



2023:DHC:6868-DB



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

% Date of decision: September 21, 2023

(42) + W.P.(C) 12451/2023 & CM APPLs. 49051/2023 & 49052/2023

UNION OF INDIA & ORS.

..... Petitioners

Through: Mr. Sushil Kr. Pandey, Sr. Panel
Counsel with Ms. Neha Yadav, Adv.

versus

VARINDER JEET SINGH

..... Respondent

Through: Mr. Kuldeep Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 49052/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 12451/2023

1. The challenge in this petition is to an order dated January 13, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA 956/2020, whereby the Tribunal has allowed by OA filed by the respondent herein by stating in paragraphs 10 and 11 as under:

"10. From the Orders/Judgments referred to and relied upon by the learned counsel for the applicant precisely noted hereinabove, it is evident that in the matter of casual/contractual/daily wage employees, such employees are required to be continued till the posts against which they



have been engaged are filled up by way of regular selection and till the such work against which they have been engaged exists. They are further not required to be replaced by another set of casual/contractual/daily wage employees and if at all because of requirement of such employees is found reduced, the principle of 'last-come-first-go', i.e., junior-most incumbent has to go first, is to be resorted to. Of course, the employer is within its jurisdiction to see the suitability as well.

11. Considering the submissions as well as the decision of the aforesaid OA and the various judgments/decisions referred therein, it is crystal clear that the respondents were wrong in issuing the advertisement dated 11.05.2022 as the same clearly amounts to replacing one contractual employee ie. the applicant with the other. Accordingly, the advertisement dated 11.05.2022 is quashed and set aside. Respondents are directed not to replace the applicant by another contract employee or till regular employee is available. In the aforesaid terms the Original Application stands allowed. There shall be no order as to cost."

2. The facts relevant to be noted in this case are, vide circular dated November 17, 2011, petitioner No.2 had advertised one post of Refractionist in the Department of Ophthalmology, Northern Railway Central Hospital, New Delhi to be filled on contractual basis for a period of one year. The respondent was appointed for one year. The appointment was extended thereafter from time to time.

3. On May 11, 2020, a fresh advertisement was issued by the petitioner No.2 for the same post in the same hospital. On June 10, 2020, the Central Hospital again recommended further extension of the engagement of the respondent for a period of three months for which



the authority had accorded the approval on June 29, 2020. It is alleged that the respondent was not aware of the advertisement dated May 11, 2020 as the same was not circulated in the Central Hospital.

4. The case of the petitioners before the Tribunal was that the post of the respondent cannot be filled on regular basis as there is neither a regular post of Refractionist nor any recruitment rules framed.

5. It was stated that earlier also on February 18, 2019, an advertisement was issued, but due to non-receipt of any applications, the respondent's engagement was extended.

6. We have reproduced the relevant paragraphs of the impugned judgment, whereby the Tribunal has allowed the OA.

7. The submission of the learned counsel for the petitioner (s) is that the respondent was being paid from the Staff Benefit Fund. As such, it is not an engagement under the Northern Railway for the Tribunal to give a direction to the petitioners herein to continue the services of the respondent.

8. We are not in agreement with the submission made by learned counsel for the petitioner for the simple reason on perusal of the appointment letter issued on December 28, 2011, it is clear that the same was issued by the Northern Railway under the signatures of Deputy Chief Personnel Officer / Headquarters. Moreover, the engagement was in Department of Ophthalmology, Central Hospital, Northern Railway, New Delhi. For all purposes, the engagement was under Northern Railway. It is not understood as to how the respondent was being paid from the Staff Benefit Fund. In any case, the same shall not have any bearing on the respondent's engagement in the Central



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Hospital under the Northern Railway. That apart, the direction of the Tribunal is to continue to engage the respondent till the work exists. It also stated, the engagement shall be till such time, a regular employee is appointed. In other words, the direction of the Tribunal is keeping in view the mandate of the Supreme Court in the case of *State of Haryana vs. Piara Singh and Others, (1992) 4 SCC 118*, wherein the Supreme Court directed that a contractual employee cannot be replaced by another contractual employee. The aforesaid being the position of law, we find that the directions of the Tribunal are in accordance with the mandate of the Judgment of the Supreme Court in the case of *Piara Singh (supra)*. We do not see any merit in the petition. The same is dismissed.

CM APPL. 49051/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 21, 2023/jg