

(2013) 08 DEL CK 0175
In the Delhi High Court
Case No : Writ Petition (C) 5373 of 2013

Maruti Sinha

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 20

Citation : (2013) 08 DEL CK 0175

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Shanker Raju, for the Appellant; Sunil Kumar and Mr. Ashish Kumar for MCI, Mr. Parvinder Chauhan, for R-3 and R-4, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—The contesting party is R-3 and R-4. Counsel as above appears for said respondents on advance copy being served. Since the matter is urgent and all the pleadings before the Central Administrative Tribunal have been filed along with the writ petition we have heard learned counsel for the parties for a final disposal of the writ petition.

2. The petitioner is a graduate in medical science and has a specialization in the field of "Obstetrics and Gynecology". Through an open competition, under the aegis of UPSC, the petitioner was appointed as a Medical Officer with post graduate specialization in "Obstetrics and Gynecology" under the erstwhile Municipal Corporation of Delhi and was posted at Kasturba Hospital in June, 1995.

3. It is the claim of the petitioner that since inception of her service she had taught post graduate students and DNB trainees in the specialized discipline of "Obstetrics and Gynecology". She relied upon certificates issued in said regards from time to time. Petitioner also claims to be possessing a certificate regarding her entitlement to teach post graduate students in the University of Delhi and DNB trainees of National Board of Education.

4. It is the claim of the petitioner that the Municipal Corporation of Delhi was participating as a unit of Central Health Services till it decided to open its own medical college and as per methodology adopted under the Central Health Services there are 4 sub-cadres namely GDMO, Teaching and Non-teaching specialists and Public Health. It is further the case of the petitioner that Medical Officers are equated as specialists and teaching sub-cadre, and the post is treated as equivalent to an Associate Professor. It is further the case of the petitioner that for purposes of promotion to the post of professor 18 years experience is necessary.

5. With reference to the Medical Council of India Act, pleadings have been made by the petitioner, effect whereof is the resultant claim that the petitioner would be entitled to be treated as an Associate Professor and upon completion of 18 years service as a Professor.

6. It is in the aforesaid backdrop that the petitioner laid a challenge to a notice inviting applications by the midnight of December 31, 2012 by the North Delhi Municipal Corporation.

7. Now, with the trifurcation of the Municipal Corporation of Delhi, three corporations falling in Delhi, one of which is the North Delhi Municipal Corporation.

8. The advertisement in question informs that North Delhi Municipal Corporation is in the process of establishing a new medical college at Hindu Rao Hospital for the academic year 2013-2014. Posts proposed to be filled up on contract basis initially for one year, extendable by another year based on performance, were notified to be filled up and we find that at serial No. 18 are posts in the department of "Obstetrics and Gynecology". One post each for Professor and Associate Professor and two posts of Assistant Professors are proposed to be filled up.

9. Marching before the Tribunal, the petitioner laid a claim as afore-noted, effect whereof if accepted would be that the petitioner would have to be treated as a Professor as of today and as an Associate Professor when she approached the Tribunal since she had already worked and had, as claimed by her, a teaching experience of 17 years. As of today, the petitioner has as per pleadings, a teaching experience of 18 years.

10. Before the Tribunal the petitioner was litigating with reference to the post of Associate Professor.

11. The Original Application filed by the petitioner was disposed of by the Tribunal by an order dated January 08, 2013 recording that after making some submissions counsel for the petitioner seeks leave to withdraw the Original Application with liberty to avail such remedy as is available under law. Seeking review of the order and praying that the same be recalled and Original Application be heard on merits, RA No. 23/2013 filed by the petitioner contains

pleadings, meaningfully read to mean, that the counsel wrongly conceded that the petitioner be permitted to avail a remedy available under law for the reason there is no remedy available.

12. The petitioner highlighted in the Original Application the urgency on account of which the claim before the Tribunal required to be adjudicated on merits.

13. RA No. 23/2013 has been dismissed by the Tribunal vide impugned order dated July 30, 2013 holding that as per the mandate of Section 20 of the Administrative Tribunals Act, the applicant before the Tribunal ought to have made a representation to the department and unless said right was availed, remedy u/s 19 of the Act cannot be entertained. We quote the reasoning of the Tribunal. It reads as under:-

Besides that, it is not the case of the applicant that in respect of the second relief she has approached the concerned authority and thereby availed the remedy as required u/s 20 of the Act, which provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed all the remedies. Therefore, the Application u/s 19 of the Act cannot be entertained unless the applicant has availed the remedy available to him/her under the law. Besides, the designation of a post being a policy matter, the applicant ought to have first approached the concerned authority seeking such relief, and in the event of refusal she had cause to approach the Tribunal u/s 19. Nothing has been brought on record to show that pursuant to the leave granted by the Tribunal to her, the applicant has availed such other remedy available to her under the law for the relief sought in the OA.

14. Suffice would it be to state that Section 20 of the Administrative Tribunals Act, 1985, is a legislative provision on the subject of alternative remedies to be exhausted and it uses the expression "the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed all the remedies available to him under the relevant service rules as to redressal of grievances".

15. Ex facie, the bar envisaged under the Section pertains to such remedies as are available under the relevant service rules. The section does not embrace non-statutory remedies, which we note are available to everybody. For, any person has a right to make a request or a claim before somebody else.

16. Further, the bar is not absolute. This is evident from the use of the three words "shall not ordinarily"

17. Under the circumstances we are of the opinion that the Tribunal ought to have allowed RA 23/2013 and heard Original Application No. 84/2013 on merits.

18. Disposing of the writ petition we quash the order dated July 30, 2013. We allow RA No. 23/2013 filed in Original Application No. 84/2013 and as a consequence set aside the order dated January 30, 2013 dismissing the Original Application as withdrawn.

19. We direct the Tribunal to decide Original Application No. 84/2013 on merits.
20. The parties shall appear before the Registrar of the Tribunal on September 06, 2013 who shall list the Original Application before the Roster Bench.
21. We note that R-2 to R-4 before us are also R-2 to R-4 before the Tribunal. They are represented before us by counsel and said respondents have noted the date for appearance before the Tribunal.
22. The tribunal would therefore proceed to serve R-1; pleadings would be completed and Original Application No. 84/2013 shall be decided on merits.
23. No costs. Dasti.