



2025:DHC:411-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 869/2025 & CM APPL. 4228/2025, CM APPL. 4229/2025

GNCTD THROUGH MEDICAL DIRECTOR LNJP
HOSPITALPetitioner

Through: Mr. Yeeshu Jain, ASC with Ms.
Nishita Gupta, Mr. Shubham Tanwar and
Ms. Jyoti Tyagi, Advs.

versus

BEENU PAWARRespondent
Through: Ms. Aanchal Anand, Adv. with
Respondent in person

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **23.01.2025**

C. HARI SHANKAR, J

1. The respondent was appointed as a Laboratory Technician/Assistant, Group-IV in the Lok Nayak Jai Prakash Hospital¹, run by the Govt. of NCT of Delhi, in 2008. She was retained as a casual Laboratory Technician for sixteen years. There is no dispute about the fact she was working uninterruptedly during the entire period and that there was no adverse record regarding her performance as Lab Technician/Assistant.

¹ "LNJP Hospital"



2. On 13 May 2013, the Govt. of National Capital Territory of Delhi² issued Vacancy Notice 01/2014, inviting candidates to apply for selection for the regular post of Lab Technician/Assistant. The respondent applied. She qualified and was selected. However, by an order passed on 3 January 2018, her candidature was cancelled on the ground that the Diploma in Medical Laboratory Technology³, which she had obtained from the YWCA⁴, could not be accepted, as the YWCA was not a recognised institution for the purpose of awarding the Dip MLT qualification.

3. Aggrieved thereby, the respondent approached the Central Administrative Tribunal⁵ by way of OA 508/2023⁶.

4. By judgment dated 2 April 2024, the Tribunal has allowed the OA. The operative directions issued by the Tribunal are contained in para 11 of its judgment, which reads thus:

“11. In view of what has been elaborately outlined above, we have no hesitation in allowing the present OA. Accordingly, we quash the order dated 03.01.2018 and 24.04.2018 with a further direction to the respondents to give appointment to the applicant on regular basis forthwith. The said appointment will be retrospective with effect from the date last of the candidates selected pursuant to the vacancy advertisement No. 01/14 was given appointment. The benefits as arise out of such appointment shall be extended in favour of the applicant on notional basis till the date of this order and on actual basis thereafter.”

² “GNCTD” hereinafter

³ Dip MLT

⁴ Young Womens’ Christian Association

⁵ “the Tribunal” hereinafter

⁶ **Beenu Pawar v GNCTD and Ors**



5. Aggrieved by the aforesaid decision, the GNCTD, through the Medical Director, LNJP Hospital, has approached this Court by means of the present writ petition.

6. We have heard Mr. Yeeshu Jain, learned Additional Standing Counsel for the petitioner and Ms. Aanchal Anand, learned Counsel for the respondent, at some length.

7. The reasoning of the Tribunal, as contained in the impugned judgment dated 2 April 2024, reads thus:

“8. Learned counsel for the applicant has drawn our attention to a judgment of the Hon’ble High Court of Delhi dated 29.11.2010 in W.P. (C) 1629/2010 and batch. This judgment also dealt with the identical issue and the observation of the Hon’ble High Court of Delhi is quite telling. Para No. 30 of the said judgment reads as under:

“30. We find it strange that for purposes of ad-hoc employment, Lalit Kumar Vimal is treated as a person duly qualified to work, but for purposes of regular appointment he is being disbarred on the ground that the institute wherefrom he has obtained the diploma is not a recognized institute.”

9. In view of the observation of the Hon’ble High Court quoted above, the issue in the present OA rests here.

10. The applicant has been working for sixteen continuous years as Lab Technician/Assistant. There is not even a whisper that there has been any question or doubt with respect to her competence for holding the said post or any question with respect to discharge of her duties. Therefore, there is no cause for the respondents to hold that she is not eligible in terms of the recruitment rules to hold the post of Lab Technician/Assistant.

11. In view of what has been elaborately outlined above, we have no hesitation in allowing the present OA. Accordingly, we quash the order dated 03.01.2018 and 24.04.2018 with a further direction to the respondents to give appointment to the applicant on



regular basis forthwith. The said appointment will be retrospective with effect from the date last of the candidates selected pursuant to the vacancy advertisement No. 01/14 was given appointment. The benefits as arise out of such appointment shall be extended in favour of the applicant on notional basis till the date of this order and on actual basis thereafter.”

8. The Tribunal has relied on the judgment of this Court in ***Lalit Kumar Vimal v Secretary (Health)***⁷ and has reproduced in this context, para 30 of the judgment.

9. We have perused the decision in ***Lalit Kumar Vimal*** and we find that it involves a substantially similar controversy. In that case, too, several of the candidates in question were denied appointment on the ground that the qualification of Dip MLT possessed by them was not obtained from a recognised institution. In that case, too, reliance was placed by GNCTD on its circular dated 3 June 2009, on which the GNCTD placed reliance in the present case as well, and which reads thus:

“No.F.3(4)/PHC/TRC/2,007/2815-21

Dated: 3.6.09

CIRCULAR

All Heads of Departments and other Authorities connected with the regular/contractual recruitment of paramedical staff are hereby informed that, pending constitution of a Paramedical Council, the Government of NCT of Delhi would treat as recognized courses all or any of the following:-

1. All paramedical courses run by the Hospitals of Delhi Government Central Government and State Government.
2. All paramedical courses being run by Indian Medical Association and Christian College of Nursing (St.Stephens Hospital).

⁷ 2010 SCC OnLine Del 4163



3. All paramedical courses approved by All India Council of Technical Education and State Boards of Technical Education.

4. All paramedical courses conducted by the Universities approved by University Grants Commission.

This issues with the approval of the Pr.Secretary (H&FW).”

10. The Division Bench of this Court held that the respondents were entitled to appointment and set aside the decision of the GNCTD cancelling their candidature on the following reasoning:

“22. It is thus apparent that pertaining to Diplomas for different courses relatable to Public Health & Hygiene, AICTE has no concern. Thus, there is no statutory body which is charged with any statutory duty and hence we find that there is no legislation covering the field requiring institutes to obtain recognition from any statutory Board.

23. But that would not mean that everyone would have a free run. It is settled law that in the absence of a legislation,- the Executive would be authorized to exercise its executive power and regulate the area concerned.

24. On being questioned, we are informed by learned counsel for Government of NCT Delhi that till date the Government of NCT Delhi nor the Board of Technical Education (a Department of Government of NCT Delhi) have not notified any rules or guidelines pertaining to grant of recognition to institutes awarding diplomas in Public Health & Hygiene and that only on 3.6.2009 a circular has been issued pertaining to recognition granted for Paramedical courses.,

25. The position therefore would be that as far as the Government of NCT Delhi is concerned, it had no list of approved institutions, diplomas- awarded by whom would be recognized by it, till the Circular dated 3.6.2009 was issued. Would that mean that the Government of NCT Delhi could not have made any appointment to the posts in question, for the reason as per the Government of NCT Delhi and the Board of Technical Education (in Delhi), no such institution exists as far they are concerned.



26. It would be a most anomalous situation. We may highlight that in respect of appointments made as OT Technicians and Medical Laboratory Technicians in various hospitals in Delhi, when questioned as to under what authority was the recognition granted to the Diplomas obtained and relied upon by such persons who were so appointed, Mr. Amiet Andley simply shakes his head signifying that he has no answer.

27. What is the way out?

28. As far as Lalit Kumar Vimal is concerned, the position would be that as of today the diploma obtained by him from St Stephens Hospital would, have to be treated as a recognized and an authorized diploma in his favour and we see no reason as to why he should not be granted the relief which he seeks.

29. Qua him it may additionally be noted that since November 2002 he is working on ad-hoc basis as OT Technician with Baba Saheb Ambedkar Hospital which is a hospital established by the Government of NCT Delhi? In other words, pursuant to his selection in the year 2002 he had been denied a regular appointment but has been granted appointment on ad-hoc basis.

30. We find it strange that for purposes of ad-hoc employment, Lalit Kumar Vimal is being treated as a person duly qualified to work, but for purposes of regular appointment he is being disbarred on the ground that the institute wherefrom he has obtained the diploma is not a recognized institute.

31. Now, having noted hereinabove that neither the Government of NCT Delhi nor the Board of Technical Education, Government of NCT Delhi had recognized any institute in the year 2002 and had not formulated any policy guidelines, noting further that Lalit Kumar Vimal has been working in a Government hospital on ad-hoc basis and the fact that he successfully cleared the entrance exam conducted by the respondents, we see no reason why he would not be entitled to be regularized in service in a Government Hospital.

32. Qua the others, we may re-emphasize once again that if the stand of the Government of NCT Delhi is that only those who have obtained a Diploma from a recognized institute can be appointed in Government Hospitals, the Government would have to explain as to how it appointed Laboratory Technicians and OT Technicians and on what parameter it recognized the diplomas relied upon by them.



33. In this connection, the matter can be looked at from a different angle. Reference by the Government of NCT Delhi to the diploma being from a recognized institution could be interpreted to mean an institution recognized by any State Government and if this be so, we have on record the fact that at least 2 State Governments and a Department of the Central Government have recognized the diplomas awarded by the Institute in question.

34. Thus, we see no scope for relief not being granted to the other writ petitioners as also the appellants of LPA No.1653-58/2005.

35. In this connection, we may observe that it may be true that a brochure published on behalf of the Government cannot be treated as a Bible on the contents thereof. But, it cannot be ignored that the common man believes the correctness of what is published in a brochure Which is printed and published by the Government. From the pleadings, we find that the Government of NCT Delhi has ducked the issue by not even touching upon the manner in which the brochure in question was published.

36. Qua Lalit Kumar Vimal and Sanjay Kumar the position would be that the two have worked now for over 8 years In a Government Hospital and nothing wrong has been found in their working. They have gained experience as OT Technician/ Medical Laboratory Technician. Of the remaining contesting parties we find that the sole litigation petitioner of WP(C) No.5396-98/2005 as also the appellants of LPA No.1653-58/2005 except appellant No.3 thereof who has been working at Deen Dayal Upadhyay Hospital,, a hospital established by the Government of NCT Delhi, the others are working in private hospitals of repute.

37. In a somewhat similar situation, pertaining to Pump Operators under the Delhi State Mineral Development Corporation who had worked for long on daily wage but lacked the prescribed educational qualifications, the experience gained while on work as daily rated workers was held entitling them to be regularized as per the decision reported as *Bhagwati Prasad v Delhi State Mineral Development Corporation*⁸.”

11. Ms. Aanchal Anand, who appears for the respondent, submits that, on the date when respondent obtained her Dip MLT from the YWCA, there was no institution which was recognised for awarding

⁸ AIR 1990 SC 371



the Dip MLT qualification.

12. Even as on date, Mr. Yeeshu Jain is unable to point out any institution which stands recognised for the awarding Dip MLT.

13. In any case, it is not the case set up by the petitioner/GNCTD before the Tribunal that there were recognized institutions, other than the YWCA, which are awarding Dip MLT or that there were any regulation or rule governing the awarding of such Diploma which the YWCA failed to fulfil.

14. In such cases, now, we have also to bear in mind the recent decision of the Supreme Court in *Jaggo v UOI*⁹, of which the following paragraphs merit reproduction:

“15. Furthermore, the respondents' conduct in issuing tenders for outsourcing the same tasks during the pendency of judicial proceedings, despite a stay order from the Tribunal directing maintenance of status quo, reveals lack of bona fide intentions. Such actions not only contravened judicial directives but also underscored the respondents' unwillingness to acknowledge the appellants' rightful claims to regularization.

16. The appellants' consistent performance over their long tenures further solidifies their claim for regularization. At no point during their engagement did the respondents raise any issues regarding their competence or performance. On the contrary, their services were extended repeatedly over the years, and their remuneration, though minimal, was incrementally increased which was an implicit acknowledgment of their satisfactory performance. The respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

⁹ 2024 SCC OnLine SC 3826



17. As for the argument relating to educational qualifications, we find it untenable in the present context. The nature of duties the appellants performed cleaning, sweeping, dusting, and gardening—does not inherently mandate formal educational prerequisites. It would be unjust to rely on educational criteria that were never central to their engagement or the performance of their duties for decades. Moreover, the respondents themselves have, by their conduct, shown that such criteria were not strictly enforced in other cases of regularization. The appellants' long-standing satisfactory performance itself attests to their capability to discharge these functions, making rigid insistence on formal educational requirements an unreasonable hurdle.

19. It is evident from the foregoing that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

20. It is well established that the decision in *Uma Devi (supra)*¹⁰ does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly “irregular,” and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in *Vinod Kumar v. UOI*¹¹, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed “temporary” but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

¹⁰ State of Karnataka v Uma Devi, (2006) 4 SCC 1

¹¹ (2024) 1 SCR 1230



“6. The application of the judgment in **Uma Devi (supra)** by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of **Uma Devi (supra)**.”

7. The judgment in the case **Uma Devi (supra)** also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case...”

21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any *mala fide* or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.



23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration⁶ encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgment of the United State in the case of *Vizcaino v Microsoft Corporation*¹² serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

- **Misuse of “Temporary” Labels:** Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as “temporary” or “contractual,” even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

¹² 97 F.3d 1187 (9th Cir. 1996)



- **Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.
- **Lack of Career Progression:** Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.
- **Using Outsourcing as a Shield:** Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.
- **Denial of Basic Rights and Benefits:** Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. While the judgment in *Uma Devi (supra)* sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in *Uma Devi (supra)* to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application



distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.”

15. The Supreme Court has, therefore, now revisited the entire concept of continuous engagement of persons on casual basis and has held that such engagement for long periods of time is unconscionable in law. Such persons obtain a right to regulation even by dint of their continuous uninterrupted service without any adverse notice being taken of their performance.

16. In the present case, the respondent joined the petitioner as Laboratory Technician/Assistant in 2008. She has served a full, and blotless, 16 years as Laboratory Technician.

17. We are in complete agreement with the Tribunal that, in such circumstances, the exordium of the Division Bench of this Court in *Lalit Kumar Vimal* that, if the respondent has been found suitable to continue to work as Lab Technician for 16 years on casual labour basis and has succeeded in the selection process for regular Lab



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Technician/Assistant, she cannot be denied selection on the ground that the Dip MLT which she had obtained, at a time when there were no regular grants of diploma by any institution, was not obtained from a recognized institution.

18. The reasoning of the Division Bench of this Court as contained in the paragraphs from *Lalit Kumar Vimal*, apply, in our view, *mutatis mutandis*, to the present dispute.

19. We, therefore, are not inclined to interfere with the impugned judgment of the Tribunal, which is upheld in its entirety. We direct that the judgment of the Tribunal be implemented by the petitioner/GNCTD positively within a period of four weeks from today.

20. The writ petition accordingly stands dismissed in *limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 23, 2025

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Click here to check corrigendum, if any