

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1203/2000
MA 2351/2000
T.A. No. CP 322/2000

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(16)

DATE OF DECISION 16-11-2000

Dr. Yogesh Dikshit

....Petitioner

Sh. B.S. Jain

....Advocate for the
Petitioner(s)

VERSUS

Govt. of NCT of Delhi &
Ors.

....Respondent

Sh. Ajesh Luthra

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)
The Hon'ble Shri S.A.T. Rizvi, Member (A)

1. to be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal etc.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1203/2000,
M.A. 2351/2000,
and
C.P. 322/2000

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New Delhi this the 16th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.A.T. Rizvi, Member(A).

Dr. Yogesh Dikshit,
M.D. (Paediatrics),
Senior Resident,
LNJP Hospital,
New Delhi-110002. Applicant.

(By Advocate Shri B.S. Jain)

Versus

1. Govt. of National Capital Territory
of Delhi (through Chief Secretary),
5, Sham Nath Road, Delhi.
2. Medical Superintendent,
LNJP Hospital,
New Delhi.
3. Union of India (through Secretary),
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi. Respondents.

(By Advocate Shri Ajesh Luthra)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who was working on ad hoc basis as Senior Resident in Lok Nayak Hospital (LNJP Hospital), is aggrieved by the order passed by the respondents, terminating his services and in his place appointing one other Doctor on ad hoc basis.

2. The applicant, who is a M.D. (Paediatrics) joined the LNJP Hospital as Senior Resident on 7.2.2000 in pursuance of the order passed by the respondents dated 5.2.2000 (Annexure A-I). This order states that he is appointed as Senior Resident in the Department of

Paediatrics on ad hoc basis for 89 days from the date of joining or till regular candidate joins through Technical Recruitment Cell (TRC), whichever is earlier.

3. Shri B.S. Jain, learned counsel has submitted that against all provisions of law and the judgements of the Hon'ble Supreme Court relied upon by him, the respondents have illegally terminated the services of the applicant by an oral order dated 29.6.2000 and appointed another Doctor in that post on ad hoc basis. He has relied on the Senior Residency Scheme issued by the respondents (Annexure A-2). He has submitted that the applicant's services were further extended for another 89 days upto 3.8.2000 and the order of termination is, therefore, without any rhyme or reason. The Tribunal by interim order dated 19.7.2000 modified the earlier ad-interim order dated 5.7.2000 to the extent that no fresher or junior should be taken in place of the applicant as Senior Resident in the same discipline in his place, and in case they need the services of a Sr. Resident, they shall take the applicant back in service.

4. Learned counsel for the applicant has submitted that under the Senior Residency Scheme issued by the respondents dated 26.9.1992, the tenure of Senior Residency is three years. He has, therefore, submitted that as the applicant had completed six months on ad hoc basis as a Senior Resident out of the required three years, proportionately the applicant should be considered as a regularly appointed Senior Resident as 10-12 years of ad hoc service in a total, of say, 30 years service of a

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government servant has been considered as sufficient. He has relied on the judgement in Jacob M. Puthuparambil & Ors. Vs. Kerala Water Authority & Ors. (1991 (15) ATC 697). This argument is not based on any rules, is rather convoluted and does not have any rational basis or nexus to the provisions of the Senior Residency Scheme which is applicable to the facts of the present case. This argument is accordingly rejected.

5. Another submission made by Shri B.S. Jain, learned counsel is that the TRC has been abolished but this has been denied by Shri Ajesh Luthra, learned counsel for the respondents. Learned counsel for the applicant has contended that even when the applicant was appointed on ad hoc basis as a Senior Resident in his speciality, he had already undergone a selection which is more than sufficient and, therefore, there is no question of any further selection by the TRC. He has also very vehemently submitted that there are a number of vacancies available with the respondents against which the applicant could be regularised which they are not doing on extraneous considerations. One of these considerations he had mentioned, was that the applicant is a qualified Doctor from outside Delhi and so he has been discriminated and local doctors have been preferred. This argument on discrimination cannot be accepted because admittedly the respondents have appointed him as Senior Resident on ad hoc basis in the Department of Paediatrics vide their order dated 5.2.2000 and thereafter, he has to be selected for the post of Senior Resident in accordance with the rules, instructions and Scheme for recruitment of Doctors in Central Government Hospitals/Institutions. The

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respondents have submitted that Doctors, like the applicant are appointed on ad hoc basis in the interest of the patients and Hospital. The Selection Committee for selection of Senior Residents in respect of Central Government Hospitals has been provided in Paragraph 3 of the Scheme. The selection of the applicant on ad hoc basis had been done as an arrangement by the LNJP Hospital and not through the Selection Committee provided in the Scheme. Shri Ajesh Luthra has, therefore, submitted that as one of the Members constituting the Selection Committee, namely, the Director/Medical Superintendent of the Hospital was not present and only the Addl. Director/Medical Superintendent was present in selecting the applicant on ad hoc basis, that selection cannot be considered as the proper selection through the duly Constituted Committee under the Scheme. These facts have been verified from the documents on record and it has been noted that the Director/Medical Superintendent of the Hospital was not present at the time of selection of the applicant on ad hoc basis in the LNJP Hospital. Hence, the argument of Shri B.S. Jain, learned counsel, that the Scheme does not require a further selection by the Selection Committee to be constituted as provided therein, or it is ultra vires the Scheme is unacceptable. The Scheme for Sr. Residents itself provides for such a selection. Accordingly, this argument of the learned counsel for the applicant is also rejected.

6. The learned counsel for the applicant has also relied on a number of judgements, referred to in his written brief. He has very vehemently submitted that no notice was given to the applicant before termination of

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his ad hoc service which is, therefore, in violation of the principles of natural justice, miscarriage of justice and infringement on his fundamental rights. The judgements relied upon by the learned counsel for the applicant again will not assist the applicant in the facts and circumstances of this case. The appointment order of the applicant dated 5.2.2000 annexed by him, shows that he has been appointed as Senior Resident in the LNJP Hospital in his speciality on ad hoc basis for a period of 89 days. This appointment letter also has a rider that the applicant will continue for 89 days from the date of his joining "or till a regular candidate joins through the TRC whichever is earlier". In the circumstances, the applicant was well aware of the terms and conditions of his ad hoc appointment and according to the learned counsel he has worked for about six months on the same terms and conditions before his services were terminated. The respondents have contended that as a duly selected candidate in the same speciality as that of the applicant was available, the applicant had to give way to her in terms of the ad hoc appointment letter given to the applicant. In the circumstances of the case, we are unable to agree with the contention of Shri B.S. Jain, learned counsel that a further notice was absolutely required to be given to the applicant before issuing the termination order.

7. He has further contended that the appointment order of the Doctor who has taken the place of the applicant also states that she has been appointed on ad hoc basis which again he has contended is illegal because one ad hoc appointee cannot be replaced by another

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appointment on the same terms. Shri Jain, learned counsel has also relied on certain endorsements in the applicant's letter dated 11.7.2000 which he states is that of the Medical Superintendent, LNJP Hospital (Page 100 of the paper book), in which it has been stated that a vacancy would arise against the post of one Dr. Seema Kapur, which has to fall vacant on 21.7.2000 in which post the applicant could be reinstated. Learned counsel has submitted that the actions of the respondents in appointing other doctors and dispensing with the services of the applicant are, therefore, illegal, arbitrary and as mentioned above, he has tried to make out a case that this has been done because the applicant is an "outsider" vis-a-vis the other Delhi candidates.

8. From the submissions made by the learned counsel for applicant, it is seen that while on the one hand he relies on the terms and conditions of the Senior Residency Scheme for Doctors issued by the respondents, he has also questioned the method of selection of Residents, both Junior and Senior Residents as provided in Paragraph 3 of the Scheme and also that the TRC has been abolished. Nothing has been placed on record to show that the TRC has been done away with. In the facts and circumstances of the case, since the Committee constituted by the LNJP Hospital who selected the applicant as Senior Resident on ad hoc basis did not consist of the Medical Superintendent but only the Additional Medical Superintendent, the submission made by Shri Ajesh Luthra that that is not the recommendation of the duly constituted Committee is also correct. The Scheme published by the respondents is a

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self contained Scheme for selection of Residents/Doctors, both Junior and Senior, in Central Government Hospitals and Institutions.

9. The respondents have in their MA 2351/2000 submitted that they have terminated the services of the applicant on Dr. Netra Prakash Yadav, an OBC candidate, joining the post on regular basis through TRC. They have submitted that ad hoc Senior Residents are appointed in the interest of patients of the Hospitals till the candidates join who have been selected by the duly constituted Selection Committee of the TRC. Shri Ajesh Luthra, learned counsel has submitted that these selections through TRC are a well recognised practice and continuing under the Residency Scheme for Doctors and has strongly refuted the allegations to the contrary made by Shri B.S. Jain, learned counsel to the contrary. Learned counsel for the respondents has submitted that TRC has recommended/sponsored duly selected candidates, namely, Dr. Ritu Sagar on purely ad hoc basis by the letter dated 1.9.2000. This candidate was appointed as Senior Resident (Paediatrics) in LNJP Hospital on ad hoc basis against a reserved vacancy. One of the terms and conditions of appointment of Dr. Ritu Sagar is that it will be on ad hoc basis for a period of six months or till the vacancy is filled on regular basis whichever is earlier. Shri Ajesh Luthra, learned counsel has submitted that in the instant case, the candidates duly selected and sponsored by TRC have been proposed to be kept on ad hoc basis only for the reason that the post sought to be filled is meant for reserved category but as no reserved category

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candidate is available, the general category candidate has been given that post. He has, therefore, explained that the contention of the learned counsel for applicant that one ad hoc appointment, that is of the applicant has been replaced by another ad hoc employee and, therefore, is contrary to the principles laid down by the Hon'ble Supreme Court in State of Haryana Vs. Piara Singh (1992 (3) SLJ 34), is not correct in the facts of the case. In the circumstances of the case, as explained by the learned counsel for the respondents and based on documents on record, this contention of the learned counsel for the applicant cannot also be upheld. The circumstances in which the duly selected and sponsored candidate/Senior Resident by the TRC has the appendage of "on ad hoc basis", shows that the action of the respondents in terminating the services of the applicant who was appointed on ad hoc basis for 89 days and thereafter replaced by another person duly selected cannot be faulted.

10. In the circumstances, the termination of the applicant's ad hoc services on the availability of a duly sponsored and selected candidate in the same speciality to replace him is neither illegal nor arbitrary, to justify any interference in the matter. We have also considered the other submissions, including the judgements relied upon by the applicant, which in the circumstances of the case do not assist the applicant or render the action of the respondents illegal. Learned counsel for the applicant had also relied upon by the judgement of the Tribunal in Dr. (Mrs.) Sangeeta Narang and Ors. Vs. Delhi Administration & Ors. (ATR 1988(1) CAT 556) which has also been upheld by the Hon'ble Supreme Court. In the

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present case, as submitted by the learned counsel for respondents, in the interest of the Hospital and patients, the LNJP Hospital has made its own ad hoc arrangements by appointing the applicant on ad hoc basis as Senior Resident. However, as per the terms of ad hoc appointment itself, it is clear that his service is liable to be terminated whenever a regular candidate joins through TRC. In this view of the matter, the emphasis placed by the learned counsel for the applicant on the judgement in Dr. (Mrs.) Sangeeta Narang's case (supra) that the respondents have adopted a "hire and fire" policy will not be applicable in the present case.

11. Learned counsel for the applicant has submitted certain documents which are placed on record. These have been submitted after hearing the O.A. and orders were reserved. Reference has been made to respondents' order dated 26.9.2000. In this order, it has been stated, *inter alia*, that all Heads of Departments/HODs are authorised to recruit and appoint Senior Residents (SRs) as per approved periodicity subject to certain conditions mentioned therein. One of the conditions is that Senior Residents could be appointed ordinarily for a period of one year which could be extended annually for a period of 3 years subject to satisfactory work and conduct. However, clause (a) states that previous approval of the TRC/Govt. shall be obtained for speciality department/category (SC/ST/OBC, etc.)-wise vacancy position under the HOD and other conditions mentioned therein. In the present case, the applicant

replies on the ad hoc appointment given to him on 5.2.2000. In the circumstances, the order dated 26.9.2000 would not be applicable to the facts in the present case. (26)

12. However, before parting with the case, we would like to add that in case the respondents need the services of a Senior Resident in the speciality to which the applicant belongs and in case he makes an application, they shall consider his case in accordance with the Rules, Scheme and instructions and keep in view the fact that he had already rendered ad hoc service with them earlier.

13. In the result, the O.A. fails and is dismissed, subject to what has been stated above. No order as to costs.

CP 322/2000 IN OA 1203/2000.

This contempt petition has been filed by the applicant in OA 1203/2000 alleging that the respondents have violated the interim orders passed by the Tribunal. The respondents have filed their reply to this contempt petition. They have submitted that TRC had recommended/sponsored a duly selected candidate, namely, Dr. Ritu Sagar on purely ad hoc basis vide their letter dated 1.9.2000. The facts and circumstances of this appointment letter have been dealt with in the aforesaid order in OA 1203/2000. The respondents have also submitted that no fresher or outsider has been appointed contrary to the interim orders and, therefore, they have also submitted that they have not wilfully or deliberately flouted any directions of the Tribunal.

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2. Learned counsel for parties have been heard on the contempt petition. In the light of the observations and final order passed in OA 1203/2000, we find no grounds to continue with these proceedings. Accordingly, CP 322/2000 is rejected and notices to the respondents are discharged.

(Signature)

(S.A.T. Rizvi)
Member(A)

(Signature)

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'