

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

Date of Decision: April 02, 2018

+ **W.P.(C) 2367/2016 & CMs 10151/16, 13559/16**

SHAHWAIZ AHMED AND ORSPetitioners
Through: Mr. Rana Ranjit Singh and Mr.
Vivek Kumar Singh, Advocates

versus

GOVT OF NCT OF DELHI AND ANRRespondents
Through: Mr. Sanjay Ghose, ASC with Mr.
Rhishabh Jetley, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Vide order of 2nd February, 2016 (*Annexure P-3 colly.*), petitioners' service stands terminated on account of the reasons spelt out therein. Learned counsel for petitioners submits that aforesaid order has been passed by the Registrar of *Delhi Bhartiya Chikitsa Parishad*, who is not competent to issue impugned order as respondent-*Parishad* stood dissolved on 16th July, 2015 in terms of Section 32 of the *Delhi Bhartiya Chikitsa Parishad Act, 1998* (hereinafter referred to as '*the DBCP Act of 1998*').
2. To seek regularization of petitioners' contractual service, reliance is placed upon order of 19th October, 2015 (*Annexure P-2*) issued by Govt. of NCT. In response to this petition, respondent-*Parishad* in the

counter-affidavit maintains that regularization of contractual employees in terms of Government's order of 19th October, 2015 (*Annexure P-2*) cannot be undertaken as no rules were adhered to, while appointing petitioners and on this ground, termination of petitioner's service is sought to be justified.

3. Learned Standing Counsel for respondents draws attention of this Court to Section 16 of the DBCP Act of 1998 to point out that employment under this Act can be granted only upon approval from the Government and since petitioners' appointment on contractual basis was not approved by the Government, therefore, it had to be terminated.

4. Learned counsel for petitioners submits that Recruitment Rules for the post of LDC were not in existence when petitioners' appointment was made and since respondent-*Parishad* has been dissolved, therefore, competent authority to terminate petitioners' service was Director, AYUSH and not the Registrar of respondent-*Parishad*. Learned counsel for petitioners submits that the dissolution of respondent-*Parishad* was not only on account of the irregularities in functioning of the said *Parishad*, but also on the ground that no Recruitment Rules were framed in terms of directions issued by the Lieutenant Governor of Govt. of NCT of Delhi, as contained in Annexure P-2. So, it is submitted that impugned termination of petitioners' service is patently illegal and deserves to be quashed.

5. Learned Additional Standing Counsel for respondents has drawn attention of this Court to paragraph No.7 of the counter-affidavit to point out that vide Gazette Notification of 2nd May, 2016 (*Annexure R-2*),

Special Director (AYUSH) was authorized to perform the functions of respondent-*Parishad* and *Dr. Yogita Munjal* was appointed as the Registrar of respondent-*Parishad* from 15th January, 2016 for a period of six months and so, impugned order has been legally passed by her.

6. The stand of respondent-*Parishad* in the counter-affidavit filed is that petitioners are not protected by Government's order (*Annexure P-2*) providing for regularization of contractual employees, as no rules were adhered to by respondent-*Parishad* by engaging petitioners on contract basis. To submit so, attention of this Court is drawn to Section 16 (1) (b) of the DBCP Act of 1998. Thus, it is submitted that this petition deserves to be dismissed.

7. Upon hearing and on perusal of impugned order, the material on record and relevant provisions of the DBCP Act of 1998, I find that in view of the Notification of 2nd May, 2016 (*Annexure R-2*), impugned order has been passed by competent authority but since petitioners' appointment was on contractual basis, therefore, the grounds on which impugned order has been passed cannot be justified. It is so said because if no Recruitment Rules for the post of LDC were framed by respondent-*Parishad*, then for the said lapse, petitioners cannot be blamed. It is evident from the counter affidavit filed by respondent that the dissolution of respondent-*Parishad* stood extended till July, 2016 and impugned order has been passed in February, 2016. Although competence of respondent to pass impugned order cannot be questioned, but the grounds on which impugned order has been passed cannot be justified. Since petitioners' employment was on contractual basis for a period of six

months, therefore instead of terminating petitioners' service vide impugned order (*Annexure P-3*), respondent-*Parishad* ought to have passed a simplicitor order dispensing with the service of petitioners upon completion of contractual period.

8. In light of the aforesaid, it is directed that impugned order (*Annexure P-3*) shall be read as an '*order simplicitor dispensing with the service of petitioners*' and not an order terminating petitioners' service. So far as regularization of petitioners' service is concerned, respondent-*Parishad* shall consider the case of petitioners for regularization in terms of Government's order of 19th October, 2015 (*Annexure P-2*) if Recruitment Rules have not been already framed.

9. With the above said directions, this petition and the applications are accordingly disposed of.

APRIL 02, 2018

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**(SUNIL GAUR)
JUDGE**