

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on :30.11.2022
Pronounced on:06.12.2022

WP(C) No.2635/2022
CM No.6660/2022

Murad Ali Sajan & Ors

.....Petitioner(s)

Through: Mr.Bhat Fayaz, Advocate

V/s

UT of J&K & Ors

..... Respondent(s)

Through: Mr. M.A.Chashoo, AAG

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioners have challenged Advertisement Notice No.3 of 2022 dated 17.11.2022, whereby, respondent No.2 has invited applications for temporary engagement of Staff Nurses on academic arrangement basis initially for a period of six months. A further direction has been sought by the petitioners upon the respondents to allow them to continue on the posts of Staff Nurses till such time these posts are filled up on substantive basis.
2. As per the case of the petitioners they responded to the Advertisement Notice No.5 of 2020 dated 07.10.2020 issued by respondent No.2, whereby applications were invited for engagement on academic arrangement basis for the posts of Staff Nurses for a period of six months or till such time the posts are filled up on substantive basis. The petitioners participated in the selection process and they were engaged as Staff Nurses in terms of Government Order No.16-SKIMS of 2021 dated April 28, 2021. According to the petitioners, after the

expiry of initial period of their engagement, extension was given by respondent No.2 for continuation of their services from time to time. Last of such extensions was granted in favour of the petitioner in terms of Communication No.GAD-MTGOSKIM/15/2021-Part(1) dated 22.11.2022 till ending of November, 2022. In the meanwhile, respondent No.2 issued the impugned Advertisement Notice, inviting applications for filling up of the vacant posts of Staff Nurses on academic arrangement basis.

3. The petitioners have challenged the impugned Advertisement Notice primarily on the ground that it was impermissible in law for the respondents to replace the temporary arrangement of engagement of petitioners with a similar arrangement. According to the petitioners even though their appointment is purely of temporary and contractual in nature, yet the respondents cannot replace them by a similar arrangement.
4. The respondents have contested the writ petition by filing a reply thereto. In their reply the respondents have submitted that the posts held by the petitioners are purely on contract basis and once their contract came to an end they have no legal right to continue. It has been further submitted that it is open to the petitioners to participate in fresh selection process and they can again be engaged on vacant posts of Staff Nurses if they succeed in the selection process. It has been contended by the respondents that the services of the petitioners were engaged on academic arrangement basis so as to take care of the exigencies that had cropped up due to the spread of Covid-19

pandemic in the year 2020. It is further submitted that though the petitioners were engaged as Jr. Staff Nurses but they were made to work on the posts of Sr. Staff Nurses, because those posts were lying vacant on account of stay order passed by this Court in another writ petition. It has been submitted that now the litigation relating to the promotion to the posts of Sr. Staff Nurses has come to an end and as such the Jr. Staff Nurses are to be promoted to these posts. It is claimed that on account of this development the respondents have issued the fresh Advertisement Notice for filling up of the posts of Jr. Staff Nurses on academic arrangement basis.

5. It has been contended by the respondents that as on the date of filing of the writ petition the petitioners are no more on the rolls of the Institute, as their contract of engagement has already expired, as such, they cannot maintain the instant writ petition. It is also contended that the competent authority has taken a decision that the contracts of petitioners would not be extended beyond November 2022, as is clear from the communication dated 22.11.2022 issued by the Under Secretary to the Government and, as such, the petitioners have no right to challenge the impugned Advertisement Notice.
6. Heard learned counsel for the parties and perused the record.
7. There is no dispute to the fact that the engagement of the petitioners on the posts of Jr. Staff Nurses was purely contractual in nature initially for a period of six months, which was extended by the respondents from time to time up to ending November, 2022. It has been fairly conceded by learned counsel for the petitioners that the

petitioners have no right to ask for extension of their contract of engagement once the same has come to an end. The only contention of the learned counsel for the petitioners is that it was not open to the respondents to replace the contractual and temporary arrangement with another similar arrangement. The learned counsel has submitted that the petitioners cannot have any grouse against the action of respondents regarding their disengagement if the respondents take steps to fill up the vacant posts of Jr. Staff Nurses on substantive basis, but they cannot make an ad hoc arrangement to replace the petitioners. In this regard learned counsel for the petitioners has relied upon the judgment of the Supreme Court in the case of *Manish Gupta & Anr v. President Jan Bhagidari Samiti & Ors* 2022 SCC online 485.

8. Per contra, learned counsel for the respondents has submitted that the nature of engagement of petitioners is purely contractual and once their contract has come to an end they have no locus standi to challenge the impugned Advertisement Notice. It has been further contended that the engagement of the petitioners, though made on the posts of Jr. Staff Nurses, yet they were allowed to work on the posts of Sr. Staff Nurses and once the hurdles regarding the promotion of Jr. Staff Nurses to the posts of Sr. Staff Nurses were removed, the respondents were well within their rights to issue the impugned Advertisement Notice for engagement of Jr. Staff Nurses, so that the vacancies that would be created due to the promotion are filled up. Learned counsel for the respondents in support of his contentions has

relied upon the judgments of the Supreme Court in the case of *Director, Institute of Management Development, UP v. Pushpa Srivastava* (1992) 4 SCC 33 and *Kalpataru Vidya Samasthe and Another vs. S.B.Gupta and Another* (2005) 7 SCC 524 and the judgments of this Court in *State of J&K & Ors vs. Afshan Majid & Ors* 2008(2) JKJ 550 and the judgment dated 24.03.2021 in the case of *Nisha Sharma vs. UT of J&K and Others* WP(C) No.267/2021.

9. So far as the contention of the learned counsel for the respondents that the petitioners were assigned the duties of Sr. Staff Nurses and, as such, once the hurdles for promotion of the posts of Sr. Staff Nurses had been removed the respondents are well within their jurisdiction to issue the impugned notification is concerned, the same is without any merit. This is so for the reason that the petitioners were admittedly engaged pursuant to Advertisement Notice No.5 of 2020 dated 07.10.2020, which relates to the engagement on the vacant posts of Jr. Staff Nurses i.e Staff Nurses Grade II. The engagement order of the petitioners dated 28.04.2021 also indicates that they were engaged on the posts of Staff Nurses Grade II i.e Jr. Staff Nurses. It is immaterial as to what duties were assigned to the petitioners, once it is shown from the record that they were engaged on the posts of Staff Nurses Grade II (Jr. Staff Nurses). Therefore, the contention of learned counsel for the respondents in this regard is without any merit.

10. The main contention on which the petitioners have based their case is that it is not open to the respondents to replace an ad hoc contractual arrangement with a similar arrangement and on this ground the

impugned Advertisement Notice is liable to be quashed. A perusal of the impugned Advertisement Notice clearly suggests that the respondents intend to make engagement against the vacant posts of staff Nurses Grade II on academic arrangement basis initially for a period of six months. Admittedly, the Advertisement Notice is not for filling up of these posts on substantive basis. The petitioners are also working on the posts of Staff Nurses Grade II on academic arrangement which is contractual in nature. Thus the respondents intend to replace the contractual arrangement of the petitioners with a similar arrangement. The question that falls for determination is as to whether the respondents can replace a contractual arrangement with a similar arrangement.

11. In *Ratan Lal and Ors v. State of Haryana* 1985 SCC (4) 43 the Supreme Court, while dealing with the cases where the State Government had resorted to practice of appointing of teachers on ad hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation and to re-appoint them on ad hoc basis at the commencement of next academic year, has deprecated this policy of State Government to appoint teachers on ad hoc basis and terminate their services and then appoint them again on ad hoc basis.
12. Similarly, in the case of *Hargurpratap Singh vs. State of Punjab & Ors* 2007(13)SCC 292, the Supreme Court while dealing with the cases where appointment of the employees was made on ad hoc basis in several colleges, observed as under:-

“3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.”

13. Relying upon the aforesaid judgments, the Supreme Court has in case of *Manish Gupta & Anr (supra)*, while dealing with a case where teachers were appointed as guest faculty for a particular academic year and after the end of the academic year their services were discontinued whereafter fresh advertisements were issued for the next academic year, observed as under:

*“12.A perusal of the advertisement dated 24 th June, 2016 issued by the Principal, Government Kamla Raja Girls Post Graduate Autonomous College, Gwalior, which is at Annexure P-2 of the Appeal Paper Book and the advertisement dated 2nd July, 2016 issued by the Principal, SMS Government Model Science College, Gwalior, M.P., which is at Annexure P-3 of the Appeal Paper Book, would show that the appointments were to be made after the candidates had gone through due selection procedure. Though Shri Nataraj, learned ASG has strenuously urged that the appointments of the appellants were as guest lecturers and not as ad hoc employees, from the nature of the advertisements, it could clearly be seen that the appellants were appointed on ad hoc basis. It is a settled principle of law that an ad hoc employee cannot be replaced by another ad hoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed. Reliance in this respect can be placed on the judgment of this Court in the case of *Rattan Lal and others vs. State of Haryana and others*, (1985) 4 SCC 43 and on the order of this Court in the case of *Hargurpratap Singh vs. State of Punjab and others*, (2007) 13 SCC 292”.*

14. From the foregoing enunciation of law on the subject, it is clear that there is consistent view of the Supreme Court that an ad hoc employee cannot be replaced by another ad hoc employee and he can be

replaced only by another candidate who is regularly appointed by following a regular procedure prescribed.

15. In the instant case, the petitioners were engaged on academic basis and the respondents after terminating their contract have issued the impugned Advertisement Notice, inviting applications from the eligible candidates for their engagement on academic arrangement, which is similar to the one on which the petitioners were engaged. Such course of action, in the face of the law laid down by the Supreme Court, is not permissible.

16. So far as the judgment in *Pushpa Srivastava's case (supra)*, relied upon by learned counsel for the respondents is concerned, it does not relate to a situation where one ad hoc arrangement was sought to be replaced by another ad hoc arrangement. The case relates to the appointment on contractual basis for a limited period and the Supreme Court has held that at the expiry of the period of the contract right of an employee in the said post comes to an end.

17. In *Kalpataru Vidya Samasthe's case (supra)*, a similar proposition of law has been laid down by the Supreme Court and this case also does not relate to replacement of ad hoc arrangement by another ad hoc arrangement.

18. So far as the judgments of this Court in *Afshan Majid and Ors's case (supra)* and *Nisha Sharma's case (supra)* are concerned, the afore noted judgments of the Supreme Court in the cases of *Ratan Lal and Ors (supra)* and *Hargurpratap Singh vs. State of Punjab & Ors (supra)*

have neither been brought to the notice of the Court nor have these judgments been considered by this Court. The judgments in the aforesaid two cases passed by this Court have been rendered in ignorance of the principles laid down by the Supreme Court in aforesaid two cases. In fact in *Nisha Sharma's case (supra)*, this Court has in para (11) of the judgment clearly noted that no law has been shown which provides that a contractual employee cannot be replaced by another contractual employee, which means that the judgments of the Supreme Court held in *Ratan Lal's case (supra)* and in *Hargurpratap Singh's case (supra)* were not brought to the notice of the Court. It is to be noted that *Manish Gupta's case (supra)* was decided well after the judgments in *Nisha Sharma's case* and *Afshan Majid's case* had been delivered by this Court. Obviously the ratio laid down in *Manish Gupta's case (supra)* was not considered by this Court in the aforesaid two judgments.

19. In view of the clear dictum of law laid down by the Supreme Court in *Manish Gupta's case (supra)* by relying upon its earlier judgments in *Ratan Lal and Ors v. State of Haryana* and *Hargurpratap Singh vs. State of Punjab & Ors*, it was not open to the respondents to invite the applications from the candidates for filling up of posts of Staff Nurses on academic arrangement basis after disengaging the services of the petitioners, who were already working on a similar arrangement with the respondents. It may be correct to say that the petitioners are not entitled to seek extension of their contractual engagement but at the same time the respondents' action of replacing the academic

arrangement by another similar arrangement cannot be countenanced in law. The respondents can only replace the petitioners by filling up the vacant posts of Staff Nurses on substantive basis, which they have not chosen to do.

20. For the foregoing reasons, the writ petition is allowed and the impugned Advertisement Notice No.3 of 2022 dated 17.11.2022 is quashed. The respondents are, however, at liberty to issue a fresh Advertisement Notice inviting applications for filling up of vacant posts of Staff Nurses on substantive basis by making regular appointment against these posts. It is further directed that in case respondents need the services of Staff Nurses on contractual basis, they shall engage the services of the petitioners who are already working on contractual basis with the respondents.

21. The writ petition stands **disposed of** accordingly.

(SANJAY DHAR)
JUDGE

SRINAGAR

.12.2022

Sarveeda Nissar

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No