

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. M.A. 867 of 2019
O.A. 88 of 2019

Reserved on : 15.11.2019
Date of order: 20.11.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. Md. Nazeer Hussain,
Son of Late S.M. Hussain,
Aged about 59 years,
Working as
Additional Chief Medical Superintendent,
Divisional Railway Hospital at
Vijaywada under South Central Railway,
Residing at 792A, Opp.
Railway Institute near Railway Hospital,
Vijaywada,
Andhra Pradesh – 520001.

... Added Respondent No. 6
In the matter of:
O.A. No. 350/00088/2019

And

In the matter of:

An application for vacating the Stay/
Interim order dated 17th July, 2019 granted
by this Hon'ble Tribunal in
O.A. No. 350/00088 of 2019 under
Section 24 of the Administrative Act, 1987.

And

In the matter of:

Dr. Anjana Malhotra & others.

... Applicants

In Original Application

- Versus -

Union of India & others.

... Respondents

b.s.g.

For the Applicants : Mr. D.N. Ray, Counsel
Mr. B. Nandy, Counsel

For the Respondents : Ms. D. Nag, Counsel
Ms. C. Mukherjee, Counsel
Mr. A. Mitra, Counsel
Mr. R. Lakhmani, Counsel
Mr. A. Chakraborty, Counsel
Mr. J. Keshwani, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant in the instant M.A., an intervener in O.A. No. 88 of 2019 had been permitted to be impleaded as a party vide orders of the Tribunal dated 25.9.2019. The intervener has filed a Miscellaneous Application primarily praying for vacation of the stay order dated 17.7.2019 in O.A. No. 88 of 2019.

2. In O.A. No. 88 of 2019 the applicants had prayed for the following relief:-

- (a) An order do issue setting thereby aside the impugned reasoned order dated 17.10.2018 passed by the Member Staff, Railway Board in compliance of the order dated 11.5.2018 in O.A. No. 350/01717/2017.
- (b) An order do issue directing the concerned respondent authorities to forthwith fix the seniority of the applicants as per the existing seniority list as stood on 28.6.2017 in the cadre of "Medical Officers of Indian Railway Medical Service" herein with a stipulated time after setting aside the Order No. E(O)I/2017/SR-6/03 New Delhi, dated 07.11.2017 issued by the respondent authorities.
- (c) An order do issue directing the concerned respondent authorities to transmit all the records before this Hon'ble Tribunal in the ends of justice.
- (d) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicants.
- (e) Leave be granted to file this application jointly by the applicants herein having regard to their common prayer and cause of action."

On 17.7.2019, this Tribunal had granted an interim protection to the applicants in O.A. No. 88 of 2019 as follows:-

"6. Since ad hoc doctors of the present case come under the category of Dr. M.A. Haque, and in view of the decision of the Hon'ble Apex Court in P. Srinivasulu differentiating between the two classes, we feel that the balance of convenience/inconvenience is heavily tilted in favour of the present applicants. Therefore, we stay operation of the speaking order till the next date of hearing.

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The respondents shall file their reply to indicate whether ad hoc appointees of the present case belong to the category 1 or 2 as enumerated in the case of Union of India & another v. Lalita S. Rao & others supra, and shall clarify why said ad hoc doctors would be allowed to steal a march upon the present applicant. List on 19.8.2019."

3. The primary grounds based on which the intervener/applicant in M.A. has sought for vacation of the interim order is as follows:-

- (a) That, the applicant/intervener is an adhoc appointee in the year 1986, presently functioning as Additional Chief Medical Superintendent with the respondent authorities and, that, his adhoc appointment was the culmination of a process held under the supervision of the Railway Board in consultation with UPSC.
- (b) That, although appointed on adhoc basis, the applicant intervener was performing similar duties as that of the regular appointees.
- (c) That, certain adhoc doctors, who failed to obtain a positive decision from the respondent authorities to count their services on adhoc basis for the purpose of calculating interse seniority had filed an O.A. No. 30/1995 before the Patna Bench of this Tribunal, which decided in their favour. The said decision was challenged unsuccessfully by the respondent authorities before the Hon'ble High Court at Patna and thereafter before the Hon'ble Apex Court. The Railway authorities were hence compelled to consider the adhoc services of the applicants upon which they published a revised seniority list dated 29.6.2017. According to the applicant/intervener, the said seniority list correctly reflects his name in the seniority list and stay of the speaking order by this Tribunal vide its orders dated 17.7.2019 being granted on incorrect and erroneous grounds, should be set aside.
- (d) According to the intervener applicant, the ratio in **Union of India & another v. P. Srinivasulu and others, SLP (C) No.**

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10714 of 1993 would squarely apply to the intervener applicant as his services were regularized upon due process of selection by UPSC.

4. The official respondents, in their supplementary reply to the O.A. filed on 15.11.2019, have submitted as follows:-

“..... the adhoc appointees of 1985-86, who had been assigned seniority vide impugned order dated 7.11.2017, arising out of the Hon’ble CAT/Patna’s decision in O.A. No. 38 of 1995 are similarly situated as the applicants in the case of P. Srinivasulu and were regularized through UPSC interview and do not come under the category of Dr. M.A. Haque.

However, the adhoc appointees of 1985-86 were not fully covered by the judgment of Hon’ble Supreme Court in UOI vs. Lalita S. Rao & ors. reported in 2001 (5) SCC 384 as they were appointees of 1985-86, subsequent to 1.10.1984 and this aspect was specifically brought to the notice of the Hon’ble Supreme Court in Civil Appeal No. 6113 of 2008, notwithstanding that Hon’ble Supreme Court dismissed the SLP, affirming findings of the Hon’ble CAT/Patna.”

It is further submitted that in a similar case Hon’ble CAT/Jabalpur in O.A. No. 203/184/2018 filed by Dr. P.K. Sardar and 11 Ors. vide Order dated 4.10.2019 has set aside the revised seniority list dated 7.11.2017.”

The official respondents have also contended that the seniority list dated 7.11.2017 in which the seniority of adhoc appointees of 1985-86 have been revised, was issued strictly in compliance with the Hon’ble Supreme Court’s order dated 18.1.2017 in Civil Appeal No. 6113 of 2008 and, that, notwithstanding the law laid down by Hon’ble Apex Court in Writ Petition No. 1165 of 1986 (Dr. M.A. Haque) and in the matter of **Union of India & another v. Lalita S. Rao & ors.** reported in **2001 (5) SCC 384**, the Railways had no option but to comply with the orders of the Hon’ble Apex Court culminating in seniority list dated 7.11.2017.

5. The speaking order, as stayed by this Tribunal, had stated the following:-

- (i) A combined seniority list of adhoc appointees and direct recruits is a must.
- (ii) That, adhoc appointees between 1968 to 1984 were regularized and given seniority in pursuance to orders of the Hon’ble Apex Court in **P. Srinivasulu (supra)** and in

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accordance with the principle laid down in **Lalita S. Rao (supra)**.

- (iii) That, despite the submission of the respondent authorities before the Hon'ble Apex Court that the decision in **Dr. P. Mukund (supra)** before Tribunal in its Patna Bench will violate the principles in **Lalita S. Rao (supra)**, relief was granted to the adhoc appointees of 1985-86.
- (iv) That, the question of law was left open by the Hon'ble Apex Court.
- (v) That, Inter-se seniority amongst the adhoc appointees was decided in accordance with their dates of appointment.
- (vi) That, the decision of the Hon'ble Apex Court in Dr. P.P.C. Rawani is not applicable in the case of the applicants in O.A. No. 88 of 2019.



While issuing its interim orders, this Tribunal was of the view that the ad hoc doctors came under the category of Dr. M.A. Haque and the respondents were asked to clarify whether the applicants belong to category 1 and 2 as enumerated in **Lalita S. Rao (supra)**.

6. Although the respondents have asserted that the ratio of **P. Srinivasulu (supra)** will apply in the case of the adhoc appointees, they have not responded on the applicability of the ratio enumerated at paras 1 and 2 in **Lalita S. Rao (supra)**.

7. Our attention has also been drawn to an order dated 4th day of October, 2019 in Original Application No. 203/00184/2018 of the Jabalpur Bench in its Bilaspur Circuit Sitting wherein the Tribunal held as follows:-

“13. It is evident that when the Patna Bench of the Tribunal passed the order on 28.06.2000 (Annexure A-2), the Hon'ble Supreme Court had already decided the case of **P. Srinivasulu (supra)** and, accordingly, the Patna Bench had adjudicated the case. However, by the time Hon'ble High Court of Patna

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adjudicated the CWJC No.689 of 2003, three judges Bench of the Hon'ble Supreme Court had already decided the case of **Lalita S. Rao** (supra). Perusal of the order clearly indicates that the judgment of **Lalita S. Rao** (supra) was not brought to the notice of Hon'ble High Court of Patna.

14. When the matter traveled to Hon'ble Supreme Court in Civil Appeal No.6113/2008, it has been brought out by the respondents in their reply that the case of **Lalita S. Rao** (supra) was brought to the notice of Hon'ble High Court. However, perusal of the judgment of the Hon'ble Supreme Court does not indicate the same.

15. Hon'ble Supreme Court in the matters of **Indian Oil Corporation Ltd. vs. State of Bihar and others** (1986) 4 SCC 146 has held:

“6. We are clearly of opinion that the view taken by the High Court was not right and that the High Court should have gone into the merits of the writ petition without dismissing it on the preliminary ground. As observed by this Court in **Workmen v. Board of Trustees of the Cochin Port Trust**, (1978) 3 SCC 119 the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be reopened in a subsequent writ proceeding before the High Court. But neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of this Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to found it on mere guesswork.

7. This enunciation of the legal position has been reiterated by this Court in **Ahmedabad Manufacturing & Calico Printing Co. Ltd v. Workmen**, (1981) 2 SCC 663. The principles laid down in the two decisions cited above fully govern the present case.

8. It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special leave petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court not to grant special leave except where the party cannot claim effective relief by approaching the concerned High Court under

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Article 226 of the Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions aforesited, that such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Article 226 of the Constitution on the sole ground of dismissal of the special leave petition."

16. In the matters of **U.P State Road Transport Corporation vs. Omaditya Verma and others** (2005) 4 SCC 424, Hon'ble Apex Court has held that the dismissal in limine does not amount to upholding the law propounded in the decision sought to be appealed against.

17. Hon'ble Apex Court had held in **Y. Satyanarayan Reddy vs. Mandal Revenue Officer**, (2009) 9 SCC 447 that:

"23. It is well settled that the dismissal of a special leave petition in limine does not amount to a clear affirmation of the High Court decision and it does not constitute any binding precedent. (See **Workmen v. Board of Trustees of the Cochin Port Trust**, (1978) 3 SCC 119, **Indian Oil Corp. Ltd. v. State of Bihar**, (1986) 4 SCC 146, **Supreme Court Employees' Welfare Assn. v. Union of India**, (1989) 4 SCC 187, **CIT v. Shree Manjunathaware Packing Products & Camphor Works**, (1998) 1 SCC 598, **P. Nallammal v. State**, (1999) 6 SCC 559 and **U.P. SRTC v. Omaditya Verma**, (2005) 4 SCC 424.)"



18. Perusal of the above cited judgments very clearly brings out that when Hon'ble Supreme Court dismisses an Appeal with a non speaking order, it does not mean that all facets of law has been examined by Hon'ble Supreme Court. It also does not imply that the contentions raised in Special Leave Petition on the merits of the case have been rejected by Hon'ble Supreme Court.

19. In the instant matter we find that the three judges Bench of Hon'ble Supreme Court in the case of **Lalita S. Rao** (supra) vide order dated 10.04.2001 has held that the services rendered by the adhoc appointees, who were appointed after 01.10.1984, prior to their regularisation through UPSC, will not be counted towards seniority. However, it is presumed that the said order of the Hon'ble Supreme Court was not brought to the notice of Division Bench of two Judges of Hon'ble Supreme Court at the time of deciding the Civil Appeal No.6113 of 2008 vide order dated 18.01.2017. The said Civil Appeal was dismissed by passing the following order:

"We have heard learned counsel for the parties. We do not see any ground to interfere with the impugned order. The Civil appeal is accordingly dismissed. No costs. Pending applications, if any, shall also stand disposed of. However, the question of law is kept open."

20. Therefore, the right cause of action would be to follow the law laid down by three Judge Bench of Hon'ble Supreme Court in the matters of **Lalita S. Rao** (supra).

Nothing has been brought on record to substantiate that this order of the Jabalpur Bench had been challenged successfully in any judicial forum.

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8. We would hence be inclined to agree with the findings of the Jabalpur Bench that, as the Hon'ble Apex Court in its judgment in Civil Appeal No. 6113 of 2008 has left the question of law open, and as the ratio in ***Lalita S. Rao (supra)*** does not find any mention therein, the same remains unassailed and the present matter also deserves to be adjudicated in accordance with the prevailing ratio in ***Lalita S. Rao (supra)***.

9. Accordingly, we do not find any outstanding reasons to modify the interim relief so granted by the Tribunal vide its orders dated 17.7.2019, and would proceed to adjudicate the Original Application.

10. With these directions, the M.A. No. 867 of 2019 stands disposed of. There will be no orders on costs.

11. List on 25.2.2020 for hearing of the O.A.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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