

CENTRAL ADMINISTRATIVE TRIBUNAL

(OA) Original Appl./1360/2012

JUDGEMENT

Central Administrative Tribunal
Principal Bench

O.A. No.1360/2012
MA No.1144/2012

Order reserved on: 08.01.2014

Order pronounced on: 13-.02.2014

Hon ble Mr. V. Ajay Kumar, Member (J)
Hon ble Mr. V.N. Gaur, Member (A)

1. Smt. Sarita Khatri, W/o Mr. Vinod Kumar,
R/o Gali Kappa, Near Shivmandir,
Village Chawla, Delhi.
2. Smt. Geeta Rohilla, W/o Mr. Sarwan Rohilla,
R/o 734/16, Station Block, Prem Nagar,
Nangloi-1, Delhi-86.
3. Smt. Priti Chhaya, W/o Mr. Som Dutt Sharma,
R/o Village and Post Office
House No.920, Harijan Basti,
Village and Post Office Ladpur,
Delhi-81.
4. Smt. Poonam Sharma, W/o Mr. Rajiv Kaushik,
R/o B-6/120-121, Sector-XI, Rohini,
Delhi-85.
5. Smt. Reena, W/o Mr. Sumit,
R/o Ishwar Colony, Bhawana,
Near M.D. Public School,
Delhi-39.
6. Smt. Bhawna, W/o Mr. Ishwar Singh,
R/o 143, Village & P.O. Ghevra,
Delhi-81.
7. Smt. Usha Sharma, W/o Mr. Balram Sharma,
R/o House No.180/2, Haidarpur,
Ambedkar Nagar, Delhi.
8. Smt. Jyoti Kaushik, W/o Mr. Deepak,
R/o House No.232/3, Ambedkar Nagar,

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Delhi.

9. Smt. Poonam, D/o Mr. Dhoop Singh,
R/o House No.1857, Gali No.15-B,
Swatantra Nagar, Narela,
Delhi-40.

10. Smt. Geeta, D/o Mr. Roop Ram Rathore,
R/o House No.173, Khera Kalan,
Delhi-82.

11. Smt. Swati Chug, D/o Mr. Jawaharlal Chug,
R/o AC-130-A, Shalimar Bagh,
Delhi-88.

12. Smt. Kamlesh Kumari, W/o Mr. Ramesh Kumar,
R/o House No.433, Village & Post Office,
Dichaon Kalan, Delhi-43.
-Applicants

(All the applicants are Supervisor, Integrated Child Development Scheme, Govt. of NCT Delhi.)

(By Advocate Shri E.J. Verghese)

Versus

1. Govt. of NCTD through
The Chief Secretary,
Delhi Secretariat,
New Delhi-110013.

2. The Secretary,
Department of Women & Child Development,
Govt. of NCT, 1, Canning Line, K.G. Marg,
New Delhi-110001.

3. The Director,
Department of Social Welfare,
Govt. of NCT, GLNS Complex,
Delhi Gate,
New Delhi-110001.

4. The Director,
Integrated Child Development Scheme,
Department of Women & Child Development,
Govt. of NCT, 1, Canning Line, K.G. Marg,
New Delhi-110 001.

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-Respondents
(By Advocate Mrs. Pratima Gupta)

O R D E R

Mr. V.N. Gaur, Member (A):

MA-1144/2012 for joining together in single application under Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987 is allowed.

2. This Original Application has been filed by 12 applicants, who were appointed as Supervisor (Female) by the respondents after going through a recruitment process consisting of interview. 88 posts of Supervisor (Female) in the Social Welfare Department had been advertised on 17.08.2007. Though the initial appointment of the applicants was for a period of six months, they have continued to serve with the department uninterrupted since then. This Tribunal has also ordered in MA-3097/2012 in the present OA not to terminate the services of the applicants till the final disposal of this OA. The applicants have sought the following reliefs:

8 [a] Allow the Application of the Applicant under 19 of the Administrative Tribunals Act, 1985 with interest.

[b] Direct the respondents to consider conversion of the posts of applicants from temporary to permanent posts as the applicants had rendered more than 3 years service under the provisions of OM dated 23/5/2011 with all consequential benefits.

[c] Direct the respondents to release the bonus due to applicants as the applicants have completed more than 3 years continuous service.

[d] direct the respondents to extend the medical facilities.

[e] direct the respondents to grant the maternity and child care leave as authorized.

[f] Grant the cost.

And

[e] any other relief, if any, this Honourable Tribunal deems fit and proper in the facts and circumstances of the case.

3. The learned counsel for the applicants has argued that the applicants had been appointed against the substantive posts, as confirmed by the respondents through RTI and have completed more than 03 years of service. The existing Government instructions require the department to take steps for conversion of the temporary posts into permanent if the posts have been in existence for more than 03 years. The department had not taken any action in this regard. The learned counsel also pointed out some glaring disparity and discrimination, for example, in the year 2007 the applicants were appointed on a consolidated emoluments of

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Rs.9,000/- per month when a clerk was being paid Rs.6,500/- and a peon Rs.4,000/-. After the VI Central Pay Commission (CPC) recommendation the salary of the peon was increased to Rs.10570/-, clerk Rs.9600/- while the emoluments of applicants remained the same, i.e. Rs.9,000/-. Similarly the respondents have appointed 182 Supervisors (Female) on outsource basis through an NGO ICSL on a lump sum salary of Rs.15,000/- per month. Thus the respondents have been discriminatory, arbitrary and exploitative in their approach to the applicants. The learned counsel pointed out that the applicants have not been given non-productivity linked bonus despite rendering more than 03 years of service, as envisaged in Ministry of Finance, Department of Expenditure OM dated 22.09.2010. The applicants have also been denied maternity and child care leave though the applicants are entitled to it. The learned counsel relied on the following judgments:

i) DTC v. DTC Mazdoor Congress & Others, 1991 (1) SLJ 56 (SC) where the Hon ble Supreme Court was dealing with the constitutional validity of regulation 9 [b] that authorized termination on account of reduction in the establishment or in circumstances other than those mentioned Clause [a] to Regulation [b] by serving one month s notice or pay in lieu thereof. Justice Sawant in his concurring opinion held that the provision contained the much hated rules of hire and fire reminiscent of laissez faire and unrestrained freedom of contract and that any such rule have not place in service conditions.

ii) Central Inland Water Transport Corporation Ltd. & Anr. V. Brojo Nath Ganguly, 1986 (2) SLJ 320 SC where the Hon ble Supreme Court had refused to enforce an unfair and unreasonable clause in a contract entered into between parties who did not have equal bargaining power.

iii) Secretary, State of Karnataka & Others v. Umadevi & Others, (2006) 4 SCC 1, where a protection has been given to those appointed by the due process of law.

iv) Harjinder Singh v. Punjab State Warehousing Corporation, 2010 (1) SCALE 613 where the Hon ble Apex Court has held that if a man is deprived of his livelihood he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity and the freedom enshrined in the constitution remains illusory.

v) Union of India v. Dineshan K.K., (2008) 1 SCC 586 where the principle of equal pay for equal work has been considered and explained.

vi) Randhir Singh v. Union of India, AIR 1982 SC 879 and D.S. Nakara v. Union of India, 1983 SCC (L&S) 145 with regard to the doctrine of equal pay for work which has assumed the status of a Fundamental Right.

vii) Rudra Kumar Sain and others v. Union of India and others, (2000) 8 SCC 25, where it has been held that appointment of employee possessing statutory qualifications to the promotional post after due consultation with or approval of, the competent authority, and continues for a fairly long period, held, is not ad hoc, fortuitous or stopgap.

viii) Mrs. Praveen Khan & Others v. Govt. of NCT Delhi & others, OA no.1184/2009 with OA no.1461/2009, where a Full Bench of this Tribunal has held that a set of contractual employees shall not be replaced by another set of contractual employees except if the contractual employees are not working satisfactorily.

4. With regard to the claim of applicants for grant of maternity leave the learned counsel relied on the decision of the Hon ble Apex Court in the case of Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr., 84 (2000) DLT 450 (SC), decision of the Hon ble High Court of Delhi in Bharti Gupta v. Rail India Technical and Economical Services Ltd. (RITES) & Ors., 123 (2005) DLT 138 and a decision of the Chandigarh Bench of this Tribunal in Ms. Sonika Kohli & Anr. V. Union of India & Ors., 2004 (3) SLJ 54 (CAT). In these cases it has been held that ad hoc female employees or female employees working on muster roll are also entitled for maternity leave for certain periods prior to and after delivery.

5. On the other hand, learned counsel for the respondents opposing the reliefs claimed by the applicants stated that the applicants were appointed on contract basis on a fixed remuneration of Rs.9,000/- which was

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mentioned in the open advertisement issued by the department. The offers of engagement of the applicants as Supervisors (Female) on contract basis also clearly mentioned the terms of contract, which did not include bonus, medical facilities and maternity/child care leave. Learned counsel stated that the status of the posts is still temporary due to administrative reasons and the status of the applicants was still contractual. The learned counsel, however, did not elaborate what those reasons were, compelling the respondents in not initiating the proposal for conversion of the temporary posts into permanent despite there being clear instructions of the Government in this regard, as submitted by the applicants.

6. With regard to the enhancement in the emoluments of the applicants it had been submitted that there is a proposal for revision of the emoluments of contractual Supervisors, which has already been concurred by the Finance department and the same has already been offered to the applicants. This has, however, been denied by the applicants in their rejoinder. The learned counsel also pointed out that the applicants were not entitled for non-productivity linked bonus as per the OM issued by the Government of India, quoted by the applicants and as enclosed with their OA. Relying on the decision of the Hon ble Apex Court in Dr. Arundhati A. Pargaonkar and another v. State of Maharashtra, AIR 1995 SC 962, the learned counsel submitted that continuation of service by itself did not give rise to the claim of regularization and the respondents were liberal in issuing experience certificate to the applicants, who require the same at the time of applying either for regular employment through DSSSB or higher posts in other departments. Reiterating the averments made in para 4 (23) of the counter-reply the learned counsel stated that the applicants had not been appointed through proper channel, i.e., by qualifying the written exam and interview conducted by the DSSSB and as such the citations quoted by the learned counsel for the applicants where the contractual/ad hoc employees have been appointed through the same mode of selection as prescribed for the direct recruits, are not relevant in this case. The department was in the process of taking action to notify the vacancies through DSSSB for the recruitment against the sanctioned posts. The applicants could participate in the selection process when the same is advertised.

7. With regard to the maternity/child care leave the learned counsel pointed out that the leave was being granted to contract workers as per the CCS (leave) Rules applicable to the contractual staff, which entitles them to earned leave, half pay leave and commuted leave. They are not entitled to any other leave except Government holidays.

8. We have carefully considered the submissions made by the learned counsels and the material placed on record by both the sides. The respondents have admitted that the existing instructions do require the department to process for conversion of the temporary posts into permanent after the same have continued to exist for more than 03 years. However, for some undisclosed administrative reasons such a proposal has not been initiated. The applicants have not made any prayer for their regularization, as is apparent from the prayer 8 [b], viz. Direct the respondents to consider conversion of the posts of applicants from temporary to permanent posts as the applicants had rendered more than 3 years service under the provisions of OM dated 23/5/2011 with all consequential benefits which is also in line with the judgment of the Hon ble Apex Court in Umadevi (supra). The judgment in Harjinder Singh (supra) is also not applicable as of now, since there has been no move on the part of the respondents to retrench the applicants. We are, however, concerned that the applicants who had been appointed in the year 2007, are continuing to get the same emoluments, notwithstanding the raise in the emoluments of other contractual workers in the same department, as pointed out by the applicants and not contradicted by the respondents. The respondents have deployed 182 Supervisors (Female) on outsource basis paying Rs.15,000/- per month. These outsourced employees are appointed against the same posts, doing the same job under the same conditions are getting higher compensation, as claimed by the applicants. However, it has not been brought out whether these outsourced

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persons are also entitled to earned leave, half pay leave and commuted leave, as admissible to the applicants under their terms of appointment. Therefore, we are not in a position to compare the total package being offered to the two sets of employees, including the emoluments but suffice it would to say that the applicants cannot be singled out for binding them down to the contract of the year 2007 when all other group employees, including daily wage employees have their salary and wages raised following the recommendations of the VI CPC or on the basis of minimum wages. Though the respondents have claimed that hike in the emoluments of the applicants have been approved by the Finance department and has been offered to the applicants, the same has been denied by the applicants in their rejoinder. This needs to be reconciled by the respondents.

9. On the issue of bonus from the applicants side the OM dated 22.09.2010 of the Ministry of Finance has been quoted but a perusal of the same shows that there is no mention of contract employees in that OM. The applicants are, therefore, not entitled for bonus under the existing scheme. However, as the name itself suggests, the OM of 22.09.2010 refers to non-productivity linked bonus (ad hoc bonus), meaning thereby that it was not linked to productivity and every one under the employment of the respondents is entitled to this bonus. It is well established under the law that bonus is a deferred wage, to which each and every employee is entitled once the scheme is in place. The present scheme also includes casual labours who have worked in offices following a 6-day week for at least 240 days for each year for 03 years or more (206 days in each year for 03 years for more in the case of officers observing 5-day week). It, therefore, stands to logic and equity demands that contractual employees also should be considered for inclusion in this scheme, having served the same employer with only difference of mode of engagement.

10. With regard to the medical leave the terms of contract of the applicants clearly mentions the types of leave that will be admissible to them and, therefore, there does not appear to be any further scope for modifying the same. The maternity leave has been the subject matter of several judgments of Hon ble Apex Court, Hon ble High Court and this Tribunal. We would particularly refer to the judgment of the High Court of Delhi in Bharti Gupta (supra), where the petitioner, a qualified Architect was initially appointed by the respondents on contractual basis for a period of six months. The said appointment of the petitioner continued from time to time upto 15.10.2000 uninterruptedly, when she applied for maternity leave, which was denied to her on the ground that her contractual appointment ceased from 16.10.2000. The Hon ble High Court of Delhi after hearing both the counsels held that respondent establishment is covered under the Maternity Benefits Act, 1961 and they cannot escape its obligation to pay benefits under the 1961 Act and accordingly the directions were issued to the respondent-RITES. Further the Hon ble Apex Court in Female Workers (Muster Roll) (supra) has held that the provisions of Maternity Benefit Act are wholly in consonance with Directive Principles of State Policy as set out in Articles 39 and 42 of the Constitution. There is nothing contained in the Maternity Benefit Act which entitles only regular women employees to benefit of maternity leave and not those engaged on muster roll on daily wage basis. This Tribunal also in Sonika Kohli (supra) has held that the contract teachers were entitled to maternity leave. We are, therefore, convinced that applicants in this case also will be covered by the doctrine already laid down in the aforesaid cases.

11. Taking the entire conspectus into account, it is directed that:

- i) the respondents shall take action for conversion of the posts of Supervisor (Female) presently held by the applicants, into permanent posts in accordance with the policy already laid down by the Government in this regard.
- ii) The applicants shall be entitled to maternity leave with pay in accordance with the rules as applicable to the regular Supervisors (Female).
- iii) As already admitted by the respondents the emoluments of the applicants shall be suitably raised, taking into account the package offered to the outsourced persons doing the same job and other similarly placed

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persons in the department.

iv) The respondents shall comply with these directions within a period of 03 months from the date of receipt of a copy of this order.

v) The OA is allowed in the aforesaid terms. No costs.

(V.N. Gaur) (V. Ajay Kumar) Member (A) Member (J)

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