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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No.230/88

Date of decision: 03.06.1993.

Dr. Raman Kumar Attrey & Ors.

...Petitioners

Versus

E.S.I.C.

...Respondents

Coram: The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

For the petitioners

Mrs. Sheela Goel, Counsel.

For the respondents

Shri O.P. Kshtariya, proxy  
Counsel for Shri N.S. Mehta,  
Senior Standing Counsel.

Judgement(Oral)  
(Hon'ble Mr. I.K. Rasgotra)

The petitioners Dr. Raman Kumar Attrey, Dr. Mukesh Kumpar Gupta, Dr. Lily Agarwal, Dr. Raj Kumar, Dr. Gyan Roy, Dr. Imtiaz Hussain, Dr. Shashi Gupta, Dr. Shyam Sunder Gupta, Dr. Ravi Bhushan and Dr. Sudhir Bhushan working as Insurance Medical Officer Grade-II have filed this petition praying for issue of a direction to the respondents quashing their letter dated 30.11.1987 according to which they have been employed purely on contractual basis for a contract period of six months from the date of commencement of the contract on a fixed remuneration of Rs.2200/- per month plus usual allowances from the dates shown against each of them in the said order. Since the date from which the contract commences and the date of termination of the contract are shown in the said impugned letter of 30.11.1987, the grievance of the petitioners is that they will be thrown out of employment automatically on the expiry of the contract. They have, therefore, prayed that the respondents be

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directed to continue the petitioners in service till they are regularised after consultation with the UPSC and that they should be given the same scale of pay and allowances as are given to the regularly appointed Doctors. As far as the last relief is concerned, we find that the remuneration fixed for the petitioners is Rs.2200/- which is the minimum of the scale of pay of Rs.2200-4000. They have also been allowed the usual allowances. In the circumstances the last relief does not survive. The impugned order is assailed principally on the ground that it is violative of the Fundamental Rights of the petitioners under Article 14, 16 and 21 of the Constitution of India. Since the posts are of regular nature it is their contention that they cannot be filled up on a contractual basis. The learned counsel for the petitioners submitted that the case of the petitioners is fully covered by the decision of the Ministry of Health and Family Welfare's Circular dated 2.11.1988 which has been issued, relying on the case of Dr. (Mrs.) Sangeeta Narang & Ors. decided by the C.A.T. This decision relates to the Doctors who were appointed in the Central Health Service. The terms and conditions of their appointments are not at par with the terms and conditions of the Doctors appointed in the E.S.I.C. In our opinion, therefore, Dr. Sangeeta Narang's case is not germane in the matter before us.

2. The stand of the respondents in their counter-affidavit is that the respondents had placed a requisition on the UPSC to fill up 74 posts of Medical Officer Grade II in E.S.I.C. on regular basis on 7.8.1986. As there was a delay in selection of the Medical Officers it was decided to have the services of some Medical Officers on contractual basis for a period of six months on a fixed salary as a stop gap arrangement in order to provide

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medical services to the beneficiaries covered under ESIC. They, therefore, contend that the posts were filled up on contractual basis purely as a stop gap arrangement and the petitioners have no right for continuing in the said posts after the expiry of the contractual period. A large number of cases of Doctors employed in E.S.I.C. had come up for consideration before the various Benches of the Tribunal. The Tribunal had observed that the petitioners have been appointed dehors the rules. As such, therefore, they cannot claim continuance in the posts even if they are regular posts until and unless they are selected in accordance with the Rules. If they cannot get selected they cannot claim a right to continue in these posts. The Supreme Court in the **Director, Institute of Management Development U.P. v. Pushpa Srivastava (Smt.) 1992 (21) ATC 377** had observed:-

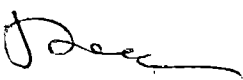
"to our mind it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post. Once this conclusion is arrived at, what required to be examined is, in view of the services of the respondent being continued from time to time on 'ad hoc' basis for more than a year whether she is entitled to regularisation? The answer should be in the negative."


In another similar case which came up before this Bench, we were told that E.S.I.C. has since framed fresh recruitment rules called Employees State Insurance Corporation (Medical Posts) Recruitment Regulations, 1990. These rules came into force w.e.f. 16.5.1990. All the Doctors who were appointed on a contractual basis have been provided an opportunity to get themselves selected through the Medical Board constituted under the Recruitment Regulations, 1990,



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subject to fulfilment of recruitment qualifications for eligibility. In fact this batch of OAs 9 applications have already been withdrawn as the Doctors appointed contract basis have already got regularised in accordance with the Recruitment Regulations which came into force w.e.f. 16.5.1990. We, therefore, do not see any reason why these petitioners should have continued on contract basis without going through the procedure as prescribed in the Recruitment Regulations, 1990. Since the learned counsel for the petitioners is not able to say whether the petitioners have appeared before the Selection Board and have been regularised it is not possible for us to give specific direction to the respondents. All that can be said is that if no opportunity has been given to the petitioners to appear before the Selection Board subject to their eligibility, they should be given such an opportunity and in case they are found suitable their services should be regularised in accordance with rules and subject to availability of vacancies. The petitioners shall also be, for this purpose, provided age relaxation to the extent they have rendered service in the respondent Corporation. In case, however, any of the petitioners has appeared before the Selection Board constituted in accordance with the 1990 Regulations and he has been declared unsuitable or ineligible he shall have no right to continue in the post. This, however, will not preclude the respondents to give a fresh contract of appointment to such a person if they find that they have the vacancies which have to be filled up again by adhoc and stop gap arrangement. No costs.

  
(J.P. Sharma)  
Member(J)

  
(I.K. Rasgotra)  
Member(A)

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