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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 29.05.2018

LPA 312/2018

SHAHWAIZ AHMED & ANR Appellants

versus

GOVT OF NCT OF DELHI & ANR Respondents

Advocates who appeared in this case:

For the Appellants :Mr. Rana Ranjit Singh and Mr. Ravish Singh, Advocates

For the Respondents :Mrs. Avnish Ahlawat, Standing Counsel, GNCTD with Mr. Nitesh Kumar Singh, Ms. Tania Ahlawat and Ms. Palak Rohmetra, Advocates for R-1

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE VINOD GOEL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

CM APPL.23218/2018 (Exemption)

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

CM APPL.23217/2018 (Condonation of Delay)

The present application under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 instituted on behalf of the applicants/appellants seeks condonation of 14 days' delay in filing the accompanying appeal.

Notice.

Mrs. Avnish Ahlawat, learned counsel accepts notice on behalf of the non-applicant/respondent No.1 and fairly does not oppose the application.

In view of the foregoing and for the reasons stated in the application, which are duly supported by an affidavit, the same is allowed. The delay of 14 days in filing the accompanying application is condoned.

The application is disposed of accordingly.

LPA 312/2018

1. The present appeal under Clause 10 of the Letters Patent impugns the judgment and order dated 02.04.2018 passed by a learned Single Judge of this Court, whereby the Writ Petition (Civil) No.2367/2016, titled as '*Shahwaiz Ahmed and Ors. Vs. Govt. of NCT of Delhi and Anr.*', instituted on behalf of the appellants was disposed of with the following directions:-

“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.”

2. In order to effectively adjudicate the present appeal, it would be appropriate to briefly encapsulate the factual matrix.
3. The appointments of the petitioners were made purely on contract basis by the Delhi Bhartiya Chikitsa Parhishad (hereinafter referred to as the ‘*Parishad*’), on a consolidated payment of Rs.6,000/- per month, for a period of six months on 03.07.2006 and 24.04.2017 respectively from the date of joining the duty.
4. Clause 5 of the Memorandum of appointment clearly stipulated that ‘*the appointment is purely on contract basis for the specific period, the appointment can be terminated at any time without notice and without assigning any reason*’. However, the appellants asseverate that they were continued on extension for almost ten years. It was also asseverated that vide office orders dated 24.04.2007 and 02.11.2007, it was directed that the

appellants would continue to function as UDC in the said Parishad, till a regular appointment is made on this post.

5. The services of the appellants were terminated on 02.02.2016 vide identical orders, which are for the sake of felicity reproduced hereinbelow:-

**“DELHI BHARTIYA CHIKITSA PARISHAD
(A Statutory body of GNCTD constituted under the DBCP
Act1998)**

**CSC III, First Floor, DDA Market, B Block, Preet Vihar,
Delhi-92**

F.No.2(2)/2006/DBCP

Date: 02.02.2016

ORDER

The services of Sh. Shahwaiz Ahmad appointed as LDC on contract basis as per resolution passed by the Executive Committee of Delhi Bhartiya Chikitsa Parishad dated 29.05.06 and further promoted as UDC stand terminated with immediate effect for following reasons:

1. No prior approval of the Government for engagement of the said staff on contract basis was taken by Delhi Bhartiya Chikitsa Parishad as required mandatorily under Section 16 of DBCP Act, 1998.
2. Delhi Bhartiya Chikitsa Parishad engaged Sh. Shahwaiz Ahmad further as LDC without first framing the Recruitment Rules of the post of LDC and extended the contract arbitrarily till regular appointment to the post is made, thus giving an open ended contract.

3. The engagement of Sh. Shahwaiz Ahmed and his promotion as UDC by Delhi Bhartiya Chikitsa Parishad was without following any transparent and fair selection procedure as neither any advertisement notifying the vacancy was given nor any comparative assessment of suitability of Sh. Shahwaiz Ahmad for the post was done as there was no competition.
4. The engagement is capricious, subjective and smacks of favouritism as no prescribed procedure of recruitment in Government was adhered to thereby violating Rule 9 of Delhi Bhartiya Chikitsa Parishad Rules, 2001.

This issues with the prior approval of Competent Authority.

(Dr. Yogita Munjal)
Registrar, DBCP

F.No.2(2)/2006/DBCP/1482-1487

Date: 02.02.2016

Copy for information to:

1. Secretary to Hon'ble Minister of H&FW, GNCTD, Delhi Sachivalaya.
2. P.S. to Secretary (H&FW), GNCTD, 9th Floor, A Wing, Delhi Sachivalaya.
3. P.S. to Special Secretary, (AYUSH), GNCTD, 9th floor, Delhi Sachivalaya.
4. P.S. to Director (AYUSH), Directorate of AYUSH, A&U Tibbia College, Karol Bagh
5. Official concerned.
6. Guard File.

(Dr. Yogita Munjal)
Registrar, DBCP"

**“DELHI BHARTIYA CHIKITSA PARISHAD
(A Statutory body of GNCTD constituted under the DBCP
Act1998)**

**CSC III, First Floor, DDA Market, B Block, Preet Vihar,
Delhi-92**

F.No.2(2)/2006/DBCP

Date: 02.02.2016

ORDER

The services of Ms. Anju Nautiyal appointed as LDC on contract basis as per resolution passed by the Executive Committee of Delhi Bhartiya Chikitsa Parishad dated 12.02.07 stand terminated with immediate effect for following reasons:

1. No prior approval of the Government for engagement of the said staff on contract basis was taken by Delhi Bhartiya Chikitsa Parishad as required mandatorily under Section 16 of DBCP Act, 1998.
2. Delhi Bhartiya Chikitsa Parishad engaged Ms. Anju Nautiyal further as LDC without first framing the Recruitment Rules of the post of LDC and extended the contract arbitrarily till regular appointment to the post is made, thus giving an open ended contract.
3. The engagement of Ms. Anju Nautiyal and was without following any transparent and fair selection procedure as neither any advertisement notifying the vacancy was given nor any comparative assessment of suitability of Ms. Anju Nautiyal for the post was done as there was no competition.
4. The engagement is capricious, subjective and smacks of favouritism as no prescribed procedure of recruitment in Government was adhered to thereby violating Rule 9 of Delhi Bhartiya Chikitsa Parishad Rules, 2001.

This issues with the prior approval of Competent Authority.

(Dr. Yogita Munjal)
Registrar, DBCP

F.No.2(2)/2006/DBCP/1476-1481

Date: 02.02.2016

Copy for information to:

1. Secretary to Hon'ble Minister of H&FW, GNCTD, Delhi Sachivalaya.
2. P.S. to Secretary (H&FW), GNCTD, 9th Floor, A Wing, Delhi Sachivalaya.
3. P.S. to Special Secretary, (AYUSH), GNCTD, 9th floor, Delhi Sachivalaya.
4. P.S. to Director (AYUSH), Directorate of AYUSH, A&U Tibbia College, Karol Bagh
5. Official concerned.
6. Guard File.

(Dr. Yogita Munjal)
Registrar, DBCP"

6. Aggrieved by the said orders of termination, the appellants instituted the writ petition praying as follows:-

- "a) Issue writ, directions, orders, in the nature of certiorari or any other appropriate writ against the respondents setting aside/expunge/set aside/revoke the impugned termination order dt.02.02.2016 passed by the respondent No.2.
- b) Issue a writ of mandamus or any other writ, directions, orders, directing the respondents to adhere the general policy for

regularization of the contractual employees dt. 16.02.2015 and subsequent policy decision/order dated 19.10.2015; and

- c) Reinstatement of the petitioners on job till the regular candidates are appointed and release all the consequential service benefits from the date of termination.
- d) Pass any other order(s) which this Hon'ble Court deems fit and just by this Hon'ble Court."

7. The learned Single Judge vide the impugned order, having considered the submissions made on behalf of the appellants to the effect that the recruitment rules for the subject post were not in existence at the time of their appointment and in view of the circumstance that the Parishad had been dissolved, the competent authority to terminate their service was the Director, AYUSH and not the Registrar of the Parishad, as well as, the submission that there was an order issued by the Government of NCT of Delhi on 19.10.2015, on framing a policy for regularization of the contractual employees; found as follows:-

"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. Before us, learned counsel appearing on behalf of the appellant has underlined the contention that were urged on their behalf before the learned Single Judge to state that, their termination was contrary to the provisions of the Delhi Bhartiya Chikitsa Parishad Act, 1998 (hereinafter referred to as 'the said Act'), inasmuch as, the Parishad, stood dissolved w.e.f. 16.07.2015 and a new Parishad ought to have been constituted before the expiration of a period of six months from the date of dissolution by the Registrar of Parishad, in terms of the proviso to Section 32 of the said Act. In such absence thereof, the competent authority to terminate the appellant's services was the Director of AYUSH and not the Registrar of the Parishad. The termination order having been issued after the said period of six months

having lapsed, was patently without jurisdiction. In this behalf, it would be appropriate to reproduce Section 32 of the said Act hereinbelow:-

“32. **Control of Government** – (1) If at any time it appears to the Government that the Parishad or its President or Vice President has failed to exercise or has exceeded or abused any of the powers conferred upon it or him by or under the Act, or has ceased to function, or has become incapable of functioning, the Government may, if it considers such failure, excess, abuse or incapacity to be of a serious character, notify the particulars thereof to the Parishad or the President or the Vice-President, as the case may be. If the Parishad or the President, or the Vice-President, as the case may be, fails to remedy such failure, excess, abuse or incapacity within such reasonable time as the Government may fix in this behalf, the Government may remove the President or Vice-President or dissolve the Parishad for a specified period, as the case may be, and in case of dissolution of the Parishad cause all or any of the powers, duties and function of the Parishad to be exercised, performed and discharged by the Director, Indian System of Medicine of the Government or any registered practitioner as the Government may appoint in that behalf.”

9. Having heard the learned counsel for the parties, we find ourselves unable to agree with the submission made on behalf of the appellants.

10. A Constitution Bench of the Hon'ble Supreme Court in **Secretary, State of Karnataka and Others vs. Uma Devi (3) and Others**, reported as (2006) 4 SCC 1, clearly and unequivocally held that absorption, regularization, or permanent continuance of temporary, contractual, casual,

daily-wage or ad-hoc employees appointed/recruited dehors the constitutional scheme of public employment was wrong and has the effect of negating the rights of others to be considered for employment in a fair and equitable manner, in terms of the mandate of Article 21 of the Constitution of India. It was further held that the right to employment, it is a part of right to life and would stand denuded by preferring those who have got in casually or those who have come through the backdoor. However, the Constitution Bench distinguished between irregular and illegal appointments to hold that a duly qualified person in a duly sanctioned post who had continued to work for ten years or more, the question of regularization of their services, must as a one-time measure, be considered by the State and its instrumentalities. The Hon'ble Supreme Court in **Uma Devi** (*supra*) categorically perpetuated the further bypassing of the constitutional requirement and regularizing or making permanent the employees, who are not duly appointed in accordance with the constitutional scheme.

11. In this behalf, in the instant case, it is observed that the appellants were appointed without prior approval of the Government for engagement on

contract basis by the Parishad, contrary to the mandate of provisions of Section 16(1)(b) of the said Act, which reads as under:-

“16. Registrar –

(1)(b) The Parishad may also employ such other persons as may be approved by the Government and possess the qualification prescribed by regulations to carry out purposes of this Act.”

12. The Parishad, without framing the recruitment rules to the subject post, extended the contract of the appellants arbitrarily, till regular appointments to the post are made, whereby continuing the illegality in perpetuity.

13. The appointment and continuance of the appellants on contract was made without following any transparent and fair selection procedure and without issuing any advertisement, as warranted. The appointments were made without conducting any comparative assessment of the eligibility and suitability of the appellants and without inviting applications from others, who may have applied therefor.

14. In any event, the appointment of the appellants was purely on contract basis for a specific period and could be terminated by the Parishad at any time, without notice and without assigning any reason.

15. In view of the foregoing discussion, in our considered view, the impugned order does not warrant any interference in the present appeal. The appeal is accordingly dismissed.

SIDDHARTH MRIDUL
(JUDGE)

VINOD GOEL
(JUDGE)

MAY 29, 2018
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