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

+ **W.P.(C) 8321/2019**

**DR. MAHTAB ALAM KHAN**

..... Petitioner

Through: Mr. M. Rais Farooqui & Mr. Laique  
S. Farooqui, Advocates.

versus

**UNION OF INDIA AND ORS.**

..... Respondents

Through: Mr. Akshay Amritanshu & Ms. Suriti  
Choudhary, Advocates for respondent  
No.1/ UOI.  
Mr. Naresh Kaushik & Ms. Vibhuti  
Tyagi, Advocates for respondent  
No.2/ UPSC.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**ORDER**

**01.08.2019**

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**C.M. No. 34464/2019**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**W.P.(C) 8321/2019**

The petitioner assails the order dated 01.11.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.4326/2013.

The petitioner, in response to an advertisement issued to invite

applications for recruitment, inter alia, to the post of Medical Officer/ Research Officer (Unani) with the Department of AYUSH, Ministry of Health & Family Welfare, submitted his application and participated in the process. Admittedly, he was overage by one year and fourteen days. However, he sought age relaxation on the ground that he was serving with the Central Council for Research in Unani Medicine (CCRUM). In this regard, he produced a certificate dated 21.09.2011, which certified that the petitioner had worked as Unani Expert for Traditional Knowledge Digital Library (TKDL) Project implemented at HRDC (CSIR), Ghaziabad and sponsored by the Ministry of Health & Family Welfare. He worked on the said project w.e.f. 19.04.2007 to 09.08.2011. He also placed reliance on another certificate dated 03.07.2012 issued by the CCRUM, which certified that the petitioner worked as Unani Expert on contractual basis between 10.08.2011 to 31.03.2012. The respondents did not accept the said experience certificate as sufficient to grant age relaxation in terms of the relevant clause contained in the advertisement since the said clause specifically required that the service rendered with the Central Government/ UT Government should be on regular basis and not on casual/ ad-hoc/ daily wage basis. Consequently, the candidature of the petitioner was cancelled.

Mr. Kaushik who appears on advance notice has tendered in Court the communication dated 31.12.2002 addressed by the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pension to the Secretary, UPSC on the subject of grant of age relaxation to persons in Central Government on short-term contract for the purpose of direct recruitment. The said communication reads as follows:

“Sir,

*I am directed to refer to your letter No. 2/42/100-RR dated 29.11.2002 and to clarify that age relaxation to Government servants applies only to Central Government employees appointed on regular basis accordingly to the relevant Recruitment Rules. Therefore, this benefit will not be admissible to those appointed on short term on contract be otherwise.”*

The aforesaid being the position, the petitioner is not entitled to grant of age relaxation on the basis of the services rendered by him in contractual capacity.

Learned counsel for the petitioner has also sought to place reliance on the decision of the Supreme Court in ***Secretary, State of Karnataka & Others Vs. Umadevi & Others***, (2006) 4 SCC 1, to submit that age relaxation should be considered while granting regular employment. This submission of learned counsel for the petitioner is completely misplaced. This is for the reason that the decision in ***Umadevi*** (supra) really concerned backdoor entries and ad-hoc appointments which were rampantly being made in Government Departments. The Supreme Court held that all such appointments are illegal and that did not vest any right in the appointee to seek regularisation. However, the Supreme Court carved out an exception in paragraph 53 of its decision in respect of those who had been irregularly appointed and worked for 10 years or more in duly sanctioned posts but not under the cover of orders of Court or Tribunal. With a view to regularise such appointees, the Supreme Court directed framing of a scheme so that the concerned persons could be regularised in the very post on which they had been serving.

Learned counsel for the petitioner placed reliance on the observation

made in paragraph 55 of the decision in *Umadevi* (supra), wherein the Supreme Court, inter alia, observed:

*“55. ... .. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time.”*

We cannot appreciate as to how the said decision in *Umadevi* (supra), and the aforesaid extract from the observation made in paragraph 55 thereof can be invoked by the petitioner. The petitioner is not seeking regularisation in the post on which he served on contractual basis. He is seeking appointment in a fresh recruitment process on a post where he has not served even on contractual basis. The observation made by the Supreme Court in paragraph 55 relates to the process of regularisation of ad-hoc/ casual/ contractual employees on the same post on which they were so serving. This submission is, therefore, completely misconceived.

We do not find any merit in this petition and dismiss the same.

**VIPIN SANGHI, J**

**RAJNISH BHATNAGAR, J**

**AUGUST 01, 2019**

*B.S. Rohella*