



2024:DHC:7653



\$~90 to 93, 96 and 97

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

% *Date of Decision: 12th September, 2024*

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+ W.P.(C) 2159/2019 and CM APPL. 10142/2019

MS. CHETNA RANI AND ORS.

.....Petitioners

Through: Ms. Kamlakshi Singh, Ms. Saundarya Singh and Mr. Parijat Kumar, Advocates

versus

NATIONAL CAPITAL TERRITORY OF DELHI AND ANR.

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD (Services) with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for R-1.

Mr. Tushar Sannu, Additional Standing Counsel with Mr. Shobhan Sachdeva, Advocate for R-2 along with Dr. Mihir Verma, M.O., Janakpuri Super Speciality Hospital (JSSH).

91

+ W.P.(C) 7664/2020 and CM APPL. 25356/2020

HARSH PATUNA & ORS

.....Petitioners

Through: Ms. Kamlakshi Singh, Ms. Saundarya Singh and Mr. Parijat Kumar, Advocates

versus

NATIONAL CAPITAL TERRITORY OF DELHI & ANR.

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD (Services) with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for R-1.



2024:DHC:7653



Mr. Tushar Sannu, Additional Standing Counsel with Mr. Shobhan Sachdeva, Advocate for R-2 along with Dr. Mihir Verma, M.O., Janakpuri Super Speciality Hospital (JSSH).

92

+ W.P.(C) 2182/2019 and CM APPL. 10247/2019

SHRI ABHISHEK MISHRA AND ORS.

.....Petitioners

Through: Ms. Kamlakshi Singh, Ms. Saundarya Singh and Mr. Parijat Kumar, Advocates

versus

NATIONAL CAPITAL TERRITORY OF DELHI AND ANR.

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD (Services) with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for R-1.

Mr. Tushar Sannu, Additional Standing Counsel with Mr. Shobhan Sachdeva, Advocate for R-2 along with Dr. Mihir Verma, M.O., Janakpuri Super Speciality Hospital (JSSH).

93

+ W.P.(C) 13438/2019 and CM APPL. 54526/2019

MS. BABITA

.....Petitioner

Through: Ms. Kamlakshi Singh, Ms. Saundarya Singh and Mr. Parijat Kumar, Advocates

versus

NATIONAL CAPITAL TERRITORY OF DELHI AND ANR.

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD (Services) with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for R-1.



2024:DHC:7653



Mr. Tushar Sannu, Additional Standing Counsel with Mr. Shobhan Sachdeva, Advocate for R-2 along with Dr. Mihir Verma, M.O., Janakpuri Super Speciality Hospital (JSSH).

96

+ W.P.(C) 7704/2018

SHRI DEEPAK SHARMA AND ORS.

.....Petitioners

Through: Ms. Kamlakshi Singh, Ms. Saundarya Singh and Mr. Parijat Kumar, Advocates

versus

STATE OF NCT OF DELHI AND ANR.

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD (Services) with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for R-1.

Mr. Tushar Sannu, Additional Standing Counsel with Mr. Shobhan Sachdeva, Advocate for R-2 along with Dr. Mihir Verma, M.O., Janakpuri Super Speciality Hospital (JSSH).

97

+ W.P.(C) 13429/2019 and CM APPL. 54483/2019

SHRI VIJAY SHANKER TRIPATHI AND ORS.Petitioners

Through: Ms. Kamlakshi Singh, Ms. Saundarya Singh and Mr. Parijat Kumar, Advocates

versus

STATE OF NCT OF DELHI AND ANR.

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD (Services) with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for R-1.

Mr. Tushar Sannu, Additional Standing Counsel with Mr. Shobhan Sachdeva, Advocate for R-2



2024:DHC:7653



along with Dr. Mihir Verma, M.O., Janakpuri
Super Speciality Hospital (JSSH).

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

1. These writ petitions have been preferred on behalf of the Petitioners under Article 226 of the Constitution of India for quashing of the impugned Recruitment Notice bearing No.F.9(7)/JSSH/Estt./2018 whereby Respondent No.2/Janakpuri Super Speciality Hospital invited applications for appointment of employees on contractual basis on the posts on which the Petitioners are working. Petitioners also seek a direction to the said Respondent not to terminate their services. Since the challenge in all the writ petitions is to the same recruitment notice and common question of law arises, these petitions were heard together and are being decided by this common judgment.

2. Facts to the extent necessary and as averred in the writ petitions are that Petitioners were appointed on contract basis on different dates between 2008 and 2020 by Respondent No.2 as Staff Nurses/Nursing Officers, through a selection process comprising written examination and interview. Their contracts have been extended from time to time and Petitioners are continuing in service till date. Apprehending that their services might be terminated, when Respondent No.2 issued the impugned Recruitment Notice inviting applications for appointment of contractual employees on the posts on which they have been working, Petitioners approached this Court.

3. Contention of the Petitioners, as articulated by their learned counsel is that by resorting to a fresh process of selection of contractual employees,



Respondent No.2 is replacing one set of contractual employees with another set of contractual employees, which is contrary to the judgment of the Supreme Court in *State of Haryana and Others v. Piara Singh and Others*, AIR 1992 SC 2130 as well as judgment of the Division Bench of this Court in *Narinder Singh Ahuja & Ors. v. The Secretary, Ministry of Health and Family Welfare and Ors.*, 2014 SCC OnLine Del 2243. It is argued that action of Respondent No.2 is arbitrary and violates right of livelihood of the Petitioners enshrined in Article 21 of the Constitution of India. Petitioners claim that they were appointed through a rigid process of written examination, interview and medical and are not only qualified in terms of educational qualifications but have vast experience having worked with Respondent No.2 for the last several years without a cause of complaint. It is urged by the learned counsel that Petitioners do not stake any claim for regular appointment as no regular appointments are made by Respondent No.2, but assert that they cannot be replaced by contractual employees.

4. Mr. Tushar Sannu, learned Additional Standing Counsel appearing on behalf of Respondent No.2 candidly submits that as per the bye-laws of Respondent No.2 there is no provision for appointment of employees on regular basis and all appointments are contractual in nature *albeit* initial contracts are for a period not exceeding 5 years and thereafter extensions are given on a year to year basis depending on requirements and performance etc. of the employees. It is also not that by the impugned Recruitment Notice, Respondent No.2 had invited applications for appointment on contract basis. On a pointed query by the Court, it is conceded that there are no complaints against the Petitioners either with respect to their work and performance or conduct.



5. Mrs. Avnish Ahlawat, learned Standing Counsel appearing on behalf of Government of NCT of Delhi/Respondent No.1 submits that there can be no quarrel with the legal proposition that contractual employees cannot be replaced by another set of contractual employees in view of the judgment of the Supreme Court in *Piara Singh (supra)*, however, it is equally settled that in a given case and depending on the bye-laws/rules/regulations of a particular Institution, there may arise a situation where contracts of existing employees are required to be terminated or not renewed.

6. Heard learned counsel appearing on behalf of the Petitioners and learned counsels appearing on behalf of the Respondents and examined their submissions.

7. As noted above, Petitioners were appointed on contract basis on different posts of Staff Nurses/Nursing Officers by Respondent No.2 and have been continuously working for many years. In these petitions, the limited relief sought by the Petitioners is for quashing the impugned Recruitment Notice whereby Respondent No.2 invited applications for appointment on contract basis on the posts on which the Petitioners have been and are working. Interim orders were passed in the respective petitions on different dates whereby Respondent No.2 was directed not to dispense with the services of the Petitioners. The legal basis of challenge is the law laid down by the Constitution Bench of the Supreme Court in *Piara Singh (supra)*, wherein the Supreme Court has held that an ad-hoc/temporary/contractual employee should not be replaced by another ad-hoc/temporary/contractual employee and must be replaced only by a regularly selected employee so as to avoid any arbitrary action on the part of the Appointing Authority. Relevant paragraph of the celebrated judgment is



as follows:

“25. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in government service.

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.....”

8. In my view, there is merit in the contention of the Petitioners that the Recruitment Notice is in the teeth of the judgment of the Constitution Bench of the Supreme Court in **Piara Singh (supra)**. It is an admitted position that by the impugned notice, Respondent No.2 is seeking to appoint another set of contractual employees on the posts held by the Petitioner. The notice is untenable in law in light of the binding dictum of the Supreme Court. Respondent No.2 may have had a case if the impugned notice was issued for filling up the posts on regular basis, which is not the case here. It be also noted that Respondent No.2 does not dispute that the work of Staff Nurses/ Nursing Officers is of perennial nature and there is constant demand and requirement of employees to discharge the functions of nursing staff in the Hospital. There is also no dispute that Petitioners have been working without any complaint with respect to their work and conduct. In fact, Petitioners have acquired vast experience in the field of nursing, having



worked with Respondent No.2 for several years and therefore, it is not understood why Respondent No.2 initiated the process of fresh selection of another set of contractual employees, the natural consequence will be replacement of the Petitioners, without any justifiable cause. Most importantly, Respondent No.2 has no provision for regular appointments to the posts in question and the bye-laws only permit contractual appointments, initially for a maximum period of 5 years and thereafter on a year to year extension and therefore, Petitioners are not interfering or stalling any process of regular selection by this writ petition. Dealing with the issue of replacing contractual employees where work was of perennial nature, Division Bench of this Court in **Narinder Singh Ahuja (supra)**, observed and held as follows:

“15. In the opinion of this Court, since the respondents nowhere dispute that there is need for the performance of the work that the petitioners were discharging all along and there is also no dispute that the project and funding (for the project) would continue till 2017, the decision to discontinue the petitioners' engagement is based only on the policy to outsource the contractual employment to a third party. The petitioners are not insisting on regularization, given the nature of the employment or engagement, which is project based. However apart from the decision to “outsource” engagement of contract employment to a third agency, there is no rationale to discontinue the petitioners' contracts. The justification that the employees engaged through the contractor are paid lower wages is arbitrary, because the “outsourced” or outsourcing agency would have to be paid its service charges. The lower wages paid, therefore, is, in effect, because of the charges/fees paid to the contractor/outsourced agency. The facts of this case clearly reveal that even though the work is to be performed by contractual employees, the reason for discontinuance of the petitioners' employment is not their replacement with regular appointees, but instead, with another set of contractual employees. The state/respondents cannot, in the circumstances of this case, say that discontinuance of such employment cannot be gone into by the Court because the petitioners were aware that their contracts ended.

16. For the above reasons, this court is of opinion that the CAT erred in law, in holding that the petitioners could not complain against the



2024:DHC:7653



discontinuance of their contractual employment. Accordingly, a direction is issued to the respondents to continue the petitioners in contractual employment on annual renewal basis, till the currency of the RNTCP scheme/project in 2017. An appropriate consequential order shall be issued by the respondents within eight weeks from today.

17. The impugned order of the CAT is accordingly set aside; the writ petition is allowed in terms of the above directions."

9. For all the above reasons, the impugned Recruitment Notice whereby Respondent No.2 invited applications for appointment of contractual employees to replace the Petitioners, is hereby quashed and set aside and writ petitions are allowed in the aforesaid terms. Pending applications also stand disposed of.

JYOTI SINGH, J

SEPTEMBER 12, 2024/kks/DU