



2025:DHC:4055-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 20.05.2025***

+ W.P.(C) 6812/2025

UNION OF INDIA AND ORS

.....Petitioners

Through: Mr.Vikrant N. Goyal, Ms.Uma
Tarafdar, Mr.Nishu Dagar and
Mr.Sumit Goswami, Advs.

versus

AJAY KUMAR SHARMA

.....Respondent

Through: Mr.Mukesh Kr. Gupta,
Mr.Rajender Khatter and Dr.S.
Jayah, Advs.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE RENU BHATNAGAR****NAVIN CHAWLA, J. (ORAL)****CAV 196/2025**

1. The learned counsel for the respondent has entered appearance.
2. The caveat stands discharged.

CM APPL. 30893/2025 & CM APPL. 30894/2025 (Exemption)

3. Allowed, subject to all just exceptions.

W.P.(C) 6812/2025

4. This petition has been filed by the petitioners, challenging the Order dated 02.02.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, 'Tribunal') in O.A. No.967/2023, titled *Ajay Kumar Sharma v. Union of India through Secretary & Ors.*, whereby the said O.A. filed by the respondent herein was allowed, and the Order dated 21.03.2023



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passed by the petitioners, terminating the respondent from service, was set aside. The respondent was directed to be reinstated to the post he was holding, with all consequential benefits. Compliance with the said direction was to be made within a period of six weeks from the date of receipt of the copy of the Order.

5. Though the Order is dated 02.02.2024, the present petition has been filed only on 22.04.2025, that is, after more than one year. There is no explanation for this delay. Though we could have simply dismissed this petition for delay and laches, we have also proceeded to consider the merits of the petition.

6. It is not denied by the petitioners that a requisition was sent by them to the Employment Exchange to nominate suitable candidates for the post of Incinerator Operator on a daily wage basis in the year 1991. The name of the respondent was sponsored by the Employment Exchange, and the respondent was selected for the said post, albeit, on a daily wage basis, and was appointed *vide* Order dated 24.07.1991.

7. The respondent filed an O.A., being O.A. No.48/1998, seeking regularisation of his services. The said O.A. was disposed of by the learned Tribunal, *vide* its Order dated 15.02.1999, with the following direction:

“7. In conclusion, the O.A is disposed off with the direction that respondents will so long as work is available and the applicant is continue do on daily wages, they will not insist on the technical breaks after every 89 days. This will however, give no right to the applicant in respect of his claim for regularization.”

8. Aggrieved by the above Order, the respondent challenged the



same before this Court in the form of a Writ Petition, being CWP No.4460/1999. The said petition was disposed of as withdrawn *vide* Order dated 29.07.1999, which reads as under:

“Counsel for the petitioner states that post of Incinerator Operator has not been created by the Government because the rules have not been finalized by the respondent. In the absence of there being any permanent post available he admits petitioner’s services cannot be regularized. He, therefore, states that he will file a separate writ petition seeking directions against the Union of India as well as Hospital authorities for finalizing the rules and for creation of permanent post of Incinerator Operator. Thus the Union of India and Hospital Authorities have to do as per the directions of Supreme Court in the cases of B.L. Wadehra Vs. Union of India & Ors (1996) 2 Supreme Court, Cases 594.

*In view of the above he does not press this writ petition.
The same is accordingly dismissed as not pressed.”*

9. The respondent then filed another Writ Petition before this Court, seeking the creation of the post of Incinerator Operator in the petitioner no.1. The said Writ Petition was dismissed by a learned Single Judge of this Court, *vide* its Order dated 11.10.2013, directing the respondent to approach the learned Tribunal for redressal of his grievances.

10. Aggrieved by the said Order, the respondent filed an Appeal, being LPA No.913/2013. During the pendency of the appeal, the petitioners, *vide* an Order dated 08.09.2010, appointed the respondent to the post of Incinerator Operator on a regular basis with effect from 03.08.2007. Based on this development, the appeal filed by the



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respondent was disposed of by this Court, with the following observations:

“After hearing learned counsel for the appellant we feel that we need not go into the question as to whether the petitioner should be asked to approach the Central Administrative Tribunal now after his writ petition remained pending from the year 1999 till the passing of the impugned order. The reason for that is that the appellant had filed a writ petition for direction to the respondent for formulating the recruitment rules in respect of the post of Incinerator Operator. Learned counsel for the appellant has submitted before us today that during the pendency of this litigation the respondents had finally given regular appointment to the appellant vide order dated 08th September, 2010 (copy produced before us and is taken on record) issued by Dr.T.S. Sidhu, Medical Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi. In the said order it is mentioned that the appellant herein was being appointed as Incinerator Operator in the Pay Band-1 with Grade Pay of Rs.1900/- w.e.f. 03rd August, 2007 the day on which the post was created. This order clearly implies that the recruitment rules for the aforesaid post, on which the appellant claims to have been working as a daily wager, has been created and he was selected through the employment exchange. Since the recruitment rules stand already framed and the appellant stands appointed for the post for which he was fighting, in our view, the writ petition filed by him should have been disposed of as having become infructuous instead of requiring him to approach the Central Administrative Tribunal and this we say so because the learned counsel for the appellant submitted that the fact of his regular appointment was brought to the notice of learned Single Judge also when the writ petition came up for hearing.

Counsel for the respondent also does



not dispute that the writ petition should have been, in fact, disposed of as having become infructuous in view of the respondents having already given regular appointment to the appellant.

We, therefore, dispose of this appeal by setting aside the impugned order directing the appellant to approach the Central Administrative Tribunal and instead dismiss the writ petition of the appellant as having become infructuous.

As far as the grievance of the appellant that he should have been given regular appointment from the date of his initial appointment as daily wager and which relief stands denied to him by the respondents by giving him regular appointment only w.e.f. 03rd August, 2007 is concerned, the appellant is at liberty to have recourse to any other remedy which may be available to him in law.

In case he initiates any fresh proceedings in that regard, the present order will not be a bar for consideration of his claim for regular appointment with effect from the date of his initial appointment."

11. The respondent kept pressing his claim for being given a regular appointment with effect from his initial appointment in the year 1991. In the meantime, after a gap of more than nine years from the date of his regular appointment, the petitioners issued a Show-Cause Notice to the respondent, dated 10.12.2022, stating therein that as the respondent had directly approached the Secretary (HFW) for regularisation of his services with effect from 29.04.1999 to 02.08.2007, this act was perceived as misconduct on his part. Accordingly, he was called upon to show cause why appropriate action be not taken against him. We reproduce the Show-Cause Notice as under:



“WHEREAS, it has come to notice that Sh. Ajay Kumar Sharma, Incinerator Operator has approached directly to the Secretary (HFW) for regularization of his service w.e.f. 29.04.1999 to 02.08.2007.

AND WHEREAS this act on the part of Shri Ajay Kumar Sharma, has been seen as misconduct on his part.

NOW THEREFORE, it has been decided by Competent Authority to give fair opportunity to Sh. Ajay Kumar Sharma before taking any action against the alleged misconduct.

AND Competent Authority has directed that Shri Ajay Kumar Sharma may submit his reply on writing within 03 days from the receipt of this communication, failing which it will be presumed that he was nothing to say in this matter and Action under relevant rules, as deemed fit will be taken against him.

This issues with the approval of Competent Authority”

12. The petitioners then went ahead and passed the Order dated 21.03.2023, which was impugned by the respondent before the learned Tribunal, terminating the services of the respondent on a totally new ground, which is, that his appointment was without the existence of the Recruitment Rules, without advertisement, and without following the core procedures for appointment, thereby rendering the regular appointment as *ex-facie* illegal.

13. Aggrieved of the above Order, the respondent challenged the same before the learned Tribunal by way of the above O.A., that is, O.A. No.967/2023. The learned Tribunal, after duly considering the above facts, allowed the O.A. while observing as under:

“18. It is not in dispute that way back in 1991 the Respondent No.2 had sent a requisition to Employment Exchange to nominate suitable candidates for the post of Incinerator



Operator on a daily wage basis as there was no sanctioned post of Incinerator Operator in position in the organization of the Respondent No.2 and name of the applicant was duly sponsored by the Employment Exchange and after being interviewed, he was selected. It is also not in doubt that in 1998 vide order of the CAT in OA No. 48 of 1998, the applicant was allowed to continue on daily wages without any technical breaks, though vide the same order he was not granted any claim for regularisation against the post of Incinerator Operator. It is also not disputed that a Work Measurement Study conducted in 1999 recommended the necessity of Incinerator Operator in the respondent organisation, i.e. Dr. RML Hospital New Delhi and vide letter dated 14.08.2007 two such posts were also created.

19. *As evident from the counter reply, the applicant was appointed on regular basis to the said post by the Respondent No.2 retrospectively with effect from 03.08.2007, i.e. from the date of creation of the post. Though in 2015, Respondent No.2 are said to have been informed the Respondent No.3, Director General of Health Services, Ministry of Health & Family Welfare that since the Incinerator in the Hospital has been demolished and the work of incineration is being managed by the Bio-Medical Waste Management Wing of the Hospital, therefore, the post of Incinerator Operator is no longer required in the Hospital but the fact remains that these posts were not abolished and the applicant continued to work in Dr. RML Hospital till his termination in 2023.*

20. *We have gone through the impugned order dated 21.03.2023 and in the impugned order also there is no mention that the post of Incinerator Operator is no longer required or has been abolished. Therefore, the applicant continued to work in Dr.RML Hospital on being regularized since 2007. So far the contention of the respondents that the*



applicant was appointed on the basis of draft Recruitment Rules whereas it is necessary to follow the Recruitment Rules while granting appointment and the regular appointment itself was legal due to above reason, our considered view is that the applicant cannot be blamed for such act of omission or commission on the part of respondents. It is not the case that the applicant was initially appointed in 1991 to the post without following any procedure or without any merit, as he was engaged as a daily wager after being duly sponsored by the Employment Exchange with requisite qualification and after qualifying in the interview. Therefore, his appointment cannot be termed as illegal....”

14. The petitioners have filed the present petition, challenging the above Order.

15. The learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that the respondent was working only as a daily wager and had been regularised in service without there being any Recruitment Rules in place and without any advertisement having been issued.

16. He submits that the respondent was regularised only because of the Orders passed by this Court and by the learned Tribunal.

17. We find absolutely no merit in the above submissions.

18. As would be evident from the above, neither the learned Tribunal nor this Court had directed the regularisation of the services of the respondent at any stage. The only direction passed was that the petitioners should not resort to technical breaks in the service of the respondent.

19. The petitioners, however, finding the need for a regular



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appointment to the post of Incinerator Operator, on which the respondent was working, regularised his services.

20. The Show-Cause Notice, which was issued to him after almost nine years of such appointment, merely stated that, as the respondent had directly approached the Secretary (HFW), the same was considered as misconduct. The Impugned Order dated 21.03.2023 was, however, passed on an entirely different basis, challenging the very appointment of the respondent to the said post.

21. It appears from a reading of the Impugned Order passed by the learned Tribunal, that the petitioners had realised that there was no longer a need for an incumbent to the post of Incinerator Operator, however, instead of taking action on the same in accordance with law, the petitioners have generated this false narrative for terminating the services of the respondent.

22. In view of the above, we find no merit in the present petition. The same is, accordingly, dismissed.

23. We are informed that the respondent stood retired on 29.02.2024. The petitioners must comply with the Order passed by the learned Tribunal within a period of four weeks from today, and the retiral benefits of the respondent should be released to him within the said period.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 20, 2025/sg/DG

Click here to check corrigendum, if any