



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

% **Reserved on: July 03, 2024**

Pronounced on: July 29, 2024

+ **W.P.(C) 17291/2022**

VINOD KUMAR SHARMA AND ORS. Petitioners

Through: Ms. Hetvi Patel, Advocate

Versus

UNION OF INDIA AND ANR. Respondents

**Through: Mr. Ripu Daman Bhardwaj, Advocate
for respondent No.1/UOI**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present writ petition under Article 226 of the Constitution of India impugns the validity of the recruitment notice dated 04.08.2022 issued by All India Institute of Medical Sciences (AIIMS) and Notices dated 18.08.2022 and 08.09.2022, both issued by Safdarjung Hospital. The petitioners have also challenged order dated 01.12.2022, whereby their claim for regularisation of service has been dismissed by the learned Central Administrative Tribunal ('Tribunal').

2. The brief facts of the case, as noted in the impugned order dated 01.12.2022 passed by the learned Tribunal, are that pursuant to an Advertisement published in the Newspaper 'Hindustan Times' dated



02.05.2009, the petitioners applied for the post of Nursing Officer with the respondent-Hospital.

3. After going through the selection process, the petitioners were appointed to the post of Nursing Officer on contractual basis, which was renewed every three months. According to the petitioners, they are in continuous service for the last 14 years with the respondent. The petitioners have pleaded that they had made various representations to the respondents for regularisation of their service, giving them preferences in the recruitment as well as age relaxation to appear in the examination which were conducted time to time for filling up various regular vacancies.

4. By notice dated 08.09.2022, the respondent proposed to fill up 215 sanctioned posts of Nursing Officer in the hospital. The petitioners herein could not apply for the same being above the age of 35.

5. The grievance of the petitioners is that despite having rendered 13 years of meritorious service on the same job and providing satisfactory service, they have not been given preference for regular appointment. Being aggrieved, the petitioners knocked the doors of the learned Tribunal seeking a direction to respondent No. 1-Union of India to regularise their service as permanent Nursing Officer/Staff Nurses from the date of their initial appointment.

6. The petitioners pleaded before the learned Tribunal that pursuant to recruitment notice No. 1/2019 dated 01.08.2019 published by respondent No. 1 for appointment to the post of Nursing Officer in various hospitals including Dr. Ram Manohar Lohia Hospital (RML), they made



representation dated 03.09.2019 seeking regularization of service with consequential benefits, however, the respondent did not consider the same.

7. The petitioners thus challenged the Office Order dated 14.02.2022 before the learned Tribunal, where-under consequent upon filling up of regular Staff Nurses in RML Hospital, contract of 151 contractual Staff Nurses were terminated by giving them one month notice from the date of issuance of that order.

8. Learned Tribunal, vide order dated 04.03.2022, stayed termination order dated 14.02.2022. However, vide impugned order dated 01.12.2022 the learned Tribunal held that the action of the respondent in terminating services of the contractual employees, like the present applicants, cannot be said to be unreasonable. While observing so, learned Tribunal held as under:-

“In our opinion, the ratio of this decision cannot be made applicable here as in the present case, there are no Regularization Rules, and accordingly, there is no question of completion of 10 years of service on promulgation of such rules. The applicants cannot escape the criteria laid down in Umadevi (Supra) wherein it has been categorically held that it is not open to the Courts to prevent regular recruitment at the instance of temporary employees whose period of employment may have come to an end or of ad-hoc employees who, by very nature of their employment, do not acquire any right.

14. Taking the totality of the facts and circumstances of the case into consideration, we do not find any merit in both the Original Applications and the same are accordingly dismissed.”



9. Being aggrieved, the petitioners have preferred the present petition on the ground that the impugned notices issued by AIIMS and Safdarjung Hospital are arbitrary and contrary to Articles 14 and 21 of the Constitution of India as well as decisions of Hon'ble Supreme Court in ***Narendra Kumar Tiwari & Ors Vs. State of Jharkhand & Ors.*** (2018) 8 SCC 238 and ***Sheo Narain Nagar Vs. State of Uttar Pradesh & Ors.*** (2018) 13 SCC 432.

10. During the course of arguments, learned counsel for the petitioners submitted that pursuant to COVID-19, medical professional, who had worked for 100 days were directed to be given preference in regular recruitment, however, in the case of petitioners, there is no such mention.

11. It was submitted that the petitioners, who have worked for 13 years and are competent and experienced have not been considered for regular appointment which is unfair labour practice to avoid paying the employees the wages and benefits of permanent employees. It was submitted that the applicants are front line workers in the hospitals who have laboriously worked in COVID wards, however, the respondents have arbitrarily directed their removal from service. A direction is sought to the respondents to reinstate the petitioners as permanent workmen, treating them as regular employees from the date of their respective employments.

12. Reliance was placed upon decision in ***K.V.Anil Mithra & Anr. Vs. Sree Sankarcharya University of Sanskrit & Anr*** (2021) SCC OnLine SC 982 in support of their case.

13. To the contrary, the stand of the respondents before this Court is that pursuant to a walk-in-interview, the petitioners were appointed as Staff



Nurses on contractual basis initially for a period of three months and in the advertisement, it was specifically mentioned that these candidates will not claim regular employment and such service in the hospital was purely on contract basis.

14. Learned counsel for the respondents pointed out that the Hospital had carried out recruitment drive in the year 2010 and 2014 for filling up the post of Staff Nurses on regular basis but these petitioners failed to qualify the competitive examination. The petitioners, thus, approached learned Tribunal for grant of equal work equal pay, which was granted by the learned Tribunal as well as by this Court in writ proceedings (W.P.(C) 12632/2018) against which an appeal was preferred by the respondents being SLP No.3763/2020, which is pending adjudication.

15. Learned counsel pointed out that various court cases have been filed by the petitioners before the learned Tribunal for quashing of termination notice dated 16.06.2017 as well as termination order dated 14.02.2022. The respondents had initiated process of regular employment for filling up 215 posts of Nursing Officer in the year 2022. The total sanctioned strength of Nursing Officers in Dr. RML Hospital is 1159 against which 1075 are filled on regular basis and 84 posts are lying vacant. Against these 84 vacant posts 88 contractual nurses are already working which is already 04 nurses more than the total sanctioned strength. No posts of Nursing Officer are being filled on contract basis or being advertised. Only 02 posts of Staff Nurse have been advertised to be filled on contract basis on monthly remuneration of Rs.37500/- under Drug De-addiction Programme of Ministry of Health & Family Welfare that too by ABVIMS and not by Dr.RML Hospital. Thus,



dismissal of the present petition is sought.

16. The submissions advanced by both the sides were extensively heard and the impugned order, decisions relied upon and the other material placed on record have been perused.

17. The learned Tribunal vide impugned order dated 01.12.2022 has disposed of two O.A. No. 3616/2019 and OA No. 501/2022 observing that some of the applicants are common therein.

18. The applicants in OA 3616/2019 claimed to have been appointed on 27.05.2009 on contractual basis, who by virtue of Tribunal's order dated 23.02.2017 in OA No. 2547/2014, were granted similar salary and allowances as given to the regular staff nurses. The aforesaid order was upheld by this Court in W.P.(C) No. 12632/2018 but has been challenged before the Hon'ble Supreme Court in SLP (Civil) 3763/2020.

19. The applicants in OA 3616/2019 were aggrieved of dismissal of their representation dated 03.09.2019 by the respondents preferred against Recruitment Notice No. 1/2019 dated 01.08.2019 for appointment of Nursing Officers for several hospitals.

20. The respondents conducted examination in the year 2019 and 2021 for filling up the posts of Staff Nurses on regular basis. The applicants in OA No.501/2022 have challenged the Office order dated 14.02.2022 whereby consequent upon filling up of posts of regular Staff Nurses working in RML Hospital were terminated on the first come last go basis by giving one month's notice from the date of issuance of that order.

21. During pendency of OA No.501/2022, the respondents again notified



vacancies vide Notice dated 18.08.2022 and 08.09.2022, for filling up unfilled vacancies on regular appointment and offer of appointment was issued on 22.11.2022 to the successful candidates.

22. The learned Tribunal vide impugned order dated 01.12.2022 held that by merely claiming to have continued work for a long time, applicants do not acquire any right for regular appointment to the post. Learned Tribunal in the impugned judgment has relied upon decision of Hon'ble Supreme Court in *State of Karnatak Vs. Uma Devi* (2006) 4 SCC 1 to hold that there was no fault on the part of respondents in terminating the services of applicants once regularly recruited employees have joined. However, the Tribunal directed the respondents to allow the applicants to work if there is work and vacancies are still available after filling up of the vacancies on regular basis and in preference to any of their junior/ freshers/ outsourced employees. The services of petitioners were thus terminated vide impugned order dated 01.12.2022, which has been challenged before this Court.

23. Relevantly, the Hon'ble Supreme Court in *Uma Devi (Supra)* has held that the Courts must be careful to ensure that they do not interfere unduly with the economic arrangements of its affairs by the State or its instrumentalities, however, has also held that backdoor entries should not be permitted, but it has permitted a onetime measure to be conducted for regularization of the services of these employees who had completed the service of more than ten years.

24. The petitioners before this Court have also relied upon decision in *University of Delhi (Supra)*, to submit that age relaxation and benefit of marks depending upon their engagement in service, be given to them. The



learned Tribunal has also relied upon this decision to hold that the petitioners have not been successful while competing in the examination.

25. It is not disputed that petitioners had participated in the recruitment drive carried out in the year 2010, 2014 and 2019 for filling up the posts of Staff Nurse on regular basis, but they could not qualify the exam. In the the recruitment drive of 2021 and 2022, the petitioners could not participate due to non-relaxation in age and non-consideration of long service.

26. In the present petition, learned counsel for respondents on 10.05.2023 submitted before this Court that on 12.04.2023 the Safdarjung Hospital has issued a notification for recruitment of Nursing Staff against 211 vacancies in Safdarjung Hospital and 84 vacancies in Dr. Ram Manohar Lohia Hospital. This Court had permitted the petitioners in this petition, to appear in the selection process for appointment to the post of Nursing Officer subject to their meeting the eligibility criteria under the Recruitment Rules (except age) as notified on 12.04.2023.

27. After the present petition has been reserved for pronouncement of orders, the petitioners have filed a copy of order dated 22.12.2023 passed by learned Tribunal in O.A. No. 509/2022, wherein the petitioners had challenged Termination Notice dated 14.02.2022 and the learned Tribunal in the light of communication dated 03.05.2021 issued by the Government of India, Ministry of Health and Family Welfare in respect of 'Augmenting Human Resources for COVID-19', had directed the Addl. Chief Secretary and Principal Secretary Health / Medical education of all States and UTs to consider the case of applicants and grant preference in regular recruitment. In Para-17 of the aforesaid communication dated 03.05.2021, it has been



mentioned as under:-

“No.Z.20015/43/2021-ME-I (FTS-8108321)

Government of India

Ministry of Health and Family Welfare

MEP Section

Nirman Bhawan, New Delhi

Dated the 3rd May 2021

To,

*Additional Chief Secretary/Principal Secretary
Health/Medical education All States/UTs*

*Subject: Augmenting Human resources for
COVID-19-regarding.*

Madam/Sir,

*In view of the need for increasing the
availability of trained human resources to tackle
the Covid-19 pandemic situation, the following
Guidelines are being issued in consultation with
the National Medical Commission and the
Indian Nursing Council.*

I-RELAXATION/FALICITATION/EXTENSION

XXXXX

*17. The Central Government recommends to
State/UT Governments to consider giving
preference in regular Government appointments
of Health professionals through the respective
Public Service Commission/ other recruitment
bodies, for those Health Professionals under this
special scheme, who complete a minimum of 100
days of Covid related duty.*

18. The State / UT Governments may also



expeditiously fill vacant posts of doctors, nurses, allied healthcare professionals and other healthcare staff in Health and Medical departments through accelerated processes as soon as possible and positively within 45 days through contractual appointments.”

28. The learned Tribunal while passing the impugned judgment has not taken into consideration the afore-noted communication dated 03.05.2021. This Court cannot ignore the contribution rendered by the Health Professional who combated with the critical situations due to Covid 19 pandemic. Even the Government of India vide communication dated 03.05.2021 has acknowledged the role attributed by the Health Professionals and the experience gained by the Nursing Officers, and recommended giving preference in regular appointment.

29. It is not the case that vacancies of Nursing Officers are not available in hospitals under the respondents.

30. In the notified Advertisement dated 04.08.2022 by AIIMs, total number of vacant posts have not been mentioned and applications have been invited to fill the posts ‘as per available vacancies’ in respective institutes. The Advertisement Notification dated 18.08.2022 also does not notify the number of vacancies available in Dr. R.M.L. Hospital, Safdarjung Hospital, Lady Harding Medical College & Smt. Sucheta Kriplani Hospital and Kalawati Saran Childrens Hospital.

31. It is the own case of respondents that total sanctioned strength of Nursing Officers in Dr. RML Hospital is 1159 against which 1075 are filled on regular basis and 84 posts are lying vacant. Against these 84 vacant posts



88 contractual nurses are stated to be already working, which according to respondents is already 04 more than the total sanctioned strength.

32. The petitioners before this Court are 42 in number and they are working on contractual basis against vacancies available for regular recruitment. Despite issuance of communication dated 03.05.2021 by the Government of India, the Ministry of Health and Family Welfare, the respondents have not acknowledged the role played by Nursing Officers during the tough Covid times. The directions passed by the Government of India to regularize services of contractual employees during Covid times was heartening recommendation, however, the petitioners have been made to suffer the legal battle to secure their jobs despite having served the nation in times of medical hardships.

33. In the peculiar facts of the present case and in light of the communication dated 03.05.2021 and the fact that 84 posts for regular appointment are vacant, the order dated 01.12.2022 passed by the learned Tribunal is hereby set aside and the impugned Office Order dated 14.02.2022 terminating the service of petitioners is quashed, with direction to the respondents to permit the petitioners to join their services forthwith by regularizing service of those petitioners who are working in RML hospital on contractual basis and rendered 100 days of Covid related duty; against the vacant 84 regular posts, on the basis of their *inter se* seniority. Those petitioners, who are left out for regular recruitment due to non-availability of vacancy in RML hospital, shall be considered and given appointment in other hospitals against available vacancies for regular recruitment in Safdarjung Hospital, Lady Harding Medical College & Smt. Sucheta



Kriplani Hospital, Kalawati Saran Childrens' Hospital and AIIMS, by the respondents.

34. It is made clear that seniority of the petitioners shall reckon from the date they are offered appointment on regular basis by the respondent and they shall not be entitled to seek seniority on the basis of number of service rendered.

35. With directions, as aforesaid, the present petition and pending application(s) are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 29, 2024
uk/r