

(2012) 09 DEL CK 0296
In the Delhi High Court
Case No : Writ Petition (C) 9562 of 2006

Arun Kumra Sharma

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0296

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Kiran Singh, for the Appellant; Ruby Sharma and Mr. Himanshu Upadhyay, Advocates for Respondent No. 1 and Mr. Pramod K. Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.

W.P.(C) 9562/2006

1. Vide the instant petition, the petitioner seeks the following relief:-

a) issue appropriate writ, order or direction especially in the nature of mandamus to the respondents directing the respondents to regularize the service of the petitioner according to the judgment dated 09.02.05 in Writ Petition No.1929/1998 and give all attendant and consequential benefits to the petitioner from the date of his initial appointment as Tuberculosis Health Visitors alongwith interest.

The facts of the instant case in brief are that the petitioner had joined the Municipal Corporation of Delhi (MCD), respondent No. 1 on contractual TBHV w.e.f. 28.05.1998 along with the other TBHVs who have been regularized by the respondents vide order dated 01.1.2005 in which even persons junior to the petitioner had been regularised. The petitioner was recruited to the post of T.B. Health Visitor at the salary of Rs.4,000/- per month and he joined on 01.07.1998

with respondent No. 2.

2. The petitioner came to know in January, 2006 that his colleagues have been regularized who had joined with/after him. this Court has passed an order dated 09.02.2005 in W.P.(C) No. 1929/1998 and W.P.(C) Nos. 2510-2529/2005, whereby the petitioners therein had been regularized on the directions of this Court. The petitioner herein is seeking the same relief as has been given by the respondents to the similarly situated persons.

3. Mr. Pramod K. Sharma, Learned Counsel appearing on behalf of respondent No. 2 has pointed out that order dated 09.02.2005 in W.P.(C) No. 1929/1998 and W.P.(C) Nos. 2510-2529/2005 was passed on the submissions of the Learned Counsel for the MCD that the petitioners were already appeared in and cleared the interviews, cleared in the Medical Test and their Police Verification also completed. It was further stated by the Learned Counsel for the MCD that there was no complaint as on date that the petitioners, who had been working since 1996, do not comply with the Regulations.

4. Vide order dated 09.02.2005, the Coordinate Bench of this Court had directed the respondent MCD that the services of the petitioners should be regularized and their seniority should be fixed from the date on which they had reported for duty in 1996, in the same manner as had been carried out for the petitioners regularized earlier, in accordance with the service records maintained by the MCD.

5. Learned Counsel for respondent No. 2 has further pointed out that no notice issued to respondent No. 2. The Learned Counsel for the MCD had made the aforesaid statement on the back of respondent No.2, accordingly, directions were issued.

6. He further submitted that since the MCD had seven vacancies, they all were regularized by the MCD and not by respondent No. 2.

7. Thereafter, some other similarly situated persons filed petitions being W.P.(C) No. 3568/2003 & 5744-45, 5747-71/2005, titled as "Babita Rani & Ors. Vs. Govt. of NCT of Delhi & Anr." with W.P.(C) No. 6783-830/2005, titled as "Pradeep Gupta & Ors. Vs. Govt. of NCT of Delhi & Anr., which were allowed by the Coordinate Bench of this Court vide its judgment dated 26.09.2005 recording as under:-

13. These Petitions are allowed with directions similar to those passed on 9.2.2005 in WP(C) No.1929/1998 & 2510-2529/2005, which Orders have not been appealed against become final. The service of the Petitioners should be regularised and their seniority should be fixed from the date on which they reported for duty in accordance with the Service Records maintained by the Respondents. The effect will be that from the passing of these Orders the Petitioners shall be entitled to receive pay, emoluments and all other benefits as are being received by regular/persons regularised appointed as TB Health Visitors/Laboratory Technicians in the Municipal Corporation of Delhi. In the

unlikely event of the TB Eradication Schools coming to an end, the services of the Petitioner may also come to an end.

8. The respondent No. 2, being aggrieved, filed LPA No.2554/2005 with LPA No.2555, 2676, 2677/2005, wherein the Division Bench of this Court vide its order dated 16.01.2006 recorded as under:-

9. On the facts disclosed we are of the opinion that the petitioners were not working under Respondent No.1, Government of NCT, Delhi, which is evident from the fact that services of the petitioners were hired by the Respondent No.2, Delhi Tapedik Unmulan Samiti. Hence the petitioners are not part of the regular government establishment and they had misrepresented in para 3 of the writ petition that they have been working under the Government of NCT of Delhi.

10. It is well settled that a writ petition is liable to be dismissed if the petitioner makes a misrepresentation of relevant facts. In our opinion, the writ petition was liable to be dismissed on this ground alone as the petitioners had not come with clean hands in as much as they made false averments that they have been working under the Government of NCT. Moreover, the engagement of the petitioners was for a specified period and they cannot claim regular appointment like regular employees. The contract could be terminated by either side by one month's notice or one month salary in lieu of the notice period. Apart from that, it is evident that the petitioners were appointed on a project to enhance the efforts to control T.B., and as such there are no substantive posts on which the petitioners could be regularized.

11. In the writ petition, the petitioners alleged that they were holding a Diploma in T.B. Health Visitors Course and they were selected in the interview. However, as pointed in the counter affidavit, the T.B. Health Visitors Course is not recognized by any competent authority i.e. Board of Technical Education/all India Council of Technical Education or any other legally established authority. Hence the petitioners' Diploma is not recognized. Also, the letter, Annexure P4 to the writ petition clearly states that the names of petitioners have been sponsored by the Employment Exchange for the post of Laboratory Technician on contractual basis for Revised National Tuberculosis Control Programme in Delhi. The appointment letter also, copy of which is Annexure P5, states that petitioners have been appointed on purely contractual basis for a period of one year. True copy of one of such letters dated 15.05.1998 is as follows:-

"DELHI NAGAR NIGAM TAPEDIK NIYANTRAN SAMITI"

Moti Nagar,

Chest Clinic, Moti Nagar, New Delhi-110 015

No./DNNTNS/MN/98/25 Dated 15 May 1998

OFFICE MEMORANDUM

Sub: Recruitment to the post of T.B. Health Visitors on contract basis on a

consolidated salary of Rs.4,000/- per month.

The Chairman Delhi Nagar Nigam Tapedik Niyamtran Samiti, Moti Nagar is pleased to appoint Shri/Smt./Km. Ajay Kumar, A-63/A, Paschim Puri, Delhi to the post of T.B.Health Visitor on the following terms and conditions:-

1. The post is purely on contract basis for a period of one year from date of issue of the letter. The appointment can be terminated at any time (on either side) by giving one month's notice or by paying one month's salary without assigning any reason or unsatisfactory/poor work and/or performance is reported to competent authority or if project is terminated prematurely.
2. The consolidated pay of the post is Rs.4,000/0 per month.
3. The appointee shall take full load of the work as prescribed in the duties. In addition, he/she will also be required to discharge the duties as and when required by the District TB Society and any other authority so authorized.
4. The appointing authority reserves the right to assign any duty as and when required. No extra allowance will be admissible in case of extra assignments.
5. The appointee shall not be entitled to any benefit of provident Fund, Pension, Gratuity, Medical Attendance, treatment, Seniority, TA or any other benefits available to the Government Servant appointed on regular basis.
6. The appointee will not be granted any claim or right for regular appointment to the post.
7. Only consolidated pay will be admissible, no dearness allowance and other allowance are admissible which are admissible to the Central Government Servant/Govt. of India.
8. The appointee shall be on the whole time appointment of the institution and shall not accept any other appointment paid during the period of contract.
9. The appointment carries with it the liability to serve in any part of NCT of Delhi or any other District TB Society.
10. The continuation of appointment is subject to the physical fitness from the competent Medical board for which he/she will be sent to the decided Medical Institutional after his joining.
11. The appointee is required to submit a declaration in the enclosed form to the effect that : He/she is not married to a person who is already having a wife/husband living or that he/she is not married in any case in which such marriage is void by reason of the husband/wife having a wife/husband living at the time of such marriage.
12. On appointment the appointee will be required to take any oath of allegiance to the constitution of India or make a solemn affirmation to that effect in the prescribed form.

13. He/she is not entitled to any TA for joining the appointment.

14. Other conditions of service will be governed by relevant rules and orders issued from time to time.

15. If any declaration given for information furnished by him/her proves to be false or if he/she is found to have wilfully suppressed any material information he/she will be liable to removal from service and such other action as the government may deem necessary.

16. No accommodation will be provided.

If Shri/Smt./Km. Ajay Kumar accepts the appointment on the above terms and conditions he/she would report to the undersigned within 10 days from the date of issue of this letter.

Member Secretary

Delhi Nagar Nigam Tapedik

Niyantran Samiti, Moti Nagar

CHAIRMAN

Delhi Nagar Nigam

Tapedik Samiti

Moti Nagar

Thus, the petitioners were clearly aware of the fact that their appointment was with Respondent No. 2 and not with Respondent No.1, and that too, on a contractual basis. The letters calling the petitioners for interview also clearly stated that the interviews held were for engagement on a contractual basis. Thus, right from the beginning, the petitioners knew that if they are appointed they would be appointed only on a contractual basis. They were paid a consolidated monthly remuneration as fixed by the Government of India in consultation with the World Bank. Hence in our opinion their salaries cannot be compared with regular government employees.

9. Learned Counsel for the respondent No. 2 has submitted that the petitioner herein is also claiming relief on the basis of same appointment letter, as mentioned above.

10. Being aggrieved, the petitioners therein had challenged the same before the Supreme Court by way of a SLP bearing No.6128/2006, which was dismissed vide order dated 13.04.2006.

11. The Learned Counsel for respondent No. 2 submits that since the issue in the instant petition has already been decided by the Division Bench of this Court and the matter went up to the Supreme Court and attained finality, therefore, the petitioner cannot agitate the same issue again as the same cannot be decided by

this Court. Moreover, the petitioner has not disclosed the orders passed by this Court in LPA and the Supreme Court in SLP. The petition can be dismissed on the facts of concealment alone.

12. After hearing Learned Counsel for the parties, it is emerged that on the similar issue, similarly placed persons filed a Writ Petition before this Court, which was initially allowed by the Coordinate Bench of this Court. However, the same was reversed by the Division Bench of this Court in LPA as noted above. Finally, the matter went up to the Supreme Court and the Supreme Court also dismissed the petitions filed by the aggrieved petitioners.

13. The instant petition has been filed after the judgment rendered in LPA and dismissal order in SLP. This fact has not been stated in the instant petition.

14. Be that as it may, the issue raised in the instant petition had already been adjudicated and rejected by the Division Bench of this Court. Moreover, the SLP filed by the petitioners therein was also dismissed and attained finality.

15. In view of the above, I find no merit in the instant petition and the same is accordingly dismissed. No orders as to costs.

CM. No. 7160/2006

Since the main petition is dismissed, instant application does not require further adjudication and disposed of as such.