



**Central Administrative Tribunal
Principal Bench, New Delhi**

**T.A. No. 16/2016
M.A. No. 1090/2017
M.A. No. 3164/2019**

This the 03rd day of March, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Dr. Rohit Chopra,
S/o Late Shri Krishan Prakash Chopra
R/o 122, E II, Sector – 18,
Rohini, Delhi – 110089

... Applicant

(through Sh. Saurabh Ahuja, Advocate)

Versus

1. The Chairman,
Maulana Azad Institute of Dental Sciences,
Fifth-floor, Sachivalaya,
New Delhi – 110002
2. The Chief Secretary,
Govt. of NCT, Fifth-Floor, Sachivalaya,
New Delhi – 110002.
3. Government of NCT,
Through Secretary,
Health & Family Welfare,
9th Floor, Delhi Sachivalaya,
New Delhi.

... Respondents

(through Sh. Naushad Ahmed Khan, Advocate)

ORDER (Oral)**Justice L. Narasimha Reddy, Chairman:**

Little did the Maulana Azad Medical College and Hospital (for short, Medical College) realize that by taking the applicant herein on ad hoc basis, they will expose the institution to so much of litigation.

2. The applicant joined the service of Medical College on 20.05.1999 as Demonstrator (Dental). The institution was reorganized into an autonomous body known as Maulana Azad Institute of Dental Sciences (MAIDS) on 01.07.2005. The employees were given an option to continue under the service conditions of the Medical College or those of the MAIDS. Since the applicant was on ad hoc service, the option did not apply to him. He was appointed as Assistant Professor on contractual basis on 04.10.2005. Thereafter he was appointed as Assistant Professor on regular basis in the pay scale of Rs. 11625-15200 vide order dated 07.07.2008.

3. Once the applicant became a regular employee, he started exhibiting his real skills. He went on making the representations that he must be made as part of the



regular establishment of the MAIDS, and extended the benefit of the pay scale from the date on which he was initially engaged. Ultimately he filed W.P. (C) No.3729/2013 before the Hon'ble High Court of Delhi. He claimed the relief of regularization of his services from the date on which he was engaged on ad hoc basis and then to extend all other attendant benefits. That writ petition was disposed of on 20.01.2015, and it became final. Thereafter, the applicant filed W.P. (C) No.2165/2016 with multiple prayers, namely, (a) to include him in the initial constitution of MAIDS and (b) to count his entire service for the purpose of retirement benefits and (c) to issue necessary directions to the concerned officers to review the promotion date from 2007, as is said to have been made in case of other Doctors. The writ petition has since been transferred to the Tribunal and renumbered as TA No.16/2016.

4. The applicant contends that once he came to be regularly appointed as Assistant Professor in the year 2008, the entire service rendered by him from the inception, either on ad hoc, or on contractual basis, deserves to be treated as regular, and that all benefits are to be extended to him.



5. The respondents filed a detailed counter affidavit. They contend that the present T.A. (W.P.) is barred by res judicata in view of the judgment rendered in W.P. (C) No.3729/2013. It is also stated that the applicant cannot reopen the issue and that it has already been dealt with in detail. The respondents further contend that the services of the applicant can be counted only from the date on which he was regularly appointed and not earlier to that.

6. We heard Shri Sourabh Ahuja, learned counsel for the applicant and Shri Naushad Ahmed Khan, learned counsel for the respondents, in detail.

7. The entry of the applicant into the Medical College was, as a Demonstrator, on ad hoc basis. Over the period, he was appointed as Assistant Professor on ad hoc basis, and thereafter, on regular basis in the year 2008. During this period, substantial change has taken place in the establishment of the Institution. Earlier, it was a Medical College and thereafter it was converted into an Autonomous body, named as MAIDS. The employees who were working in the Medical College were



given option to be governed by the service conditions of that organization or to be governed by those of the MAIDS. The applicant did not have any opportunity of that nature in view of the fact that he was not a regular employee of the Medical College. It was only in the year 2008, that he became a substantive member of the MAIDS.

8. The attempt of the applicant is to get the benefit of regular service from the date on which he entered on ad hoc basis. Basically, such a plea cannot be accepted. Added to that, the applicant approached the Hon'ble High Court by filing W.P. (C) No.3729/2013. The issue raised by him was dealt with in detail in paragraphs 6, 7 & 8 of the judgment. They read as under:

“6. Firstly, it is not as if that the petitioner is in any manner being adversely affected on his being employed by the respondent no. 1 from the respondent no. 3 because petitioner with the respondent no. 1 was appointed at the same post and on the same ad hoc basis which he was working with the respondent no. 3. Petitioner also received the same monetary emoluments with the respondent no. 1 when his services were taken over by respondent no. 1 from respondent no. 3. Therefore, it is not permissible for the petitioner to argue that he has been prejudiced or adversely affected and petitioner cannot rely upon the clause of the scheme of the transfer to claim that petitioner in fact by virtue of the said clause is entitled to benefits of regular employee from retrospective



date in 1999 although petitioner's post changed and he became a regular employee only much later with the respondent no. 1 in the year 2008. An ad hoc employee can only get the benefits of service conditions which are applicable to the ad hoc employee, and therefore, I put it to the counsel for the petitioner whether he is interested again in continuing as an ad hoc employee with the respondent no. 3 or the respondent no.1 and which is the ad hoc post on which the petitioner was working with respondent no. 3, but counsel for the petitioner rightly replies that petitioner does not want to continue on the ad hoc post inasmuch as he has now been appointed to a regular post with respondent no. 1. Therefore, the argument urged on behalf of the petitioner of having been adversely prejudiced is an argument without merit and is rejected.

7. Another reason for rejecting the argument urged on behalf of the petitioner would be that the effect of an ad hoc appointment is that an ad hoc employee who has been regularized only in the year 2008 cannot claim benefits of the emoluments etc of a regular post during the period of the ad hoc appointment. In somewhat similar circumstances on the aspect of status/rights of a temporary/ad hoc employee, in the case of W. Morris Romel Roy and Ors. Vs. Airport Authority of India, W.P.(C) No.3398/2013 decided on 28.11.2013 (which was a case with respect to a promotion claimed by a person appointed to ad hoc post), I have held as under:

“5. Promotion is from a lower post to a higher post, and therefore, before seeking promotion a person must be holder of a lower post. To be a holder of a lower post a person has to be employed in that post within a regular /permanent employment. A probationary employee, similar to an adhoc employee or a temporary employee, cannot be said to be a holder of a post, and therefore, not being holder of a post which is a sine qua non for promotion, a



probationary/adhoc/interim employee cannot be an eligible candidate for promotion to a higher post. In my opinion, it is implicit in the very term of promotion that promotion is of a regular/permanent employee of an organization. Promotion surely can only be of a regular/permanent employee inasmuch as it would be an absurd position that if for some reason a probationary employee is promoted but thereafter for valid reasons his original period of promotion itself is held not to be successfully completed and therefore there takes place termination of services of such an employee. It is not the law that by participating and being successful in the selection process for promotion there is an automatic passing of an order by an employer that probationary officer has successfully completed the period of probation. The period of probation can only be successfully completed in accordance with the applicable rules or agreement, and on completion of the probationary period. Of course, there may be confirmation of the employee even prior to completing the probationary period, however, an order would be required that the probationary period stands successfully completed and the employee is now a regular/permanent employee. I put it to the learned senior counsel for the respondent to show me any judgment of any Court which lays down a ratio that promotion can be granted even to those employees who are not regular/permanent employees but are only probationary employees, however learned senior counsel for the respondent very fairly states that he does not have any judgment with him though it is argued that it is the general/ normal law that a probationer should be held entitled to appointment to a higher post by promotion. I however cannot agree with this argument urged on behalf of



the respondent that a probationary officer without his successfully completing the period of probation or without his being deemed to be confirmed in the job by making his appointment as regular/permanent, a probationary employee can/ must be considered for promotion.” (underlining added)

8. Therefore, once the petitioner was only an ad hoc employee either he has to exercise his option to continue on ad hoc basis with the respondent nos.1 or 3 and in which circumstances he can continue with the same terms and conditions at which he was working with the respondent no. 3, but, it cannot be said that the petitioner will claim different service conditions of a regular employee and to be appointed to a permanent post, and yet claim that he should be given retrospective benefit of the permanent post for the period he was working on an ad hoc basis on a post. Regular benefits/monetary emoluments of a regular post can only be granted to a regular employee from the date of his being appointed on a regular/permanent post and not w.e.f. retrospective date during the period in which the employee was working on a temporary/ad hoc post.”

9. This being the fact, it is just un-understandable as to how the applicant can raise the same issue once again. This TA is clearly barred by the principle of res judicata. Though certain other facets of relief are claimed in the present proceedings, they too are barred by the operation of the doctrine of constructive res judicata. The reason is that the cause of action, if at all, very much existed when the earlier writ petition was filed.



10. It is pleaded that the applicant was discriminated. The record discloses that the persons with whom he is drawing comparison were appointed on regular basis much before the formation of the MAIDS. Therefore, the question of comparison much less discrimination does not arise.

11. We do not find any merit in the TA. It is accordingly dismissed. MAs shall also stand disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/ns/ankit/akshaya/