



2024:DHC:2724-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.04.2024

+ **LPA 691/2012**

NORTH DELHI POWER LIMITED

..... Appellant

versus

DR. U.K. PRIYADARSHI

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sudhir Nandrajog, Senior Advocate with
Mr Abhay Kumar, Mr Shagun Ruhil, Ms Aditi
Prakash and Mr Amit Singh, Advocates.

For the Respondent : Mr Nitesh Kumar Singh and Mr A.P.
Verma and Mr Hariom Sharma, Advocates.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant, North Delhi Power Limited (hereafter *NDPL*) has filed the present intra court appeal impugning a judgment dated 23.08.2012 in W.P. (C) 4955/2010 captioned *Dr. U. K. Priyadarshi v. North Delhi Power Limited* (hereafter *the impugned judgment*)



whereby, the learned Single Judge had allowed the writ petition filed by the respondent.

2. The respondent had filed the aforementioned petition [W.P.(C) 4955/2010] *inter alia* impugning an order dated 15.06.2010 informing the respondent that his services as a Medical Officer stood terminated. The respondent was relieved of his duties and was called upon to forthwith handover charge to the Chief Medical Officer (CMO). The respondent prayed that he be reinstated in services with immediate effect with all service benefits.

3. The aforementioned petition was allowed and the order dated 15.06.2010, terminating the respondent's services was set aside. The Court directed NDPL to reinstate the respondent in services albeit with no back charges.

4. The controversy involved in the present appeal, essentially, revolves around the question whether the respondent had a right to be regularized to the post of a Medical Officer in the services of NDPL.

5. It is NDPL's case that the respondent was appointed on an *ad hoc* basis and therefore, had no right to claim regularization. The respondent had, prior to filing the petition, W.P.(C) 4955/2010, also filed a petition [W.P.(C) 188/1999] seeking regularization in the services, which was dismissed as withdrawn. It is the respondent's case that he is entitled to continue services as he was appointed against the sanctioned post and had the requisite qualification for such an



appointment. The respondent had continued in service for twenty-four years; therefore, claimed a right to be treated as a regular employee. Consequently, his services could not be terminated.

FACTUAL CONTEXT

6. The respondent had applied for serving on a post of a Medical Officer with Delhi Electric Supply Undertaking (hereafter *DESU*), of the Municipal Corporation of Delhi. Pursuant to the said application, DESU had offered the respondent a post of Medical Officer in the “*pay scale of ₹1000-40-1200-EB-1400-60-1700-75-1850 plus other usual allowances as admissible under the rules and orders of the undertaking*” in terms of the letter dated 17.05.1986. The said offer was subject to various conditions as set out in the said letter of offer including that the respondent would have no claim for regularization or seniority.

7. The respondent accepted the said offer and was appointed to the post of Medical Officer by an Office Order dated 26.05.1986 issued by DESU.

8. The respondent continued to be in service of DESU. In the year 1992, DESU considered the proposal dated 23.09.1992 for filling up the post of Medical Officer. On 29.09.1992, it was decided to refer the respondent’s case to the Union Public Service Commission (hereafter *the UPSC*) for considering his appointment on a regular basis, as a special case.



9. In the year 1996, Delhi Vidyut Board (hereafter *DVB*) succeeded to the undertaking of DESU. The question of regularising the respondent's services as a Medical Officer was considered by DVB and by a letter dated 31.03.1997, the matter was referred to the UPSC, New Delhi for regularising the services on the post of a Medical Officer in DVB. However, it is stated that no response was received by the UPSC in regard to the said proposal. In the circumstances, Additional General Manager, DVB sent another letter dated 04.07.1997, once again requesting the UPSC to expedite the approval in respect of the proposal to regularise the respondent to the post of a Medical Officer. It is stated that no response was received by the UPSC to this proposal as well. However, the respondent has handed over a copy of a letter dated 17.07.1997 – which is not a part of the present appeal or record of the writ petition – along with the written note of submissions. This letter indicates that the UPSC did not accept the proposal for regularisation of the respondent's services in DVB.

10. In view of the above, the respondent filed a petition [W.P.(C) 188/1999], *inter alia*, praying that directions be issued to DVB not to allow break in his service. Additionally, the respondent also prayed that directions be issued to regularise him to the post of Medical Officer in DVB, from the date of his initial appointment. The said petition was moved on 13.01.1999 and an *ad interim* order was granted by this Court restraining DVB from creating any break in the service of the respondent, until further orders.



11. Thereafter, DVB issued an Office Order dated 28.07.1999 allowing the respondent to continue the post of Medical Officer in DVB with effect from 23.07.1999 until further orders in terms of the *ad interim* order dated 13.01.1999 passed by this Court in W.P.(C) 188/1999 and subject to the final outcome of the said petition.

12. The respondent withdrew the aforementioned writ petition [W.P.(C)188/1999] and the same was dismissed as withdrawn by an order dated 04.07.2000.

13. The respondent, thereafter, filed an application (CM No. 2505/2002) in the disposed of petition [W.P.(C) 188/1999] alleging that his counsel had withdrawn the petition without instructions and the petition be restored. The respondent also filed a complaint with the Bar Council of India and the Bar Council of Delhi against his counsel. The allegations made by the respondent were contested by his erstwhile counsel, who claimed that the petition was withdrawn at the instructions of the respondent, who was present in the Court on the date when the petition was withdrawn.

14. In view of the above, on 13.03.2003, the respondent tendered his apology in the Court and also withdrew the application seeking recall of the order dated 04.07.2000, whereby his petition was dismissed as withdrawn. He also made a statement that he would unconditionally withdraw the complaint filed by him before the Bar Council of India and the Bar Council of Delhi. The respondent's apology was accepted.



15. Notwithstanding that the respondent's petition had been dismissed as withdrawn and the interim order dated 13.01.1999 did not survive, the respondent continued to be in service of DVB. It is NDPL's case that the respondent's services were continued under a misconception that the interim order continued. On 15.06.2010, NDPL succeeded to some of the undertakings of the erstwhile DVB and issued a communication dated 15.06.2010 terminating the respondent's services with immediate effect and further directing him to handover charge to the CMO.

16. Aggrieved by the said order, the respondent filed a petition [W.P.(C) 4955/2010 captioned *Dr U.K. Priyadarshi v. North Delhi Power Ltd.*], which was allowed in terms of the impugned judgment.

17. NDPL moved the present appeal before this Court on 12.10.2012 along with an application for interim relief. This Court issued notice and passed an *ad interim* order staying the impugned judgment. The petition was admitted on 07.01.2013. This Court is informed that by virtue of the said order, the services of the respondent were not reinstated.

REASONS AND CONCLUSION

18. As noted at the outset, the principal controversy to be addressed is whether the respondent has any right to be regularised and be absorbed as a permanent employee of NDPL.



19. The Letter of Offer made to the respondent clearly stated that his appointment would be on an *ad hoc* and short-term basis, for a period of three months and would automatically expire on the expiry of the period of three months. He was also informed that the post of Medical Officers was required to be filled by a direct recruitment through UPSC and therefore, he would have no claim for regularisation or seniority by virtue of the aforesaid appointment. Additionally, he was informed that the appointment would be terminable with three days' notice on either side, without assigning any reason. Some of the relevant conditions as mentioned in the Letter of Offer dated 17.05.1986, are set out below:

“(i) The appointment is purely on ad-hoc and short-term basis for a period of three months only and will automatically stand terminated on the expiry of the period of three months;

XXX

XXX

XXX

(iii) The post of Medical Officer/are to be filled by direct recruitment through U.P.S.C. and you will have no claim for regularization or seniority by virtue of the aforesaid appointment;

XXX

XXX

XXX

(v) The appointment is terminable with three days' notice on neither side without assigning any reason therefore.”

20. Although, the appointment was made against the sanctioned post, it was clearly irregular as it was not made in accordance with the relevant Rules. Admittedly, the appointment was required to be made through the UPSC by open competition. Notwithstanding the same, considering that the respondent had continued to serve with DESU for



over six years, a letter was sent by DESU (MCD) to the UPSC requesting that the respondent's candidature may be considered for appointment as a direct recruit against one of the reserved vacancies reported by DESU for filling up through direct recruitment by its an earlier letter dated 16.09.1992. The said letter is not on record. However, a copy of the an undated and unsigned letter dated 15.01.1993 has been handed over by the learned counsel for the respondent along with the written submissions. However, this Court is informed that the same was sent on 15.01.1993.

21. The learned Counsel for the respondent has also handed over a copy of the letter dated 17.07.1997 sent by the UPSC. The said letter reads as under:-

“NO. F.4/30(1)/97-AU.IV

UNISECOM
Telex : 031-62677
Fax :- 011-385345

UNION PUBLIC SERVICE COMMISSION
(SANGH LOK SEVA AYOGE)
DHOLPUR HOUSE, SHAHJAHAN ROAD
NEW DELHI-110011

17TH July 1997

To,
The Chairman,
Delhi Vidyut Board,
Shakti Bhawan, Nehru Place,
New Delhi-110019



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(By Name to Shri Chaman Lal, Addl. General Manager
(Admn.))

Sub:- Regularisation of Dr. U.k Priyadarshi as Medical Officer
in Delhi visyut Board.

Sir,

I am directed to refer to your letter No. F.4
(112)/A&G/NT/88/1811 dated 31.3.97 and subsequent reminder
dated 4.7.97 on the above subject and to say that the proposal for
regularisation of Dr. U.K Priyadarshi has been examined
carefully. It is observed that a regular post of Medical Officer is
available with the Delhi Vidyut Board against which Dr. U.K
Priyadarshi is working in ad hoc basis. It had been stated by
Delhi Vidyut Board that the post falls in a point reserved for
Scheduled Caste. As per Rectt. Regulations, the post is required
to be filled by direct recruitment.

2. In the circumstances, the Union Public Service Commission
advise that action to fill up the post in accordance with the
provisions of Rectt. Regulations may be taken for which a
requisition may be sent to the UPSC for advertisement of the
post as reserved for S.C Delhi Vidyut Board may consider
relaxation of age limit in favour of Dr. U.K Priyadarshi to enable
him to apply for direct recruitment since he has served in DESU
(DVB) for 11 years on ad hoc basis.

The proposal is accordingly disposed of.

Yours Faithfully

(B.D Sharma)
Under Secretary
Tel3381715"



22. It is clear from the above that the UPSC had not accepted the request of DESU or DVB to regularise the services of the respondent. It is however not clear whether any steps were taken pursuant to the UPSC's advice for relaxing the age requirement for the respondent.

23. As stated above, the respondent had, thereafter, filed a petition and also secured an order dated 13.01.1999, whereby DVB was restrained from creating any break in the respondent's service until further orders. Undisputedly, but for the said order, the services of the respondent would either be terminated or the cycle of periodic breaks in service would continue. In compliance with the said order dated 13.01.1999, DVB issued an Office Order dated 28.07.1999 permitting the respondent to continue on the post of a Medical Officer in DVB with effect from 23.07.1999. The said order expressly provided that the said appointment was subject to the final outcome of the petition [WP(C) 188/1999] filed by the respondent. Although, the respondent had withdrawn the writ petition on 04.07.2000, it is apparent that the import of the said order did not percolate to the concerned authorities. Thus, the appellant continued to be in the services of DVB.

24. After his services were terminated in terms of the Office Order dated 15.06.2010, the respondent sought to claim that the petition was withdrawn without his consent. It is material to note that during this period – that is, after withdrawal of the writ petition on 04.07.2000, till the issuance of the order dated 15.06.2010 terminating his services – the respondent did not raise any claim regarding regularisation. There is no



communication on record, which would even remotely suggest that he had taken up the issue. As it transpires from the allegations that the aforesaid writ petition was withdrawn by his counsel without his consent. Thus, undisputedly, the petition had been withdrawn by the respondent's counsel at his instructions.

25. In the given circumstances, the only conclusion that can be drawn is that the respondent was aware that his services could not be regularised as the respondent had not been recruited by open competition through the UPSC. The respondent had continued in service apparently as DVB/NDPL were under a misconception that his services were required to be continued by virtue of the interim orders passed by this Court in W.P.(C) 188/1999.

26. However, it is clear that the respondent had no right to continue in the services as his appointment was on *ad hoc* basis. The respondent had accepted the terms and conditions in the Letter of Offer dated 17.05.1986 including that he would have no claim for regularization.

27. In *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.: (2006) 4 SSC 1*, the Supreme Court had authoritatively held that the employees who had not been appointed in accordance with the Rules, could not be regularised. The learned counsel for the respondent relies on the one-time exception carved out in the said decision in respect of irregular appointments (not illegal appointments). The Supreme Court had observed that the question of regularisation of the services of those employees, whose appointments were irregular and



not illegal, and who had continued to work for ten years or more without the intervention of orders of the Court or Tribunal may have to be considered on merits. The relevant extract of the said decision is set out below:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071]*, *R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799]* and *B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937]* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed.....”

28. We are unable to accept that the benefit of the aforesaid exception can be afforded to the respondent. First of all, he had continued in service after 13.01.1999 pursuant to the orders passed by this Court. Thus, it is not a case where the respondent had continued in service without the intervention of the Court. As noted above, the



respondent's appointment was not through open competitive examination and in accordance with the Rules. Thus, he had acquired no right for being regularised or be absorbed in the permanent service of NDPL (DESU or DVB). The respondent's service prior to 13.01.1999 also cannot be considered for regularisation, at this stage, as his services thereafter were continued pursuant to orders passed by this Court. More importantly, the respondent has not been in active service of NDPL with effect from 15.06.2010 (that is, for almost fourteen years). This is because the impugned judgement dated 23.08.2012 was stayed by this Court by an order dated 12.10.2012. This Court is informed that the respondent would have now superannuated from service, if he had been appointed regularly. Considering that the respondent had no legal right to be absorbed in the services of DESU/NDPL, no relief can be granted to the respondent.

29. The impugned judgement is premised on the basis that the respondent had withdrawn his writ petition on the assurance that his services would be regularised. There is no material on record to even remotely sustain this assumption. The fact that the respondent had issued no communication to DVB after filing the writ petition, in regard to the subject of his regularisation (at least none has been placed on record), clearly indicates that no such assurance had been held out to the respondent. It is, in this background, that the respondent had attempted to file an application for restoration of his earlier petition W.P. (C) 188/1999 on the ground that the same was withdrawn without his consent.



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30. In view of the above the present appeal is allowed and the impugned judgment is set aside.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 05, 2024
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