

(2012) 08 DEL CK 0408

In the Delhi High Court

Case No : Writ Petition (C) 4955 of 2010 and CM No. 9806 of 2010

UK Priyadarshi

APPELLANT

Vs

NDPL

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 131 DRJ 440 : (2012) 5 ILR Delhi 788

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : O.P. Saxena with Mr. Sanjay Verma, for the Appellant; Vikram Nandrajog and Mr. Sushil Jaswal, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Vide the instant petition petitioner seeks quashing of the order dated 15.06.2010 and consequently prayed that the respondent be directed to reinstate the petitioner in service with all service benefits. Respondent (erstwhile DESU) vide letter dated 19.05.1986 advanced an offer of appointment to the petitioner as Medical Officer on an ad-hoc basis for a period of three months against a permanent post in the pay scale of Rs. 1000-40-1200-EB-1400-60-1700-75-1850 plus other usual allowances as admissible under the Rules.

2. Thereafter, vide Office Order dated 26.05.1986, it is conveyed to the petitioner that he was appointed in pursuance of the DESC's approval vide Item No. 58B dated 09.04.1986. Thereafter, the ad-hoc appointment of the petitioner has been extended from time to time.

3. The petitioner had completed six years of service till the year 1992. Thereafter, vide the proposal contained in GM (E)'s letter No. F.4 (1)A&G/86/Mtg./2132 dated 23.09.1992 regarding filling up the post of Medical Officers was considered and decided vide decision No. 1790/DESU dated 29.09.1992 that it

would be appropriate to refer the case of the petitioner to the Union Public Service Commission for considering his appointment on regular basis as a special case.

4. In the year 1996, Delhi Vidyut Board (DVB) became the Successor of DESU (MCD). Additional General Manager (A) of the then Delhi Vidyut Board also vide letter dated 31.03.1997 referred the matter, for regularization of the petitioner for the post of Medical Officer in DVB, to the Secretary, Union Public Service Commission, New Delhi

5. Since no response came from the Union Public Service Commission, the Additional GM (A) of Delhi Vidyut Board vide letter dated 04.07.1997 again requested the Union Public Service Commission to expedite the approval on the proposal sent by them.

6. On 28.01.1998, petitioner also made representation to the Chairman of Delhi Vidyut Board for his regularization as Medical Officer. When no decision was taken by the Union Public Service Commission, the petitioner on 02.12.1998 filed an OA before the Central Administrative Tribunal, Principal Bench, New Delhi for redressal of his grievance, which application was subsequently transferred to this Court and numbered as W.P.(C) 188/1999.

. On 13.01.1999, this court passed an order as under:

13.01.1999 Present: Mr. Rajnish Shekhar for the petitioner.

CW No. 188/1999

Rule

CM. No. 265/1999

Notice to the respondents for 27.07.1999. There shall be an injunction restraining the first respondent from creating any break in service of the petitioner until further orders.

Dasti.

8. In pursuance to the aforesaid order passed by this Court, the Delhi Vidyut Board vide office Order dated 28.07.1999 allowed the petitioner to continue in the post of Medical Officer w.e.f 23.07.1999 until further orders subject to the outcome of the aforesaid Writ Petition.

9. Mr. O.P. Saxena, Id. Counsel appearing on behalf of the petitioner submitted that though the petitioner had a very strong case and he was enjoining interim protection, however, on the assurance of the respondent that the petitioner will be regularized, petitioner withdrew the said petition on 04.07.2000 in the presence of Counsel of Delhi Vidyut Board and this fact was very much within the knowledge of the officials of the respondent.

10. He further submitted that service record of the petitioner with the erstwhile

DESU from the year 1986 to 1996, with Delhi Vidyut Board from the year 1996 to 2001 and with the present respondent i.e. NDPL from the year 2001 to 2010 has been quite clean and unblemished.

11. Ld. Counsel for the petitioner has argued that vide Office Order dated 15.06.2010 service of the petitioner was terminated abruptly which was quite strangely and without prior notice or information to the petitioner. The contents of the aforesaid impugned order are as under:-

Vide Office Order No. F4 (112)/A&G/NT/86/68 dated 28.07.1999 issued by erstwhile DVB, the appointment of Dr. U.K. Priyadarshi on the Post of Medical Officer on ad-hoc basis in the pay scale of Rs. 8000-13775/- plus other allowances as admissible under the rules, was allowed to continued on the post of Medical Officer in DVB w.e.f 23.07.1999 until further orders, in terms of the Hon''ble High Court of Dlehi order dated 13.01.1999 passed in CMP No. 265/1999 in CWP No. 188/1999 subject to the final outcome of the aforesaid Writ Petition.

Now it has been informed that the Writ Petition No. 188/1999 on the basis of which the said office order dated 28.07.1999 was issued, has been dismissed as withdrawn by an order dated 04.07.2000 by the Hon''ble High Court of Delhi but no intimation in this regard was given by Dr. U.K. Priyadarshi to NDPL.

Accordingly, since the said Writ Petition No. 188/1999 stands withdrawn, the appointment of Dr. U.K. Priyadarshi no longer continues after 04.07.2000 in DVB / NDPL.

In view of the above the appointment of Dr. U.K. Priyadarshi as Medical Officer, on ad-hoc basis in NDPL automatically stands terminated with immediate effect. He may be relieved from the service immediately and he will hand over the charge to CMO.

12. Ld. Counsel for the petitioner argued that on perusal of the said order, the impression given is that respondents were not aware of the withdrawal of the petition, whereas the said petition was withdrawn in the presence of the Id. Counsel appearing on behalf of the respondent. Moreover, it is mentioned in the impugned order that the appointment of the petitioner is no longer continues after 04.07.2000 in DVB/NDPL whereas the impugned order has been issued on 15.06.2010 itself, which is contrary to their own record and service rendered by the petitioner.

13. Ld. Counsel for the petitioner has pointed out that vide Decision No. 1790/ DESU dated 29.09.1992, following decision was taken:

Proposal contained in GM (E)''s letter No. F.4(1)A&G/86/Mtg.-2132 dated 23.09.1992 regarding filling up the post of Medical Officer considered. It is observed that the incumbent working against vacancy / leave vacancy on short term arrangement basis right from 1986. It would be appropriate to refer her case to the UPSC for considering her regular appointment as a special case. With

this stipulation, approval is accorded to the ad-hoc appointment of Dr. U.K. Priyadarshi as Medical Officer in the scale of pay of Rs. 2200-4100 for short-term vacancy on three months basis or till the post is filling up on regular basis, whichever is earlier, subject to the usual terms and conditions of appointment applicable to such case of short-term arrangements. Also, AGM (A) is authorized to make ad-hoc appointment.

14. Moreover, vide communication dated 31.03.1997, Delhi Vidyut Board also communicated to the Union Public Service Commission for considering the case of the petitioner for regularization.

15. In representation dated 28.01.1998, petitioner apprised the Chairman (DVB) that he was entitled for regularization as Medical Officer for the reasons that in a similar case the Junior Medical Officers, who were appointed on ad-hoc and short-term contract basis by the Delhi Administration in the year 1986 and were paid consolidated monthly wage had been regularized for the post as per the Judgment given by the Central Administrative Tribunal on 18.12.1987.

16. Ld. Counsel has submitted that, moreover, vide order dated 13.01.1999 respondents were restrained from creating any break in service of the petitioner till further orders.

17. Ld. Counsel has relied upon a case of Rudra Kumar Sain and Others Vs. Union of India and Others, wherein it is held as under:

The three terms ad hoc, stop gap and fortuitous are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression fortuitous in Stroud's Judicial Dictionary is accident or fortuitous casualty. This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to fortuitous. In Blacks Law dictionary, the expression fortuitous means occurring by chance, a fortuitous event may be highly unfortunate. It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression ad hoc in Blacks Law Dictionary means something which is formed for a particular purpose. The expression stop-gap as per Oxford Dictionary means a temporary way of dealing with a problem or satisfying a need.

The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post

will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as ad hoc or stop-gap. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as fortuitous in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as ad hoc appointment. It is not possible to lay down any straightjacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.

In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be stop-gap or fortuitous or purely ad hoc. In this view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be fortuitous/ad hoc/stop-gap are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

18. Ld. Counsel has further relied upon a case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, wherein it is held as under:-

Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College (1962) Supp. 2 SCR 144. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute

or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanapa (supra)*, *R.N. Nanjudappa (supra)*, and *B.N. Nagarajan (supra)*, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

19. On the other hand, Mr. Vikram Nandrajog, Id. Counsel appearing on behalf of the respondent NDPL has submitted that petitioner was never appointed on a regular basis to the post of Medical Officer under the then DESU. He was purely on ad-hoc basis for a period of three months or till the post is filled up on a regular basis whichever is earlier. He submitted that the Recruitment and Promotion Rule dated 14.11.1975 qua the appointment to the post of Medical Officer were amended in the year 1984 and the Medical Officer was changed from Class-II to Category-"A?".

20. It is further submitted that the appointment to the said post of Medical Officer was required to be made / filled up through Union Public Service Commission. However, he has fairly conceded that DVB and DESU forwarded the case of the petitioner to the Union Public Service Commission, but the name of the petitioner was never recommended for appointment for the post of Medical Officer on regular basis.

21. Moreover on 04.07.2000 petitioner withdrew the aforesaid Writ Petition, therefore, the relief sought by the petitioner was given up on withdrawing the same. Therefore, the petitioner has no claim qua regularization of service as Medical Officer or any other post / capacity under DESU / DVB or the present

respondent.

22. Ld. Counsel for the respondent has further submitted that "Rule" along with an interim order having been issued in the aforesaid Writ Petition on the first hearing itself, it seems the subsequent withdrawal of the said Writ on 04.07.2000 was not processed / noted by the erstwhile DVB in its records. The present respondent i.e. New Delhi Power Limited (NDPL) was incorporated on 04.07.2001 and inherited the distribution undertaking on 01.07.2002 along with the assets, liabilities, personnel and proceedings in pursuance of Statutory Transfer Scheme notified by the Government pursuant to Section 14-16 and 60 of the Delhi Electricity Reforms Act, 2000. The petitioner got transferred in routine to the present respondent.

23. Ld. Counsel has relied upon a case of Secretary, State of Karnataka & Ors. (Supra), wherein it is held as under:

When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be

absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

24. I heard Id. Counsel for parties.

25. No doubt, no right can be founded on an employment on daily wages to claim that such employee should be treated at par with a regularly recruited candidate, however, in a case of Uma Devi (supra), the Apex Court directed the Union of India, the State Government and their instrumentalities to take steps to regularize as an one time measure, the services of such irregularly appointed, who had worked for 10 years or more.

26. The case in hand is on better footings. The petitioner was appointed in pursuance of the DESC's approval vide order dated 09.04.1986. Moreover, vide proposal contained in GM (E)'s letter No. F 4(1) A & G /86/Mtg./2132 dated 23.09.1992 regarding filling the post of Medical Officer was considered, decided and sent to UPSC. Therefore, the respondent had given him high hope and he continued in service.

27. In the year, 1996, Delhi Vidyut Board (DVB) became the successor of DESU. Second time, Addl. General Manager (A) of the then Delhi Vidyut Board vide letter dated 31.03.1997 referred the case of the petitioner for regularization to the Secretary, UPSC. When no response came from the UPSC, the aforesaid authority vide letter dated 04.07.1997 again requested the UPSC to expedite the approval on the proposal sent by them. Thus the hope of the petitioner continued till 1997.

28. In the absence of any response from the UPSC, finally, the petitioner knocked the door of the court. Vide order dated 13.01.1999, this court granted interim protection, restraining the first respondent from creating any break in service of the petitioner until further orders. In this manner, petitioner was enjoying the interim protection from the Court and the case was pending.

29. It emerges from the submission of Id. Counsel for the parties that at one point of time, respondent assured the petitioner that if he withdraws the case, he will be regularized. On this, petitioner had withdrawn the case in the presence of Counsel for respondent as is evident from the order of withdrawal. Therefore, from any stretch of imagination, it cannot be believed that respondents were not aware of the withdrawal of the petition by the petitioner and he continued with the present respondent till the impugned order dated 15.06.2010.

30. Moreover, the respondent sent the case of the petitioner to the UPSC twice, but no decision was taken at their end. As per Recruitment and Promotion Rules, 1984 for making the direct recruitment, the UPSC has to be consulted. The respondent already taken the steps and consulted the UPSC, however, the UPSC did not take any decision. In such a situation, the petitioner should not suffer on non-decision on behalf of the UPSC.

31. The petitioner is a qualified Doctor and eligible for the post of Medical Officer. He was appointed through proper procedure. Even no notice was issued to him prior to his termination. Petitioner worked for more than 24 years w.e.f 19.05.1986 with DESU, DVB and NDPL (present respondent).

32. Therefore, the termination order dated 15.06.2010 is bad in law, arbitrary and in violation of the principles of natural justice. Therefore, the order dated 15.06.2010 is set aside and the respondent is directed to reinstate the petitioner in service with no back wages. In view of the above, instant petition is allowed with no order as to costs.

CM. No. 9806/2010

In view of the above, the instant application becomes infructuous and disposed of as such.