

(2020) 03 CAT CK 0011
In the Central Administrative Tribunal
Case No : Original Application No. 701 Of 2014

Ram Tek And Others	Vs	APPELLANT
Delhi subordinate Service Selection Board And Others		RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:

Citation : (2020) 03 CAT CK 0011

Hon'ble Judges : L. Narasimha Reddy, J;A. K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Shyam Moorjani, Alka Sharma, Yatender Sharma, Ayushi Jain, R.K. Jain

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The Municipal Corporation of Delhi (MCD) issued an employment notice in December, 2009 for appointment of Assistant Public Health Inspector (APHI)/ Vaccinator, on contractual basis, against 126 posts. The applicants and various others responded to the advertisement. In September 2019, they were issued orders of engagement as APHI, on contractual basis for a period of six months, or till the time the post is filled on regular basis, whichever is earlier. It is stated that the appointment of the applicants was being extended from time to time.

2. The Delhi Subordinate Service Selection Board (DSSSB) - respondent no. 1 herein, issued advertisement for the post of APHI/Vaccinator. At that stage, the applicants filed this OA seeking a declaration to the effect that the artificial breaks given by the Corporation in the appointments of the applicants, and that advertisement no. 01/2014 to the extent it proposes to fill 108 posts of APHI, are illegal, arbitrary and discriminatory and for a direction to the respondents to consider the regularization of the applicants in the post of APHI.

3. The applicants contend that they were subjected to a selection process at the time of appointment, albeit, on contractual basis, they hold the stipulated

qualifications and that their appointments are also against clear vacancies. They contend that the appointment, though called as contractual in nature, partakes the character of regular appointment and that there was absolutely no basis for the respondents in giving artificial breaks or to make the so called regular appointments against the posts held by them.

4. It is stated that, the candidates who were selected by the first respondent got impleaded in the OA when further proceedings were not taking place in view of the pendency of the OA.

5. The respondents filed separate counter affidavits. The gist of their counter affidavits is that the engagement of the candidates was purely on contractual basis, that too, till the regular appointments are made. It is also stated that the only agency that can select the candidates, is the first respondent and the applicants were not selected by that agency at all. It is further stated that the applicants do not have any right to insist on being regularized and that the OA is misconceived.

6. We heard Sh. Shyam Moorjani, learned counsel for the applicants and Ms. Alka Sharma for R. No. 1, Sh. Yatender Sharma for R. Nos. 3 and 7 and Sh. R.K. Jain for R. Nos. 4, 6, 7 and 8, at length.

7. It is a matter of record, that the appointment of the applicants was purely on contractual basis. The advertisement, in response to which, the applicants applied, reads as under:

"Public Health Department of the Municipal Corporation of Delhi proposes to make engagement purely on contractual basis, for the following posts:

- 1) Assistant PHI/ Vaccinator-126 posts
- 2) Assistant Malaria Inspector-280 posts

Essential qualification and experience :

- 1) Matriculation passed from recognized University/Board/School/Equivalent (candidate with less than 50% marks will not be considered)
- 2) Sanitary Inspectors/Health Inspectors Diploma from recognized institution/ equivalent.

Desirable: Knowledge of Hindi

The further terms and conditions are as under:

Gross emoluments: Rs.8820/- P.M.

Age: Between 18 to 27 years(relaxable upto 35 years for Government Servants & employee of MCD in accordance with instruction issued by Central Govt. Relaxation to SC/ST/OBC candidates as per rule.

General terms and conditions:

i) The contract appointment will be for a period one year only in the first instance or till regular incumbents join whichever is earlier. Contract may be terminated any time without giving any notice.

ii) Leave as permissible to contract employment as per direction of Govt.

(remaining part omitted)

A typical order of appointment issued to the applicants reads as under:

"With reference to your application for the post of APhi/Vaccinator on contract basis and approval of Commissioner dated 15.09.2010 you are hereby given offer of engagement to the post of APhi/Vaccinator on contract basis at a fixed emolument of Rs.10,300/- P.M., subject to the following terms and conditions: -

1) The engagement is purely on contract basis for a period of 06 months or till the time the post is filled up on regular whichever is earlier. The engagement can be terminated at any time by giving one month's notice or by paying one month's salary by the incumbent. However, contractual engagement can be terminated at any time without assigning any reason.

2) The appointing authority reserves right to assign any duty as and when required. No extra remuneration will be admissible in case of such assignment.

3) The incumbent shall not entitled to any other benefit such as Provident Fund, Pension, Gratuity, Medical Attendance Treatment, Seniority, LTC or other Terminal Benefits which are available to the MCD employees appointed on regular basis....."

It is not necessary to refer to other conditions.

8. From the above, it is clear that the engagement was: a) purely on contractual basis, and

b) for a period of six months or till the posts are filled on regular basis.

9. If the applicants had any objection to these conditions, they were expected to protest, at the relevant point of time. The making of appointments on contractual basis, to meet the immediate exigencies is not uncommon. Once the way becomes clear for regular appointment and the candidates are appointed, naturally, those appointed on contractual basis, have to vacate the positions. It is a different matter that in certain cases, the relaxation as to age limit, is extended to candidates appointed on contractual basis, whenever the regular appointment takes place. The applicants did make an effort in this behalf. However, the record is not clear whether such a relaxation was given or whether any of them have appeared in the selection process initiated through advertisement.

10. The first respondent issued advertisement in December, 2013, proposing to fill 108 vacancies. The applicants cannot have any plausible objection to that. No right had accrued to them for being continued or to obstruct the regular appointments. In State of Karnataka & Ors. vs. Uma Devi, (2006) 4 SCC 1, the

Hon'ble Supreme Court has, in fact, deprecated the practice of regularizing the service of candidates appointed on contractual basis. Extensive discussion was undertaken as to the effects such a practice would have, on the efficiency of the administration. As a one time measure, it was directed that in case, employees who were continuing for a period, exceeding ten years, without the help of any orders from the court, up to the date of judgment, and if they held the requisite qualifications, and were working against a clear vacancy, their case shall be considered for regularization. The applicants do not fit into such a situation at all.

11. Even otherwise, by the time the applicants filed the OA, their standing was hardly four years. The process for regular appointment has already been initiated. They could have taken part in the examination. Across the bar, it is stated that they took part in the regular selection, but they were not successful. The mere fact that the contracts of the applicants were being extended from time to time, does not confer any right to them. It is brought to our notice that under similar circumstances, this Tribunal dismissed OA No. 4289/2015. It is also stated that Writ Petition against the said Order is pending before the Hon'ble High Court of Delhi.

12. Learned counsel for the applicants submitted that, as against 108 vacancies which were advertised, appointments were made only against 51 vacancies and the applicants are continuing on contractual basis. In case, the applicants are being continued and if there exists work for them, the respondents shall not replace them with another set of contractual employees.

The OA is dismissed with the above observations.

There shall be no order as to costs.