

SUPREME COURT OF INDIA

Union Public Service Commission

Vs.

Dr. Jamuna Kurup

C.A.No.2294-2329 of 2008

(K. G. Balakrishnan CJ. R. V. Raveendran and J. M. Panchal JJ.)

21.02.2008

JUDGMENT

K.G. Balakrishnan,CJ.

1. Leave granted. Heard counsel.

2. The Union Public Service Commission (for short 'UPSC') has filed these appeals against the judgment dated 26.4.2004 of a learned Single Judge of Delhi High Court in WP (C) Nos. 4787-4823/2004.

3. The Municipal Corporation of Delhi (respondent no.38 herein, for short 'the Corporation' or 'MCD') had sent a requisition to UPSC the appellant herein for recruiting 45 Ayurvedic Vaidas (that is, Medical Officers Ayurved). As the process of selection by UPSC was likely to take considerable time the Corporation issued an advertisement dated 18.10.2000 inviting applications for contract appointment (on the basis of a walk-in interview) on a fixed salary of Rs.10, 000/- for a period of six months or till such time such posts are filled on regular basis through UPSC, whichever was earlier.

4. It is stated that respondents 1 to 37 (for short 'respondents') applied for such contractual employment and were appointed in April, 2001. The letters of appointment on contract basis were issued to respondents in terms of the advertisement. As the UPSC selections were delayed, the contract appointment of respondents were renewed for periods of six months each by office orders issued in October 2001, May 2002, October 2002, May 2003 and October 2003.

5. by advertisement dated 13.3.2004 (corrected on 27.3.2004) UPSC advertised 45 posts of Ayurvedic Vaidas. The term regarding age limit in the said advertisement prescribed that the age limit of the candidate (as on 1.4.2004) should not exceed 35 years. It further provided:

"Age is relaxable for employees of Municipal Corporation of Delhi up to five years. Age is relaxable up to five years for SC/ST, and up to three years for OBC in respect of vacancies reserved for them. Age is also relaxable for employees of the Government of India and Union Territories up to five years."

6. Respondents filed WP(C) Nos.4787-4823/2004 in Delhi High Court seeking a direction to the Corporation to regularize their services in the vacant posts of Medical Officer (Ayurved) with effect from the respective dates of their initial appointment. Alternatively, they prayed that if the High Court was of the view that they could be regulated only pursuant to UPSC selection process, then to grant them due weight age for the service rendered by them on contract basis, and also extend the age relaxation by five years to those who were aged more than 35 years and had worked on contract basis for three years. They also sought a direction to the Corporation to extend the benefit of regular pay scale with consequential benefits and perks attached to the regular post of Ayurvedic Vaid, from the date of their initial appointment. However, when the writ petitions came up for hearing, the respondents (Writ petitioners) submitted that they would be satisfied if two directions were issued, the first being that those who had become overaged should be given the benefit of age relaxation and second, they should not be replaced by persons other than regular appointees.

7. The learned Single Judge was of the view that the writ petitioners were entitled to the said two limited reliefs. Therefore, he disposed of the writ petitions by order dated 26.4.2004 directing that those writ petitioners who had crossed 35 years would be entitled to the benefit of age relaxation corresponding to the number of years they had worked as contractual Medical Officers (Ayurved) under the Corporation and should be treated as eligible with reference to age requirement. He also directed that the services of the writ petitioners should not be replaced by anyone save and except those appointed on regular basis after undergoing the selection process.

8. The UPSC chose to approach this Court by filing SLPs against the order of the learned Single Judge, bypassing the remedy of appeal to the Division Bench, in view of the pendency of a similar issue before this Court in SLP (C) No. 15714/2003 (UPSC vs. Girish Jayantilal Vaghela). The special leave petitions from which these appeals arise, were originally tagged to Vaghela's case on 19.1.2005, but by a subsequent order dated 1.12.2005, they were delinked and ordered to be heard separately.

9. The UPSC contended that the term 'age is relaxable for employees of Municipal Corporation of Delhi' in the advertisement dated 13.3.2004 is intended to refer only to regular and permanent employees of MCD. It was also contended that being short term contract employees, the respondents cannot claim to be 'employees of MCD'. For this purpose reliance was placed on the decision of this *Court in UPSC vs. Girija Jayantilal Vaghela*¹ wherein this Court held that persons working on short term contract basis cannot claim the status of Government Servants. UPSC submitted that on a similar interpretation, 'employees of MCD' will not include contract employees.

10. The learned counsel appearing for the respondents submitted that the decision in Vaghela did not apply to the respondents as they did not claim to be government servants. He submitted that the respondents claimed age relaxation as employees of MCD which was specifically provided in the advertisement. We have already noticed that the UPSC advertisement (No. SPL-03-2004) clearly specified that the age limit of 35 years was relaxable for employees of Municipal Corporation of Delhi, up to five years. Therefore, the only question that arises for consideration is whether the word 'employees of MCD' should be construed as referring only to permanent or regular employees of MCD as contended by UPSC or to all employees of MCD including contract employees, as contended by respondents.

11. Even the UPSC recruitment advertisement for the subsequent year (Advertisement No.SPL-54-2005 dated 23.7.2005 issued during the pendency of these matters) inviting applications for filling 16 posts of Medical Officers (Ayurved) in the Municipal Corporation of Delhi (and similar posts in NDMC and Union Territories) provided for age relaxation as follows :

"AGE: Not exceeding 35 years on normal closing date. Not exceeding 38 years for Other Backward Classes candidates and not exceeding 40 years for Scheduled Castes and Scheduled Tribes candidates in respect of vacancies reserved for them. Relaxable for central government servants as per the instructions issued by Government of India including NDMC/MCD from time to time up to five years. Age is also relaxable for employees of NDMC and MCD in respect of the posts in NDMC and MCD respectively up to five years. By interim order dated 9.12.2005, this Court permitted the overage respondents to sit for the examination in relation to the 2005 advertisement subject to the condition that the UPSC shall not publish the result until further orders. By subsequent order dated 9.3.2007, the said interim order was vacated and UPSC was permitted to publish the results and MCD was permitted to proceed with the appointment of candidates selected by UPSC. We are informed that UPSC has neither declared the results nor MCD proceeded to make appointments. Be that as it may."

12. Recruitment to posts in MCD is governed by the Delhi Municipal Corporation Act, 1957 ('Act' for short). Section 90 of the Act contemplates appointment of persons to either permanent posts or temporary posts. Section 90(6) provides that the Standing Committee may on the recommendations of the Commissioner create for a period not exceeding six months any category A or category B post. Section 92 provides that the power to appoint employees whether permanent or temporary shall vest in the Commissioner. Section 96 provides that no appointment to any category A post shall be made except after consultation with the UPSC, but no such consultation is necessary for selection for appointment to any acting or temporary post for a period not exceeding one year. We have referred to these provisions only to show that employment under the Municipal Corporation of Delhi could be either permanent/regular or short term/contractual.

13. The term 'employee' is not defined in the Delhi Municipal Corporation Act, 1957. Nor is it defined in the advertisement of UPSC. The ordinary meaning of 'employee' is any person employed on salary or wage by an employer. When there is a contract of employment, the person employed is the employee and the person employing is the employer. In the absence of any restrictive definition, the word 'employee' would include both permanent and temporary, regular or short term, contractual or ad hoc. Therefore, all persons employed by MCD whether permanent or contractual will be 'employees of MCD'. The respondents who were appointed on contract basis initially for a period of six months, extended thereafter from time to time for further periods of six months each, were therefore, employees of MCD, and consequently, entitled to the benefit of age relaxation. If the intention of MCD and UPSC was to extend the age relaxation only to permanent employees, the advertisement would have stated that age relaxation would be extended only to permanent or regular employees of MCD or that the age relaxation would be extended to employees of MCD other than contract or temporary employees. The fact that the term 'employees of MCD' is no way restricted makes it clear that the intention was to include all employees including contractual employees. Therefore, we find no reason to interfere with the judgment of the High Court extending the benefit of age relaxation.

14. The learned counsel for appellant submitted that the advertisement granted age relaxation to employees of MCD and employees of government of India, and that the words 'permanent' or 'regular' were not used either with reference to 'employees of government' or 'employees of MCD'. It is pointed out that in *Vaghela (supra)*, this Court while dealing with persons employed in identical circumstances, that is 'engaged for a period of six months from the date of joining or till a candidate selected by UPSC joined on regular basis', held that the term 'government servant' did not refer to or include persons employed on contract basis. It is argued that on the same principle, the term 'employees of MCD' cannot include a contract employee of MCD. We cannot agree. *Vaghela (Supra)* related to contract employment by a government whereas in this case the contract employment is by a Municipal Corporation. The reason that weighed with this Court in *Vaghela* to hold that a contract employee was not a government servant was in view of the special connotation of the term 'government servant'. This Court after referring to the decision of the *Constitution Bench in Roshanlal Tandan vs. Union of India*² and the decision in *Dinesh Chandra Sanpma vs. State of Assam*³ held that employment under the government is a matter of status and not a contract even though acquisition of such a status may be preceded by a contract; and that contract employees of the government were governed by the terms of contract and did not possess the status of government servants nor were governed by rules framed under Article 309 of the Constitution, nor enjoyed the protection under Article 311. But a Municipal Corporation is not 'government', and municipal employees are not government servants governed by Article 309 to 311. Though permanent employees of Municipal Corporation or other statutory bodies may be governed by statutory rules, they do not enjoy the status of government servants. Therefore, the decision in *Vaghela*, rendered with reference to government servants may not

be of any assistance in interpreting the term 'employees of MCD'. In fact, for that very reason, these matters were de-linked from the hearing of Vaghela.

15. In view of the above, we dismiss these appeals. We also direct UPSC to declare the withheld results of respondents who had participated in the examination in pursuance of the interim orders of this Court and grant the benefit of age relaxation as per the direction of High Court.

¹2006 2 SCC 0482

²1968 1 SCR 0185

³1977 4 SCC 0441