

Government of India  
Ministry of Labour & Employment,  
Central Government Industrial Tribunal-Cum-Labour Court-II, New  
Delhi.

Present:

Smt. Pranita Mohanty,  
Presiding Officer, C.G.I.T.-Cum-Labour  
Court-II, New Delhi.

**INDUSTRIAL DISPUTE CASE NO. 116/2015**

**Date of Passing Award- 03.11.2022**

Between:

Shri Govind Singh Bisht,  
Through:-  
State Secretary,  
Bhartiya Mazdoor Sangh,  
16-A, Rajpur Road,  
Dehradun.

Workman

Versus

1. The General Manager,  
CMS, ONGC Hospital,  
Dehradun 248001  
Dehradun.

2. The Executive Director,  
Oil and Natural Gas Ltd. Tel Bhawan,  
Dehradun.

Management

Appearances:-

Shri M C Panth  
(A/R)

For the claimant

Shri V K Chopra  
(A/R)

For the Management

**A W A R D**

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of CMS, ONGC Hospital, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-30011/15/2015 (IR(M) dated 08/06/2015 to this tribunal for adjudication to the following effect.

“Whether the demand of workers (Annexure I & II enclosed) regarding permanent status in the

ONGC Hospital who are working since 1996 is justified? IF yes, then what relief the worker will get?

As stated in the claim petition, the 41 claimants whose details has been stated in the claim petition and represented by the state secretary, Bharatiya Mazdoor Sangh were employed as Para medical staff on contractual basis in the hospital run and managed by ONGC. Their initial appointment varies between 1996 to 2012 and some of them have worked for 18 years continuously. The nature of work discharged by them is perennial and the posts in which they have been working are permanent in nature. The ONGC a Nabaratna Govt. owned company, instead of being a model employer has acted in a manner prejudicial to the interest of the claimants and the claimants have been appointed on contractual basis against permanent vacancies and their contract of appointment is being renewed from time to time for fixed terms, which amounts to unfair labour practice. The claimants have further stated that the management ONGC at the time of their initial appointment had requisitioned the names of eligible candidates through the employment exchange. The candidates who were sponsored by the employment exchange were to appear the test as prescribed by the employer and on being successful, were given appointment. In the year 2012, the management again asked those contractual Para medical employees to appear. In the test conducted before renewal of their contract. Though as per the model Industrial standing order, the contractual employees are entitled to be regularized against the vacancy regular posts, the management in the year 2014 made open advertisement for filling up the permanent vacancies of Para medical staff. Being aggrieved, the claimants approached the Hon'ble High Court of Uttarakhand by filing writ petition no 1053/2014 and challenged the advertisement dated 20.07.2014. The Hon'ble High Court of Uttarakhand by interim order dated 24.07.2014 allowed the management to conduct the examination, but restrained the publication of the result till disposal of the writ petition. Thus the management took up a discussion with the claimants as agreed the service of the claimants were extended up to June 2016 and the advertisement dated 20.07.2014, was withdrawn. The claimants were assured of a scheme to be brought shortly for their regularization. With such assurance the claimants also withdrew the Writ petition filed before the High Court of Uttarakhand. On such amicable arrangement, the management also extended the benefits of contributory provident fund to the claimants, a benefit

granted to the regular employees. Thus the workers were under the bonafide belief that their service will be regularized in ONGC. But no step in that regard was taken by the management. While the matter stood thus, The Bharatiya Mazdoor Sangh moved an application before the central labour commissioner Derhadun, alleging that for the perennial nature of work discharged by the paramedical staff, contractual appointment of workers is not permissible under law. Equal pay at par with the permanent paramedical employees was also demanded along with other demands. The Labour Commissioner gave notice to the management and took steps for conciliation. At that point, the management appeared and at the time of conciliation took the stand that the claimants being appointed on fixed term contractual basis can not demand regularization. Since the conciliation failed, the appropriate Govt. referred the matter to this Tribunal for adjudication on the legality of the demand made by the workmen for permanent status as employees of the management ONGC. It has also been pleaded that the management during the pendency of the Industrial Dispute is trying to recruit regular employees against the vacancies they are working.

Being noticed the management ONGC appeared and filed written statement refuting the stand taken by the claimants. It has been pleaded that ONGC is a public sector undertaking having its own Rules governing the procedure of Recruitment and service condition of the employees. Thus the Industrial Standing Order does not have the applicability for the management. The petitioners have been working for the ONGC for the period ranging from 2 to 8 years and not since 18 years as claimed by the claimants. Only 4 of the claimants are working since 18 years. (List of such persons enclosed with the WS) requirement of permanent and temporary staff in the Hospital of ONGC varies depending upon the workload, so also the requirement of Para medics. The no of requirement of Para medics in ONGC Hospital is assessed in an interval of two years by the Human Resource Group (HRG), Derhadun. As per that assessment, the required no of posts for paramedics are sanctioned and advertisements are made in the News Papers inviting applications from the eligible candidates having eligible qualification. The claimants are working in the Hospital of ONGC for some time and they were engaged against an advertisement in which the nature of employment was specifically described as on fixed term contractual basis. The candidates having knowledge of the terms of employment and

being desirous to serve as such, had applied and participated in the written and viva voce test and being selected, had joined in their respective posts. This procedure was adopted each time their period of contract was extended. It has also been pleaded that if the applicability of Model Standing order is accepted for the sake of argument, the said Model Standing Order recognizes the concept of fixed term employment, but does not provide for absorbing the fixed term employees as permanent employees. Thus the claim of the claimants, who are fixed term employees to be absorbed as permanent employees is not permissible under law. Their employment is governed by the terms specified in the contract and they have no vested right on the permanent Para medical posts advertised now. The validity of the contract of different category of paramedics was for two years i.e up to 30<sup>th</sup> June 2014. But the same has been extended up to 30.06.2016, as the claimants had approached the Hon'ble High Court of Uttarakhand and the court passed an interim order directing conduct of the exam for regular Para medical staff, but put a restraint on declaration of the result. In the mean time the claimants sat in a dharna in front of ONGC and also filed an application before the Asst Labour Commissioner Dheradun. During the conciliation as advised by the ALC, it was decided not to discontinue the services of the claimants till the Hon'ble H C of Uttarakhand decides the writ petition filed by the claimants on merit. But no assurance was ever given to the claimants about framing of a scheme to regularize their service. These Para medics were initially appointed after notification of vacancies through employment exchange followed by written and viva voce test. Before expiry of their fixed term employment advertisement was made for fresh short term contractual employment. The claimants had applied, appeared in the tests conducted and being found successful were appointed. These claimants are not the contract labours nor employed through any contractor. Their claim in respect of the regular posts advertised in the year 2014 is illegal and not maintainable. It has also been pleaded that the appropriate Govt. has referred the matter to adjudicate on the claim of the workmen working since 1996. Hence the case of the claimants who were engaged after 1996, can not be adjudicated. With such assertion, the management has pleaded for dismissal of the claim.

The claimants filed replication denying the stand of the management and reiterating the stand taken in the claim petition. It has been explained that the claim for regularization is in respect of

the regular vacancies, now advertised. Considering their long period of service as contractual employees and that they possess the requisite qualification and were selected through a proper selection process, the management should regularize their service instead of making fresh advertisement and this action of the management amounts to unfair labour practice. The claimants in their replication have admitted the fact that all the claimants were not engaged in the year 1996 and their years of appointment varies. But the stand of the management that the reference is in respect of the persons employed in the year 1996 only.

On these rival pleadings the following issues were framed by order dated 21.12.2019.

### **ISSUES**

- 1- If the proceeding is maintainable
- 2- If the action of ONGC in not making the workmen permanent, though appointed against permanent vacancy amounts unfair labour practice.
- 3- Whether the demand of the workmen for absorption against permanent vacancies is justified.
- 4- Whether the workmen are entitled to all the service benefits as claimed by them.
- 5- To what other relief the parties are entitled to.

The claimants filed their individual affidavits to be read as evidence and altogether 32 affidavits were filed. They were examined as WW/1 to WW/32. All the witnesses examined produced and exhibited their appointment letters and certificates in support of their educational qualification.

But on the date fixed for cross examination of the witnesses examined on behalf of the claimants, none appeared on behalf of the management and as such the cross examination was marked as nil. The evidence adduced by the claimants thus stood un rebutted and unchallenged. The management, when called upon to adduce evidence choose not to adduce any oral or documentary evidence.

It is necessary to mention here that during the pendency of this dispute, the claimants moved an application for grant of pay scale at par with the regular Para medical employees and this Tribunal by order dated 29.11.2018, allowed the said petition and directed the management ONGC to pay remuneration and

additional emoluments at par with the regular employees discharging similar nature of work, from the succeeding month of the order. The management filed an application for recall of the said order. But this Tribunal by order dated 24.05.2019, rejected the said application. Being aggrieved the Management moved the Hon'ble High Court of Delhi in WPC No 8597/2019. The Hon'ble High court while upholding the order of this Tribunal on the prayer for interim relief disposed off the said writ application.

At the outset of the elaborate argument advanced on behalf of the management attention of the Tribunal was drawn to the constitution bench judgment of **the Hon'ble SC in the case of Secretary, State of Karnatak vs. Uma Devi**, to emphasize that the prayer for regularization of the contractual employees if would be allowed, the same would amount to back door entry and opposed to the policy of public employment and right guaranteed under the constitution. Reliance has also been placed on several other judicial pronouncements to support the argument that when the claimants having knowledge that their appointment is on fixed term contractual basis had accepted the offer of appointment their claim for regularization is not tenable in law. The counter argument of the claimants is that the principle decided in the case of Uma Devi referred supra has no applicability to labour law and Industrial Dispute , where the issue is about unfair labour practice.. He placed reliance in the case of Narendra **ku Tiwari vs. State of Jharkhand**, in which the **Hon'ble SC** while examining the law declared in the case of Uma Devi, observed that the purpose and intent of the decision in Umadevi was twofold, namely, to prevent irregular and illegal appointment in future and secondly to confer a benefit on those irregularly appointed in the past. With this he submitted that the undisputed and unrebutted evidence adduced by the claimants prove how they have been made victim of the fixed term contractual employment for years and denial of regularization amounts to unfair labour practice for which the relief as prayed should be granted.

## FINDINGS

### ISSUE No1

The management /Respondent in the written statement filed has challenged the maintainability of this proceeding on the ground that the reference is to adjudicate upon the legality and justification of the demand for conferment of the status of permanent

employees to the claimants working in ONGC since 1996. Hence the claimants engaged after 1996 have no right to claim the said status. The learned counsel for the management forcefully argued that the Tribunal can not Travel beyond the reference made by the appropriate Govt. and the adjudication shall be confined to the claim of those claimants only who started working in the year 1996. He pointed out to Para 8 and 10 of the WS where in the no of paramedics engaged in different years and the names of the persons engaged after 1996 has been shown. Basing on that he argued that the engagement of fixed term contractual Para medics depend upon the work load of the Hospital. At an interval of two years the HRG, Derhadun, makes assessment of the work load and recommends the no of paramedics required, which is forwarded to the higher Management for approval and with such approval advertisement is made for engagement of fixed term paramedics. Thus the no varies from tenure to tenure. He emphasized that the Tribunal for the specific reference made should consider the claim of the persons engaged in 1996 only.

Be it stated that the claim has been filed by 41 claimants and in the claim petition in Para 10, the name, DOB, date of joining, the post in which they are working and their qualification has been clearly mentioned. It is true that the date of initial engagement of the claimants vary from 1996 to 2013. It is also an admitted position that all the claimants are continuing to work in the Hospital of ONGC. The management in this proceeding has not adduced any oral or documentary evidence. In Para 8 the no of Para medics engaged in different years has been indicated and the same does not match with the no of the claimants who are still working. Moreover, in para10 of the WS there is a mention of only six Para medics and against the name of three only who are at serial no 20,33and 37 of the claim petition, the date of joining has been indicated. The respondent being in possession of all the documents relating to the engagement of the claimants could have produced documents in support of the stand taken in the WS. In absence of proof to the contrary, the evidence adduced by the claimants and the statement in the claim petition with regard to the initial date of engagement of the claimants is accepted.

The reference received from the appropriate Govt. reads as follows.

“Whether the demand of workers (Annexure I&II enclosed) regarding permanent status in the ONGC

Hospital, who are working since 1996 is justified? If yes, what relief the workmen will get?”

The management has taken a stand that the adjudication should be confined to three of the workmen only who were engaged in the year 1996. This stand taken by the management does not sound convincing since the reference has been made with reference to the claimants mentioned in Annexure I& II, which are nothing but the letters dated 13.06.2014 and 27.05.2014 submitted by Bharatiya Mazdoor Sangh before the ALC containing the names of the claimants forwarded by the ALC to the Govt., which in turn has been forwarded to this Tribunal for adjudication. Hence, it is held that the reference has been received for adjudication of the dispute in respect of all the claimants described in the Annexure to the reference as well as in the claim petition. This issue is thus answered in favor of the claimants.

### **ISSUE No 2&3**

These two issues being interdependent are taken up for consideration together. Admitted position with regard to the claim of the workmen is that these workmen were engaged in the post of Para medics in the Hospital run by ONGC on different dates as mentioned in the annexure received along with the reference and as stated in the claim petition. Both the parties have pleaded that their engagement is on contractual basis and for a fixed term on consolidated remuneration. It is also admitted that the contract has been renewed from time to time pursuant to advertisements published and selection through a process decided by the management. The claimants have described their qualification in the claim petition and while testifying as witnesses have produced documentary proof in support of their qualification, which has not been disputed by the management. The oral and documentary evidence adduced by the claimants thus proves that the claimants having requisite qualification had offered their candidature for the posts advertised and the management after testing their eligibility and suitability in their own way selected and appointed them against the posts held by them. The claimants have filed their appointment letter and the letter correspondence extending their engagement. The management, in the WS has clearly stated that these claimants were selected through a written as well as a viva voce test conducted by the management. The evidence, in this regard, as adduced by the claimants stand unchallenged as the



witnesses were not cross examined and no rebuttal evidence was adduced by the management.

The claimants have pleaded that they are working against the permanent posts since the date of their initial appointment and the nature of work discharged by them is perennial in nature. For that reason the management is making advertisement for the posts on intervals and re appointing these claimants again and again as contractual employees only with the intension of depriving them of regular status. As stated in the preceding paragraph, the management has admitted the said contractual appointment, but with an explanation that the claimants are working against the temporary vacancies as determined by the HRG, on assessment of the work load. These posts are distinguishable from the permanent posts of paramedics. But no evidence with regard to the assessment and recommendation made by HRG has been placed on record. The learned counsel for the management only advanced oral argument in this regard. On the contrary, the documents filed by the claimant which are the appointment letters and extension letters of engagement shows that the management is in constant need of the service of these Para medics for which they have been granted extension. It is also not disputed that when the management in the year 2014, made advertisement for regular posts the claimants through their union had approached the Hon'ble High Court of Uttarakhand in writ petition no 1053/2014, where an interim order was passed restraining publication of the result of the recruitment test held for the permanent vacancies. It is also admitted by both the parties in their pleading that a talk of compromise was held and pursuant thereto, the claimants were granted extension of engagement and the WPC filed by the claimants was withdrawn. The claimants have stated that the benefit of CPF as given to the regular employees was granted to them. Though the management has denied this stand of the claimants in the WS, no rebuttal evidence has been adduced. Before the Hon'ble High Court of Nainital, the management also admitted that the posts advertised have nothing to do with the posts held by the claimants. This clearly shows that the management is/was having vacancies in the post of paramedics when the claimants are working on contractual basis.

The one and only argument advanced by the management is that the claimants had accepted the offer and joined in the posts knowing fully well that their appointment is contractual and for a

fixed term. Thus their present claim for permanent status is nothing but an attempt for a back door entry. ONGC is a public sector undertaking, having its own Rule and Procedure of Recruitment. The relief prayed by the claimants, if would be granted, the same shall stand opposed to the policy of public employment. He further submitted that the advertisement made in the year 2014 was withdrawn. But the fresh advertisement was made in the year 2018 and the recruitment process is over by joining of the recruited persons. Thus the ONGC has no vacancy at present. The learned counsel made argument solely relying upon the judgment of the Constitution Bench of the Hon'ble S C in the case of Umadevi, referred supra.

In his reply the learned AR for the claimants argued that the law laid down in the case of Umadevi has been wrongly interpreted. In that case the Hon'ble SC have disapproved the practice of regularizing the service of the persons appointed illegally and without following the due procedure. Such appointments have been held as back door entries. But in this case, the claimants were appointed pursuant to advertisement made. They were short listed for having requisite qualification. Not only that, they had to appear in the written as well as in the viva voce test to prove their competency for the post and this has been admitted by the Respondent in the WS and in the written reply filed before the labour commissioner. The claimants, who testified as WW1 to WW31 have proved their certificates of qualification and the same proves that the claimants possess the qualification for the post held by them and for that reason, their tenure of engagement were extended from time to time. This documentary evidence has not been disputed or rebutted by the management. Reliance has been placed by the claimants in the case of **Sachin Ambadas Dawale vs. State of Maharashtra (Writ Petition No 2046/2010)** decided by the Hon'ble High Court of Bombay, where in the Hon'ble court have held in the following manner.

*“it could be clearly seen that the issue before the SC in the case of Secretary, State of Karnataka vs. Umadevi, was pertaining to the appointments which were made clandestinely, without following the selection process. The facts of the present case are totally different. In the present case the petitioners were appointed after the posts were advertised, they were selected in a selection process by a committee of*

*experts duly constituted as per the Govt. Resolution. In that view of the matter, the law laid down in the case of Uma Devi, would not be applicable to the facts of the present case. \*\*\*\*\*it being an admitted position that the posts in which these employees have been appointed and continued for a considerable length of time, on contractual basis, which are regular and full time posts, the appointment in these posts can not be at the whim and fancies of the Govt. of Maharashtra. The state can not adopt the policy of hire and fire or use and throw.”*

On the basis of the said judgment the claimants argue that the law decided in the case of Umadevi is not applicable to the admitted facts of this case and the tribunal should consider the long and continuous service rendered by them for granting the relief prayed.

It is admitted that the claimants, pursuant to the advertisement were appointed being found qualified and suitable in the selection process. The work discharged by them is of perennial nature which is evident from the fact that their tenure is being extended from time to time. The posts held by them are separate and distinguishable from the posts Para medics filled up by the advertisement made in the year 2018, though the duty and work done by them are similar. But the management has made them to work as contractual employees for years together and for a prolonged period, even though they possess requisite qualification and experience and there are vacancies. This act of the management amounts to unfair labour practice as defined under the ID Act. In the case of **Maharashtra Road Transport Corporation vs. Casteribe Rajya Parivahan Karmachari Sanghatana, SCC,573**, the Hon'ble SC have held that

*“the power given to the Industrial courts u/s 30 is very wide and affirmative action mentioned there in is inclusive and not exhaustive. Employing Badlis, casuals or Temporaries and to continue them as such for years together , with the object of depriving them of the status and privilege of permanent employees is an unfair labour practice and the Industrial and Labour Courts are empowered to issue preventive as well as positive directions to an erring employer.”*

The present industrial dispute is identical on facts with the case of Maharashtra Road Transport referred supra.

Again, the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed: "In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace." Thus keeping the pronouncements made by the Apex court in the aforesaid cases in view, it is held that the management of ONGC has adopted unfair labour practice by allowing the claimants to work continuously for years together as contractual employees even though the work and duty discharged by them was of perennial nature and the management has vacancies as it is admitted that the posts filled up by advertisement made in the year 2018 has nothing to do with the posts in which the claimants are working. The claimants claim for regularization is held justifiable and they are entitled to the status of permanent employees of ONGC. The ONGC, a public sector undertaking and one of the Navaratna companies, instead of being a model employer has conducted it self in manner prejudicial to the claimants giving service in the Hospitals of ONGC for years together. These two issues are accordingly decided in favour of the claimants.

### **ISSUE No 4 and 5**

In view of the decision and finding arrived in deciding issue no 2 and 3, it is concluded that the claimants are also entitled to all the service benefits granted to the regular and permanent Para medics including salary and other service benefits attached to the post from the date they completed one year of service from the date of their first appointment in ONGC. This benefit will be applicable to the 31 claimants who testified in this proceeding and proved by oral and documentary evidence, their respective qualification and continuity of service, since eligibility is sine qua non for the claim of regularization. Both the issues are accordingly decided in favour of the claimants. Hence, ordered.

### **ORDER**

The reference be and the same is answered in favour of the claimants as per the list enclosed. The claim advanced for regularization of their service and conferment of permanent status as employees of ONGC is held justified. It is directed that the claimants as per the list enclosed with this award shall be treated as permanent employees of ONGC w. e. f. the date they completed one year of service from the date of their respective initial appointments and shall be paid the pay and other service benefits at par with the permanent and regular Para medics appointed by ONGC, from that date. The pay of the claimants shall be revised and the arrear pay and other financial benefits as admissible and had accrued shall be paid to them within two months from the date of publication of this award without interest failing which the amount payable to the individual claimant shall carry interest @ 6% per annum from the date of accrual and till the final payment is made. The management is directed to pay Rs 50,000/- to each of the claimants towards litigation expenses within the time stipulated above failing which the said amount shall carry interest @6% from the date of publication of the award and till the payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.  
CGIT-Cum-Labour Court.  
3<sup>rd</sup> November, 2022.

Presiding Officer.  
CGIT-cum-Labour Court  
3<sup>rd</sup> November, 2022.

