

In the Central Administrative Tribunal

Principal Bench: New Delhi

CA No. 1048/87

Date of decision: 11.12.1992.

Dr. (Mrs.) Sunita Goel

...Petitioner

VERSUS

Union of India through the

Employees State Insurance

Corporation

...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman

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

For the petitioner Shri Ashok Aggarwal, Counsel.

For the respondents Shri G.R. Nayyar, Counsel.

Judgement (Oral)

(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner Dr. (Mrs.) Sunita Goel was appointed as a Medical Officer Grade-II in the Employees State Insurance Corporation by office order No.31 of 1985 for a period of 90 days. By the said order 26 Doctors were appointed, including the petitioner. The petitioner's name is at serial No.19. It is stated that her appointment would start on 26.12.1985 and would stand terminated on 25.3.1986. So far as Doctors Deepak Saxena, Sunita Vohra, Sanjeev Prasad and Virendra Singh Chauhan at serial Nos.23-26 are concerned, their dates of appointment are later

and their dates of termination are also later, having regard to the fixed tenure of 90 days. On the expiry of the stipulated period the services of the petitioner stood terminated. It is in this background that the petitioner has approached this Tribunal by way of this petition in which he has prayed:-

- i) for quashing of the impugned order dated 3.3.1986;
- ii) to direct her reinstatement in service with back wages and continuity of service and for payment of wages in the pay scale of Rs. 700-1300.

2. The petitioner's principal grievance is that the termination of the petitioner is arbitrary and illegal, as persons who are juniors to her have been retained. The names of juniors stated in paragraph-H are those of Doctors Ajay Kumar Gupta, Deepak Saxena, Virendra Singh Chauhan. It is not the case of the petitioner that any particular person was appointed on ad hoc basis after the termination of the petitioner in similar post. As regards the continuance of the junior mentioned by the petitioner is concerned, it is necessary to note that they were also appointed by the very same order along with the petitioner, as already stated for the same period of 90 days. The only difference is that whereas the petitioner's appointment started on 26.12.1985 the appointment of the said three persons started on subsequent dates with the result they continued even after the

termination of the petitioner, as they were also appointed for the same fixed period of 90 days. In a situation like this continuance of such a person beyond the tenure of the petitioner is inevitable. The question for consideration is as to whether this can be regarded as arbitrary and violative of the Articles 14 and 16 of the Constitution.

3. The learned counsel for the petitioner relied upon the decision of the Supreme Court in AIR 1986 SC 1626 between Jarnail Singh Vs. State of Punjab. He invited our attention to paragraph-35 of the said case. That was also a case of termination of a person appointed on ad hoc basis. It is stated therein that the ad hoc service of the appellant that was arbitrarily terminated on the ground that his services were no longer required while the respondents had retained other Surveyors who are juniors to the appellant. This was held to be violative of Articles 14 and 16 of the Constitution. That is not a case of appointment for a specified term, as in this case. If persons appointed later are continued in preference to those appointed earlier it would be a case of violation of Articles 14 and 16 of the Constitution. But if all the persons are appointed for the same period, persons who are inducted later are bound to continue in service after persons inducted earlier for the same period ceased to continue in service after the expiry of the period for which they are appointed. This would not violate Articles 14 and 16 of the Constitution, as is clear from the pronouncement of the Supreme Court reported in JT 1992 (4) SC 489.

(S)

between Director, Institute of Management Development, U.P. vs. Smt. Pushpa Srivastava. That was a case dealing with the appointment on ad hoc basis for a contractual period of six months. The Supreme Court held that in such situations violation of Articles 14 and 16 does not take place when the persons appointed later for the same contractual period continued whereas the persons appointed for the same contractual period on earlier dates would vacate office on the expiry of their term of appointment. Besides this is a decision of three-Judge bench whereas the decision in AIR 1986 SC 1626 (supra) is a judgement of two-Judge Bench. *Prima facie* we are inclined to take the view that there is no conflict between the two decisions. The latter decision of the Supreme Court deals with cases of ad hoc appointment for specific contractual period. The law in regard to contractual appointments on ad hoc basis is the one as laid down by the Supreme Court in JT 1992 (4) SC 489 (supra). As regards the decision of the Tribunal relied upon by the petitioner's counsel in the case of Prem Lata Choudhari vs. E.S.I.C. is concerned, it is enough to say that in view of the clear pronouncement which is directly on the question which we have adverted to above, the question of taking a view different from the view taken by the Supreme Court does not arise. Besides we are informed that the decision in the said case is pending before the Supreme Court the special leave having since been granted.

4. We, therefore, have no hesitation in holding that the action of the respondents in terminating the

(37)

services of the petitioners after the expiry of the contractual period is not arbitrary and violative of Articles 14 and 16 of the Constitution. Hence, this petition fails and is dismissed. No costs.

de Souza
(J.K. de Souza)

Member(A)

Melvin
(V.S. Melvinath)

Chairman

Sen.

111292