate for the subsequent post which was advertised i.e the petitioner had applied pursuant to that advertisement.

(iii) Learned counsel for the respondent no. 1 states that when the subsequent posts were advertised in the year 2014, the petitioner did not apply under that advertisement which was for one permanent post and two contractual posts and thus I would not like to go into this aspect in detail. Subsequent appointments in a subsequent recruitment process would have necessarily to be a subject matter in an independent writ petition where a complete cause of action will have to be pleaded.

11. In view of the above discussion, this writ petition is infructuous so far as the claim of contractual appointment for a period of one year is concerned and so far the claim of the petitioner for grant of monetary reliefs is concerned for the period of one year taking the petitioner to have been appointed, but since the petitioner did not work even for a single day in the post of Physiotherapist with the fact that the respondent no. 1 has paid the monetary emoluments to the persons who were appointed for the contractual period, hence, this relief also cannot be granted and is therefore rejected.

12. The present writ petition is accordingly dismissed, leaving the parties to bear their own costs. Pending applications also stand disposed of.

MARCH 30, 2017
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VALMIKI J. MEHTA, J