



2024:DHC:9101-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 25 November 2024*

*Pronounced on: 26 November 2024*

+ W.P.(C) 2920/2024, CM APPL. 45440/2024 & CM APPL. 45441/2024

SPORTS AUTHORITY OF INDIA & ANR. ....Petitioners

Through: Mr. Rakesh Khanna, Sr. Adv.  
with Mr. Sandeep Kumar Mahapatra, CGSC  
with Mr. Sugam Kumar Jha, Mr. K P  
Sreedas, Mr. Aditya Khanna, Mr. Raghav  
Tandon and Mr. Tribhuvan Kashyap, Adv.

versus

DR. KULBIR SINGH RANA .....Respondent

Through: Mr. Sachin Chauhan, Adv.

+ W.P.(C) 2955/2024, CM APPL. 45352/2024 & CM APPL. 45353/2024

SPORTS AUTHORITY OF INDIA & ANR. ....Petitioners

Through: Mr. Rakesh Khanna, Sr. Adv.  
with Mr. Sandeep Kumar Mahapatra, CGSC  
with Mr. Sugam Kumar Jha, Mr. K P  
Sreedas, Mr. Aditya Khanna, Mr. Raghav  
Tandon and Mr. Tribhuvan Kashyap, Adv.

versus

DR HEMA VALECHA .....Respondent

Through: Mr. Sachin Chauhan, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**JUDGMENT (ORAL)**

**26.11.2024**

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**C. HARI SHANKAR, J.**

**CM APPL. 45440/2024 [for recall of order] in W.P.(C) 2920/2024**  
**CM APPL. 45352/2024 [for recall of order] in W.P.(C) 2955/2024**

1. These applications, by the Sports Authority of India<sup>1</sup>, seek recall of the following order dated 28 February 2024 passed by a Coordinate Division Bench of this Court, whereby WP (C) 2920/2024<sup>2</sup> and WP (C) 2955/2024<sup>3</sup> were disposed of:

“1. The present writ petitions under Article 226 of the Constitution of India seek to assail the order dated 04.11.2023 passed by the learned Central Administrative Tribunal in a batch of O.As.

2. Vide the impugned order, the learned Tribunal has quashed the orders issued by the petitioners, whereunder the respondents, who had been working with the petitioners on contractual basis for the last many years, were sought to be terminated. It prima facie appears that the learned Tribunal has quashed the termination orders passed by the petitioners after it found that the petitioners were trying to replace one set of the contractual employees by another set of contractual employees.

3. *After some arguments, learned counsel for the petitioners prays that instead of pressing the present petitions on merit, the petitioners would be satisfied if the time granted by the learned Tribunal for considering the case of the respondents as ‘Initial Constituents’ as per 2022(4) Staff Recruitment Rules is extended by eight weeks.*

4. Learned counsel for the respondents has no objection to this limited request.

5. In the light of the aforesaid, the writ petitions along with pending applications stand disposed of by extending the time granted by the learned Tribunal to the petitioners for passing orders

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<sup>1</sup> “SAI” hereinafter

<sup>2</sup> Sports Authority of India & Anr v Dr Kulbir Singh Rana

<sup>3</sup> Sports Authority of India & Anr v Dr Hema Valecha



after considering the case of the respondent as ‘Initial Constituents’ as per 2022(4) Staff Recruitment Rules dated 03.08.2022 by eight weeks from today.

6. Needless to state, this Court has not expressed any opinion on the merits of the rival claims of the parties.”

(Emphasis supplied)

2. We have heard Mr. Rakesh Khanna, learned Senior Counsel for the petitioners and Mr. Arvind Nigam, learned Senior Counsel for the respondent at considerable length on these applications.

3. WP (C) 2920/2024 and WP (C) 2955/2024, in which the present applications have come to be filed, assailed the judgment dated 4 November 2023, passed by the Central Administrative Tribunal<sup>4</sup> in a batch of Original Applications, headed by OA 597/2023<sup>5</sup>. The applicants in the said OAs, who were working on contract basis with the SAI, assailed the decision, of the respondent, to replace them with other contract employees and further prayed that the SAI be directed to continue their services till regularisation.

4. Among the contentions that the respondents, as the applicants before the Tribunal, had advanced, was the contention that they were deemed to have been employees who were in employment with the SAI at the time of “initial constitution” within the meaning of Rule 4(a) of the Sports Authority of India (Sports Sciences and Sports Medicine) Staff Recruitment Rules, 1992.

5. Though, subsequently, new Recruitment Rules<sup>6</sup> were

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<sup>4</sup> “the Tribunal” hereinafter

<sup>5</sup> **Dr Hema Valecha v SAI and anr**

<sup>6</sup> “RRs” hereinafter



promulgated in 2022, the Tribunal, in its judgment, observed that there was nothing to indicate that the 2022 RRs superseded the 1992 RRs, insofar as the definition of “initial constitution” was concerned.

6. The judgment of the Tribunal concluded, in paras 28 and 29, thus:

“28. Notwithstanding the above, the case remains that the applicants possessed the prescribed qualifications and they have been selected through a process of open competition, therefore, their appointment was not 'illegal' but irregular and therefore they should be considered as part of the initial constitution as laid down in 2022 rules. Therefore, the right invested in the employees working on *ad hoc* basis remained intact. In this regard, we also placed reliance on *S.S. Moghe and Others v Union of India and others*<sup>7</sup>, wherein it was held that when a new service is proposed to be constituted by the Government, it is fully within the competence of the Government to decide as a matter of policy the sources from which the personnel required for manning the service are to be drawn.

29. In the facts and circumstances of the case, the OA is allowed with direction to the competent authority amongst the respondents to consider the applicants as “Initial Constituent” as per 2022 (4) Rules notified on 03.08.2022 and pass an appropriate reasoned order in this regard as expeditiously as possible and in any case within 8 weeks of the receipt of a copy of this order and till service of such order(s), the applicants will not be terminated. Consequently the termination orders dated 09.02.2023 and 10.02.2023 are quashed. No costs.”

(Emphasis supplied)

7. WP (C) 2920/2024 and WP (C) 2955/2024 were preferred by the SAI, assailing the aforesaid judgment dated 4 November 2023 of the Tribunal.

8. As is apparent from a reading of the order dated 28 February 2024, whereby WP (C) 2920/2024 and WP (C) 2955/2024 were

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<sup>7</sup> (1981) 3 SCC 271



disposed of, learned Counsel for the SAI specifically stated that “*instead of pressing the petitions on merit*”, he would be satisfied if the time granted by the Tribunal *for considering the case of the respondents as initial constituents, in terms of the RRs*, was extended by eight weeks. Accordingly, this Court disposed of the writ petitions by extending the time for compliance with the directions passed by the Tribunal by eight weeks with effect from 28 February 2024. It was also clarified that no opinion had been expressed on the rival claims of the parties.

**9.** Purportedly by way of compliance with the directions in the aforesaid order dated 28 February 2024, a speaking order was passed by the SAI on 18 April 2024.

**10.** SAI subsequently filed CM Appl 32555/2024 and CM Appl 32558/2024, seeking clarification of the order dated 28 February 2024. It was submitted that, though SAI had issued a speaking order, by way of compliance of the order dated 28 February 2024, the respondents had filed CP 140/2024 before the Tribunal for initiation of contempt proceedings, alleging that there had been wilful and contumacious disobedience of the order dated 28 February 2024.

**11.** By order dated 3 May 2024, the Tribunal directed issuance of notice on CP 140/2024 and further directed SAI to file compliance affidavit, if any, within two weeks.

**12.** By order dated 28 May 2024, the High Court disposed of the aforesaid applications CM Appl 32555/2024 and CM Appl



32558/2024, which sought clarification of the order dated 28 February 2024, thus:

“1. The present applications filed by the petitioners seek clarification of order dated 28.02.2024 vide which the writ petitions filed by the petitioners assailing the order dated 04.11.2023 passed by the Central Administrative Tribunal were disposed of. The petitioners also seek condonation of 56 days delay in filing these clarification applications.

2. Despite service, none appears on behalf of the respondents. Having perused the applications as also the order dated 28.02.2024, we clarify that the intent of the said order passed by this Court was only to grant further eight weeks time to the petitioners to implement the Tribunal’s order dated 04.11.2023. The order passed by this Court on 28.02.2024 however did not envisage any further directions to any of the parties.

3. The applications are accordingly disposed of in the aforesaid terms.”

**13.** More than a month thereafter, on or around 3 July 2024, the present applications have come to be filed by the SAI, seeking recall of the order dated 28 February 2024.

**14.** In our considered opinion, the present applications are completely misconceived. If such attempts are to be allowed, there would be no end to litigation.

**15.** It is also worthwhile to recount the proceedings which have taken place *vis-à-vis* the present recall applications. On 2 September 2024, the following order was passed:

“1. In terms of the last order, the learned senior counsel for the petitioners has obtained instructions and submits that the petitioners are willing to pay the respondents arrears of their salaries from the date their services were dispensed with till



18.04.2024, i.e. when an order holding them not to be ‘Initial Constituents’ of the Service was passed by the petitioners. He further submits that the writ petitions were withdrawn by the learned counsel for the petitioners under a *bonafide* belief that in terms of the impugned order, the petitioners were at liberty to consider as to whether the respondents were to be treated as ‘Initial Constituents’ of the Service or not but *has now realised that as per the directions issued vide the Tribunal’s impugned order, the petitioners were required to treat the respondents as ‘Initial Constituents’ of the Service, as per the 2022 (4) Staff Recruitment Rules dated 03.08.2022, and then pass an appropriate order.* He submits that this direction of the Tribunal to treat the respondents as ‘Initial Constituents’ of the Service is contrary to the Rule position and, therefore, prays that the order dated 28.02.2024, dismissing the writ petitions as withdrawn be re-called and the petitioners be granted an opportunity to argue the matter on merits.

2. Learned senior counsel for the respondents vehemently opposes the application seeking recall and submits that the petitioners having unilaterally withdrawn the writ petition, cannot now be permitted to urge that they had not understood the scope of the directions issued by the learned Tribunal.

3. *We find merit in the respondents’ plea that a prayer for revival of a writ petition, which is withdrawn without any liberty, should normally not be entertained.* However, taking into account, the explanation given by the learned senior counsel for the petitioners, we are of the opinion that the petitioners ought to be granted an opportunity to file an affidavit of the counsel, who had withdrawn the present writ petitions, explaining the reasons as to why he chose to withdraw the petitions.

4. At request, list on 12.09.2024.”

(Emphasis supplied)

**16.** The explanation tendered by the Counsel for the submission recorded in para 3 of the order dated 28 February 2024 reads thus:

“4. That the Impugned Judgment of the Ld. Tribunal was challenged by way of Writ Petitions bearing W.P. (C) 2920 of 2024 and W.P. (C) 2955 of 2024. The Deponent Counsel for Sports Authority of India (SAI) understood that as per the Order of the Ld. Tribunal, the Competent Authority has to undertake the exercise of considering as to whether the Applicant employees in the OAs are covered by the definition of Initial Constituents and it is to that effect that the Authority has to pass an appropriate





reasoned order. It is with this understanding, on 28.02.2024, the Deponent explained his understanding to the Competent Authority and upon receiving instructions sought permission of this Hon'ble Court to withdraw the Writ Petitions and sought an extension of time to pass an appropriate reasoned order within eight (08) weeks.

5. I say that on 18.04.2024 based on the above understanding of the Deponent, the Competent Authority passed an appropriate reasoned order, taking into account all the relevant rules applicable over the contractual employees. The Respondents sought to portray, before the Ld. Tribunal, that the reasoned order dated 18.04.2024 is non-compliance of its order dated 04.11.2023. In these circumstances, the Petitioners filed an application seeking clarification before this Hon'ble Court and the same came to be disposed on 28.05.2024.

6. It is stated that even in the application dated 24.05.2024 seeking clarification, was filed in the aforesaid premises. I say that at all times, it was my *bonafide* understanding that the direction of this Hon'ble Court was to pass a Speaking Order after considering the Respondents' case in light of the Staff Recruitment Rules dated 03.08.2022, and not to assume or predetermine their status as 'Initial Constituents.' This understanding was clearly articulated in the clarification application referred to above, and the Petitioners have consistently adhered to this interpretation."

17. We have perused the aforesaid explanation tendered in the affidavit of the Counsel who had appeared on behalf of the petitioners on 28 February 2024. In our considered opinion, it does not make out any legitimate ground to recall the order. If such a practice is to be allowed, it would create a state of utter judicial chaos, as orders, concessions and undertakings tendered by Counsel at the bar would lose all sanctity. It would be open to Counsel to resile from concessions, and seek reopening of cases, on the tenuous plea that they had tendered the concession on a misunderstanding of the order under challenge. This, to our mind, is completely unacceptable in law.

18. We deem it appropriate to reproduce, here, at the cost of





repetition, the concluding paragraph of the judgement dated 4 November 2023 of the Tribunal and para 3 of the order dated 28 February 2024 of this Court, thus:

<b>Concluding para 29 of order dated 4 November 2023 of the Tribunal</b>	<b>Para 3 of order dated 28 February 2024 of this Court</b>
“In the facts and circumstances of the case, the OA is allowed with direction to the competent authority amongst the respondents <i>to consider the applicants as 'Initial Constituent' as per 2022 (4) Rules notified on 03.08.2022</i> and pass an appropriate reasoned order in this regard as expeditiously as possible and in any case within 8 weeks of the receipt of a copy of this order and till service of such order(s), the applicants will not be terminated. Consequently the termination orders dated 09.02.2023 and 10.02.2023 are quashed. No costs.”	After some arguments, learned counsel for the petitioners prays that instead of pressing the present petitions on merit, the petitioners would be satisfied if the time granted by the learned Tribunal <i>for considering the case of the respondents as 'Initial Constituents' as per 2022(4) Staff Recruitment Rules</i> is extended by eight weeks.

19. We note that the undertaking given by the Counsel in para 3 of the order dated 28 February 2024 is *exactly* in terms of the concluding paragraph of the judgment dated 4 November 2023. The Tribunal directed the SAI “to consider the applicants as ‘Initial Constituent’ as per 2022(4) Rules, notified on 03.08.2022 and pass an appropriate reasoned order in this regard”. Para 3 of the order dated 28 February 2024 records the submission of learned Counsel for the SAI that he would be satisfied if the time granted by the Tribunal “for considering the case of the respondents as ‘Initial Constituent’ as per 2022(4) Staff Recruitment Rules” was extended by eight weeks.



**20.** Thus, the Counsel for the respondent expressed his clear willingness, on behalf of SAI, to comply with the directions issued by the Tribunal, in para 29 of its judgment dated 4 November 2023, in the very same terms in which those directions were issued. The undertaking of learned Counsel as recorded in para 3 of the order dated 28 February 2024, to comply with the order passed by the Tribunal, if extension of time was granted therefor, is verbatim in the terms of the direction issued by the Tribunal.

**21.** In that view of the matter, the explanation tendered by the learned Counsel in his affidavit dated 10 September 2024 that his statement, as recorded in para 3 of the order dated 28 February 2024, was based on an erroneous understanding of the order dated 4 November 2023 of the Tribunal, cannot be accepted.

**22.** In our opinion, the only escape from a concession granted by a Counsel on behalf of his client before the Court is if the client states, on affidavit, that the Counsel was not instructed or authorised to make such a concession. Even in that circumstance, it would be for the Court to take a view as to whether to allow the Counsel to resile from the concession.

**23.** It is not the case of the SAI that the concession made by Counsel, as recorded in para 3 of the order dated 28 February 2024 was beyond the instructions granted to the Counsel or made without authorisation.



**24.** The only ground on which a *volte face*, from the said statement, is now being attempted, is that the Counsel misunderstood the order passed by the Tribunal. Such a contention, in our view, cannot constitute a basis to recall the order dated 28 February 2024, especially since, as we have already noted, the undertaking in para 3 was in the terms in which the directions had been issued by the Tribunal in para 29 of its order dated 4 November 2023.

**25.** *It is not the case of SAI, in these applications, that the order dated 28 February 2024 is erroneous in any way, or that the Court was under a wrong impression while passing it. Nor do these applications seek to contend that there was some fact which could not be brought to the notice of the Court on 28 February 2024, which SAI now seeks to bring to the Court's notice. Nor, even, is it SAI's case that there have been any subsequent developments – except the filing of the contempt petition by the respondents – as would justify a revisitation of the order dated 28 February 2024.*

**26.** The actual provocation for filing this application appears, after hearing learned Senior Counsel for the petitioner, to lie elsewhere. The speaking order dated 18 April 2024, passed by the SAI purportedly by way of compliance with the directions contained in the order dated 28 February 2024 of the Division Bench, appears to have been made subject matter of contempt proceedings instituted by the respondent before the Tribunal.

**27.** SAI seems to be belabouring under the apprehension that, if the order dated 28 February 2024 is not recalled, the Tribunal may take an



2024:DHC:9101-DB



adverse view in the contempt proceedings.

**28.** The executive – which includes, in this case, SAI – is bound, by law, to comply with judicial orders. We do not express any opinion on whether the speaking order dated 18 April 2024 does, or does not, comply with the order dated 28 February 2024 of the predecessor Division Bench, or whether it amounts, or does not amount, to contempt.

**29.** That is a matter which would have to be contested by both sides before the Tribunal, and on which it would be for the Tribunal to take a call.

**30.** It does not appear that, till date, any order has been passed by the Tribunal in the contempt petition, which expresses a view in the matter, one way or the other.

**31.** In the above circumstances, while we decline to grant the prayer for recall of the order dated 28 February 2024. The right of the petitioners to avail remedies, available in law, in the contempt proceedings pending before the Tribunal, shall remain reserved.

**32.** We reiterate that we are not expressing any opinion on the merits of the contempt proceedings one way or the other.



2024:DHC:9101-DB



**33.** Subject to the above limited caveat, these recall applications are dismissed.

**C. HARI SHANKAR, J.**

**ANOOP KUMAR MENDIRATTA, J.**

**NOVEMBER 26, 2024**

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*Click here to check corrigendum, if any*