
(2010) 11 DEL CK 0125

In the Delhi High Court

Case No : Writ Petition (C) 5396-98 of 2005 and 1629 of 2010 and LPA 1653-58 of 2005

Lalit Kumar Vimal

APPELLANT

Vs

Secretary (Health) and Others
 Rajendra Singh Negi
and Others Vs National Capital Territory thru" Secretary

 Vijay Nautiyal and Others Vs GNCT of Delhi and Others

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Citation : (2010) 11 DEL CK 0125

Hon'ble Judges : Siddharth Mridul, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Roshni Chopra, in W.P. C 1629/2010, Avnish Ahlawat, Latika Chaudhary, in W.P. C 5396-98/2005 and 18037/2006, K.P. Sunder Rao, A. Subhasini and Sangeeta Batra, in LPA 1653-58/2005, for the Appellant; Meera Bhatia in W.P. (C) 1629/2010, Roshan Kr. Adv. in W.P.(C) 5396-98/2005 and 18037/2006, V.K. Rao Wajeesh Shafiq, Vaibhav Kalra for R-2 and Amiet Andley, for R-6 in LPA 1653-58/2005, for the Respondent

Judgement

Pradeep Nandrajog, J.—At the outset it may be noted that of the 3 writ Petitioners who had filed WP(C) 5396-98/2005, only 1 i.e. Petitioner No. 3 Sh. Dushyant Kumar Garg, survives to litigate as stated at the Bar by Ms. Avnish Ahlawat, Advocate who appears for the Petitioners in the said writ petitions and thus we hold that qua Petitioners No. 1 and 2, the relief being granted would not enure to their benefit and the writ petition qua them is treated as having been dismissed as not pressed.

2. We may additionally note that all the writ Petitioners who had joined in a common action in respect whereof LPA No. 1653-58/2005 has been filed have not joined in further litigation. Of the 12 writ Petitioners only 6 have joined in the Appeal and hence the benefit of this order would enure only to the credit of the 6 Appellants in LPA No. 1653-58/2005.

3. It may be noted that on LPA No. 1653-58/2005 and WP(C) 5396-98/2005 being dismissed by this Court, the matter was taken by way of further challenge before the Supreme Court and vide order dated 16.3.2009 the orders passed by this Court were set aside and LPA No. 1653-58/2005 and WP(C) No. 5693-98/2005 were restored with a direction that the "Board of Technical Education" should be impleaded as a Respondent in the proceedings before us and the appeal and the writ petition be decided afresh. The Board has since been impleaded and is represented by Mr. Amiet Andley, Advocate.

4. As regards the 2 other writ petitions being decided by us today, the same were not disposed of at any earlier stage.

5. The origin of the dispute is an advertisement issued by the Government of NCT Delhi (Department of Health & Family Planning). Various posts were advertised to be filled up. 44 posts of Technical Group IV (Biochemistry/Endocrine or Metabolic Lab/Dialysis Lab. (except Australia Antigen Unit) Gastrology Lab./Surgical and Medical Lab./Pathology/Clinical /Pathology/Blood Bank/Anatomy/Forensic Medicine/Micro Biology or Serology/Immunology/Parasitology/Physiology/Pharmacology /Prima House/Allergy Clinics/Tissue Collection Preservation) were advertised. Diploma in MLT (Medical Laboratory Technician) from a recognized institution was the essential educational qualification prescribed. 41 posts of Technician OT were also notified to be filled up and for which the educational qualifications prescribed was Diploma as OT (Room Assistant) from a recognized institution.

6. The writ Petitioners and the Appellants except the writ Petitioner of WP(C) No. 1629/2010 had obtained a Diploma from Institute of Public Health & Hygiene, Mahipalpur. Lalit Kumar, the writ Petitioner of WP(C) 1629/2010 had obtained the necessary diploma from Christian Medical Association of India, having undertaken 2 years Diploma Course from St. Stephens Hospital, which we note is a hospital established by the Christian Medical Association of India. All of them applied pursuant to the advertisement and were permitted to take a written test which they cleared not only successfully but meritoriously evidenced by the fact that they were all empanelled for appointment and being posted in different hospitals established by the Government of NCT Delhi.

7. Armed with a letter of appointment and directed to report to the Medical Superintendent, G.B. Pant Hospital, Lalit Kumar Vimal, the writ Petitioner of WP(C) 1629/2010 reported at G.B. Pant Hospital, where the Medical Superintendent held him not entitled for the job as an OT Technician stating that the certificate obtained by him was not from a recognized institution.

8. Similarly, armed with a letter of appointment Petitioner No. 3 of WP(C) No. 5396-98/2005 reported for being appointed at G.T.B. Hospital where the Medical Superintendent did not permit him to join on the ground that the certificate held by him was not from a recognized institution.

9. Likewise, armed with a letter of appointment, Sanjay Kumar, the writ

Petitioner of WP(C) 18037/2006 reported for duty at D.D.U. Hospital where he was permitted to join and since the month of August 2003 started working, till on 21.5.2004 a show-cause notice was issued to him as to why his appointment be not cancelled on the ground that he had not obtained a diploma from a recognized institute. He immediately questioned the show-cause notice and obtained a stay in his favour from the Tribunal which enured till the Original Application filed by him was dismissed and we note that it is not in dispute that he is still working in the hospital concerned and has been earning his annual increments.

10. The Appellants of LPA No. 1653-58/2005 were likewise not permitted to join at the respective hospitals to which they were assigned for reporting to duty on the ground that the Diplomas held by them were not from a recognized institution. They and a few other filed writ petitions in this Court seeking a direction against the Government of NCT Delhi to accept their candidature and permit them to work at the respective hospital where they were assigned duties.

11. The claim of all the protagonists except Lalit Kumar Vimal, the writ Petitioner of WP(C) No. 1629/2010 was predicated on recognition accorded to the Institute of Public Health & Hygiene from where they had obtained their respective Diplomas and for which they relied upon recognition granted to said institute by the Government of Manipur, Government of Sikkim as also the Director General Resettlement, Ministry of Defence, who on behalf of Government of India recognized the diploma courses run by the Institute in question. They additionally relied upon a brochure published by the Government of NCT Delhi for benefit of the persons who sought employment under the Government of NCT Delhi. The said brochure published the names of various institutes which were ostensibly recognized by the Government of NCT Delhi and the relatable courses which were recognized. Suffice would it be to note that in the booklet, the name of the Institute of Public Health & Hygiene was listed pertaining to the diploma course in "Medical Lab Technician".

12. Qua these persons except Lalit Kumar Vimal, the issue which came up for consideration before this Court was whether the diploma issued by the Institute of Public Health & Hygiene was from a recognized institution.

13. At the first instance, the writ petitions filed by the Appellants in LPA No. 1653-58/2005 and a few others came to be dismissed vide order dated 12.5.2005 when a learned Single Judge of this Court held that since AICTE has not granted recognition to the Institute of Public Health & Hygiene, Diplomas awarded by said institute would be not from a recognized institute.

14. LPA 1653-58/2005 was filed in this Court against the decision of the learned Single Judge which came to be dismissed by an order dated 1.8.2005 in which the Division Bench observed that since the institute was not recognized the view taken by the learned Single Judge was not wrong.

15. At the second stage to be dismissed was WP(C) 5396-98/2005. A Division

Bench of this Court dismissed the writ petition vide order dated 27.4.2005. The Division Bench held that the All India Council for Technical Education having not granted recognition to the institute for diploma courses, the factum of said institute being shown as a recognized institute in the brochure published by the Government of NCT Delhi was meaningless. Thus, the writ petition was dismissed on 27.4.2005.

16. As noted herein above, the matter was further carried to the Supreme Court, where vide order dated 16.3.2009, the matter was remitted to this Court. The Supreme Court noted that as per AICTE it is not the body authorized to grant recognition for the courses in question. Matter was remanded to this Court with a direction that the Board of Technical Education be impleaded as a party in the matter.

17. It is apparent that before the Supreme Court it was informed that the Board of Technical Education would be the Competent Authority to reflect upon and tell this Court whether the Institute of Public Health & Hygiene is authorized to conduct courses and grant diploma in the subjects in question.

18. In the meanwhile, the writ Petitioners of the 2 connected writ petitions being decided today approached the Central Administrative Tribunal seeking similar relief. Their Original Applications were dismissed and the orders passed by the Tribunal have been questioned by them in WP(C) No. 1629/2010 and WP(C) 18037/2006.

19. Mr. Amiet Andley, learned Counsel who appears for the Board of Technical Education informs us that the Board has not granted any recognition to the Institute of Public Health & Hygiene.

20. On being questioned, Mr. Amiet Andley informs us that the Board of Technical Education is a department of the Government of NCT Delhi and has till date not accorded any approval to any institute for purposes of awarding diplomas in the field in question i.e. as OT Technicians or as Medical Laboratory Technician.

21. At this stage, we may note that on 3.6.2009 the Government of NCT Delhi has issued a circular which reads as under:

No.F.3(4)/PHC/TRC/2007/2815-21

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).
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).

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 nod 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 Vs. Delhi State Mineral Development Corporation, .

38. We dispose of the writ petitions and the LPA as under:

(1) WP(C) No. 1629/2010 filed by Lalit Kumar Vimal is allowed with a direction to the Government of NCT Delhi to forthwith regularize him as OT Technician and since he has been working in a government hospital since November 2002 as an OT Technician on ad-hoc basis we direct that he would be entitled to the benefit of seniority with retrospective effect as per his seniority position in the select panel and noting that he has not been granted annual increments we direct that he would be granted annual increments from the deemed date of regular appointment which would be the date when the person immediately junior to him in the select panel was appointed. Arrears would be paid to him within 6 months from today.

(2) WP(C) No. 18037/2006 filed by Sanjay Kumar is allowed with a direction to the Government of NCT Delhi to regularize his services as a Medical Laboratory Technician with effect from August 2003, the month in which he joined after he was selected. He would be entitled to seniority at par with Lalit Kumar Vimal and noting that he has been getting the benefit of the annual increments, we observe that he would not be entitled to any arrears.

(3) As regards Petitioner No. 3 of WP(C) No. 5396-98/2005 and the Appellants of LPA No. 1653-58/2005 we direct that they be granted employment as Medical Laboratory Technicians and for purposes of seniority be placed as per their position in the select panel. They would not be entitled to any back-wages, save and except Appellant No. 3 who has been working at DDU Hospital and qua him we direct that he would be entitled to the same benefit as Lalit Kumar Vimal. Arrears would be paid to him within six months. Others would be issued formal posting orders within six weeks.

39. Before concluding we must express our anguish at the fact that the Government of NCT Delhi and its Department concerned i.e. the Board of Technical Education have not been discharging their Constitutional obligations evidenced by the fact that knowing fully well that Paramedical Education is not the subject matter of any legislation, they have neither legislated nor have framed any norms for recognizing institutions awarding diplomas in Paramedical Education. Even till today neither any legislation nor guidelines have been

framed. The circular dated 3.6.2009 is based on the whims and fancies of somebody and without any norms being settled. We would be highlighting one fact that many similarly situated persons were permitted to join by the Medical Superintendents of some Government Hospitals and some like the writ Petitioners before us were denied the benefit of they having been successful at the entrance exam. The proof of the fact that the diplomas obtained by them were after seriously pursuing a course from an institute worthy of awarding the diploma is the fact that Appellant No. 3 of LPA No. 1653-58/2005 as also Sanjay Kumar have been working as Medical Laboratory Technician since the year 2002 and 2003 respectively and nothing unworthy in their work has been noted. This reassures us that as a result of our decision untrained persons would not be appointed. We note that three Petitioners have been successfully working for the last 7 to 8 years.