IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

DATE OF DECISION 18.12.87

Reg.No.OA 716/87

Dr. (Mrs.) Sangita Narang and another ....Applicants

Vs.

Delhi Administration ....Respondent

OA 706/87

Dr.Ravinder Kumar Mathur ....Applicant

Vs.

Delhi Administration ....Respondent

OA 677/87

Dr.Amit Kumar Sharma ...Applicant

Vs.

Delhi Administration ...Respondent

OA 704/87

Dr.Rakesh Kumar and others ...Applicants

Vs.

Delhi Administration ...Respondent

OA 1135/87

Dr.Rakesh Singh and others ...Applicants

Vs.

Delhi Administration ...Respondent

OA 777/87

Dr.V.K.Chaudhary ...Applicant

Vs.

Delhi Administration ...Respondent

OA 1072/87

Dr.Karamjit Singh Kochhar ...Applicant

Vs.

Delhi Administration ...Respondent

OA 1014/87

Dr.Niloy Ranjan Laskar ...Applicant

Vs.

Delhi Administration ...Respondents

OA 888/87

Dr.Surinder Pal ...Applicant

Vs.

Delhi Administration ...Respondent

OA 977/87

Dr.Jagdish Chander Pathak ...Applicant

Vs.

Delhi Administration ...Respondents

OA 1390/87

Dr.Dalvir Singh & others ...Applicants

Vs.

Delhi Administration etc. ...Respondents

For the Petitioners: Shri Sanjiv Sharma, Advocate

For the Respondents: Shri B.R.Prashar, Advocate

CORAM: HON'BLE MR.JUSTICE J.D.JAIN, VICE CHAIRMAN
HON'BLE MR.BIRBAL NATH, ADMINISTRATIVE MEMBER

JUDGMENT:

(Judgment of the Bench delivered by
Mr. Justice J.D. Jain, V.C.)

The petitioners in all the above mentioned applications under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act") are qualified doctors. They have called in question the validity, legality and propriety of the policy adopted by the Directorate of Health Services, Delhi Administration in appointing them as Junior Medical Officer (ad hoc) on short-term contract (monthly-wage) basis, say for a period of 90 days in the first instance renewable after a break of a working day for another 90 days. They are paid a consolidated monthly wage of Rs.650/- besides non-practising allowance and all other allowances admissible under the rules from time to time. In these applicaions, they have assailed the policy of hire and fire on the part of the respondent and have also claimed that they are entitled to equal pay, allowances and other benefits like leave facility etc. as are admissible to other Junior Medical Officers appointed on regular basis from the respective dates of their joining the service with the respondent. They have further sought a declaration that their services are not liable to be terminated till the vacancies are filled up by regular appointments.

2. Since common questions of law and fact are involved in all these applications, we propose to dispose of all of them by this common order. Succinctly, the facts of each case are as follows:-

OA No.716/87

In this application, the petitioners hold a Bachelors degree in Medicine and Surgery (M.B.B.S.) and they have

also done their internship courses. Further they have worked as Junior Resident Doctors in recognised hospital. They registered themselves with the Employment Exchange for sponsorship to the government departments as and when vacancies for their appointment as Junior Medical Officer arose and consequent upon sponsorship of their names by the Employment Exchange, they received offers dated 12.11.86 (Copy Annexure A-I and A-II) from the Directorate of Health Services, Delhi Administration. Since the offers are identical in all the cases, we think it advisable to reproduce the salient terms of one of the offers couched in terms for ready reference, as under:-

" Consequent upon sponsorship of name from Exmployment Exchange Dr. _____ is offered a post of Junior Medical Officer (ad hoc) on the following terms and conditions:-

1. The appointment will be for 90 days in the first instance renewable after a break of the working day for another 90 days only.

2. The scale of the post is Rs.650 plus N.P.A. and all other allowances admissible under the rules from time to time.

3. The Delhi Administration/Directorate of Health Services has the right to call him/her for work on Holidays also, if necessary.

4. The appointment can be terminated at any time without assigning any reason or notice.

5. In the matter of discipline etc. he/she will be subject to all rules, instructions of the Government.

6. The appointment will not entitle him/her for absorption in regular capacity.

7. The appointment will not entitle him/her for any leave casual or otherwise."

On their accepting the job, the respondent, Directorate of Health Services made an order appointing them as Junior Medical Officer (Ad hoc) from 24.11.86 to 21.2.87 on the terms and conditions embodied in the letters of offer. On the expiry of the said term, a fresh order of appointment dated 19.2.87 was passed by the

respondent for the period from 24.2.87 (FN) to 23.5.87(AN) (second term) on the terms and conditions already communicated to them in the offer of appointment (copy Annexure-A-3). Just before the said term was to expire the petitioners filed this application, inter alia, seeking interim relief restraining the respondents from terminating their services and/or discharging or relieving them from the post of Junior Medical Officer. An ad-interim injunction was issued by Court No.1 of this Bench on 22nd May, 197 to the effect that the services of the applicants shall not be terminated by displacing them by other ad hoc appointees. It appears that under the cover of the ad-interim injunction they are still continuing as Junior Medical Officer.

OA 706/87

In this case too, the petitioner was appointed as Junior Medical Officer in the first instance for 90 days from 24.11.86 to 21.2.87 and for a second term from 24.2.87 to 23.5.87 on the terms and conditions which are identical to those in O.A.716/87. In his case also, interim order was made on 22nd May, 1987 which is couched in the same language.

OA 677/87

The petitioner was likewise appointed Junior Medical Officer (Ad hoc) for 90 days from 24.11.86 to 21.2.87 in the first instance and after a days break his term was renewed vide letter of appointment dated 19.2.87.

OA 704/87

Similarly, the petitioners in this application were appointed as Junior Medical Officers w.e.f.24.11.86

to 21.2.87 on ad hoc basis and after a days break they were reappointed vide letter dated 19.2.87 for 90 days w.e.f. 24.2.87.

OA 1135/87

All the four petitioners in this O.A. were appointed for 90 days in the first instance from 19.2.87 to 19.5.87 (vide Annexure 'C') and after a break of a day or so, their term was renewed for another 90 days w.e.f. 21.5.87 to 18.8.87 (vide Annexure-A). They filed this application on 12.8.87 on coming to know that their services as JuniorMedical Officers (adhoc) had been terminated vide order dated 11.8.87. In their case too, the operation of the said order was stayed.

OA 777/87

The petitioner in this O.A. was initially appointed as Junior Medical Officer on ad hoc basis for 90 days from 2.12.86 to 28.2.87 videletter dated 3.12.86 (Annexure-A-I) and subsequently, his term was renewed for another 90 days w.e.f. 3.3.87 to 30.5.87 vide order dated 3.3.87 (Annexure-AII) He filed this application on 27.5.87 and ad-interim order was issued on 28.5.87 restraining the respondents from terminating the services of the applicant by appointing somebody else on ad hoc basis in the post occupied by the applicant.

OA 1072/87

The applicant was appointed as Junior Medical Officer on ad hoc basis for 90 days w.e.f. 8.5.87 to 6.8.87 in the first instance, but apprehending that on the expiry of her term, the same may not be renewed as in the case of Dr. Uma Rani Mohan, Dr. Vinod Kumar and Dr. Love Raj Chaudhary, who had been appointed on ad hoc basis for 90 days from 2.4.87 to 30.6.87, but were not allowed

to continue on the expiry of the first term of their appointment, she filed this application on 31.7.87. A direction was issued to the respondents in her case also to continue her in service pending further orders.

OA 1014/87

The petitioner was appointed as Junior Medical Officer on ad hoc basis in the first instance from 29.1.87 to 28.4.87 vide letter dated 29.1.87 (Annexure A-2) and on the expiry of the said term, he was re-appointed for another term from 30.4.87 to 28-7-87. He filed this application on 22.7.87 and was granted interimstay as in other cases.

OA 888/87

The petitioner was appointed as Junior Medical Officer on ad hoc basis for 90 days in the first instance from 6.4.87 to 4.7.87, but like the petitioner in O.A.1072/87, he too apprehended that his services may not be renewed for another term, so he filed this application on 25.6.87 and he was granted the relief of status quo as on the date of the order viz., 3.7.87 in relation to employment as Junior Medical Officer, ad hoc.

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OA 977/87

The applicant was initially appointed for 90 days as Junior Medical Officer(Ad hoc) w.e.f. 29.1.87 and his term was renewed for another 90 days from 30.4.87 to 28.7.87 vide letter dated 27.4.87(copy Annexure-III). He filed this application on 15.7.87 and he was granted ad-interim stay uptil the time of regular appointment to the post held by him was made.

OA 1390/87

There are two petitioners in this case, Dr.Dalvir Singh and Dr. Ram Kanwar. Both of them were initially appointed by the Central Government Health Scheme, Nirman Bhavan vide order dated 31st July, 1987(Annexure A-II) for a period of 30 days only. It was stated therein that their appointments were being made against the vacant posts of regular Medical Officers(Junior Class I) and as soon as a regular Medical Officer joins the service of junior-most Medical Officer on monthly wage basis will stand terminated. After the break of service for one day i.e. on 31st August, 1987 a fresh order appointing them for another 30 days was passed(Annexure AIII). On the expiry of the said term the petitioners filed this O.A.No.1390/87 on 29.9.87 and they have continued in service purusant to the stay order issued by this court. The stand taken by the respondent-Union of India is almost identical with that taken by the Delhi Administration in the above mentioned cases.

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3. All these applications are vehemently contested by the respondents, Delhi Administration and the Director, Health Services, Delhi Administration and the Director C.G.H.S. (O.A.No.1390/87 only). Since it was considered necessary to implead the Union of India also as a respondent, the petitioners were directed to amend the cause title of the applications accordingly, and notices were issued to the Union of India. However, there is no appearance on behalf of the Union of India except in O.A.No.1390/87.

4. The stand of the respondents primarily is that the Directorate of Health Services, Delhi Administration is the implementing authority of the instructions/orders issued by the Government of India, Ministry of Health and Family Welfare which the Cadre Controlling Authority in respect of all Medical Officers comprised in Central Health Service Cadre from time to time. In this particular case, the Directorate of Health Services was allowed to fill the vacant posts of Junior Medical Officers on monthly wage basis as stop-gap arrangement for the smooth functioning of the hospitals and dispensaries run by the Directorate on the terms and conditions embodied in the Ministry of Health & Family Welfare letter No.10226/72/78-CHS-I dated 11th May,1978. So, as per the guidelines for the appointment of Junior Medical Officers(ad hoc), the petitioners wereto be appointed only for a short term of 90 days with an intermittent break of one or two days on the expiry of 90 days and they were to be paid a consolidated salary of Rs.650/- besides non-practising allowance and other allowances. Their contention is that the appointment of the petitioners and others like them are purely by way of stop-gap arrangement as the appointment of Medical Officer on regular basis are made on All India

basis by the Ministry of Health and Family Welfare in consultation with the Union Public Service Commission in accordance with the relevant rules of service. The further contention of the respondent is that the terms and conditions including their monthly wage and the short duration of the tenure viz., 180 days was duly intimated to the petitioners in the offer of appointment made to them and the petitioners willingly accepted the terms and conditions and joined the service as ad hoc Junior Medical Officers. So, they cannot now make any grievance out of it. This was being done as per the terms and conditions laid down by the Ministry of Health and Family Welfare vide letter dated 11.5.78 as amended vide their letter dated 9.3.81. They deny that the Junior Medical Officers (ad hoc) perform the same duties and discharged the same responsibilities as the regular Medical Officers appointed by the Ministry of Health and Family Welfare do. Further, Delhi Administration is not the appointing authority in respect of Medical Officers on regular basis in the pay-scale of Rs.700-1300 and it is only by way of stop-gap arrangement that they are appointed Junior Medical Officer on monthly wage basis. There is no method of selection of Junior Medical Officer ad hoc such as interview/written test etc. and they are appointed strictly on the basis of the seniority as per the list furnished to them by the Employment Exchange, Delhi. No codal formality like medical examination and character and antecedents verification etc. is completed. Further, according to the respondents, the Junior Medical Officer (ad hoc) are appointed for routine check up of

patients in the hospitals/dispensaries run by the Directorate of Health Services and they are generally not entrusted with the responsibilities of stores/ instruments and they just perform only routine duties which carry less responsibilities in comparison to regular Medical Officers appointed by the Ministry of Health and Family Welfare through U.P.S.C. Hence they assert that the petitioners are not a substitute of regular Medical Officer appointed by the Ministry of Health & Family Welfare through UPSC and as such they are not entitled to the same scale of pay and other facilities like leave, housing accommodation etc.

5. The respondents further explain that the policy and the terms and conditions of service of Junior Medical Officer (Ad hoc) were framed by the Ministry of Health & Family Welfare as per their letters dated 11.5.78, 20.7.80 and 6.4.84 as amended from time to time. So in consonance with the said policy, the Junior Medical Officers (ad hoc) are appointed for a total period of 180 days and that too with a break of one day on the expiry of 90 days. However, after the expiry of 180 days fresh appointments against the vacancies thus occurring are made as per vacancy position from the list of candidates furnished by the employment exchange and offers are sent to the other candidates who are next below the candidates already given appointment as Junior Medical Officer (ad hoc) The underlying idea, the respondents say, is two-fold viz., making stop-gap arrangements and providing employment to other candidates who have registered themselves with the Employment Exchange and are equally in need of employment. Lastly, the respondents have explained that it is always open to the petitioners to apply

for regular appointment for the post of Medical Officers by selection through U.P.S.C. in accordance with the relevant rules and some of the petitioners are even trying for their appointment on regular basis.

6. The first and foremost question in the applications obviously is whether the policy of hire and fire which is a legacy of the old system of laissezfaire adopted by the respondents is in consonance with the mandate of equality enshrined in Articles 14 and 16 of the Constitution of India. It is not disputed that the posts to which the petitioners have been appointed on ad hoc basis are all permanent posts borne on the cadre of Central Health Service. It is also not disputed that the recruitment to the said posts on permanent basis has to be made in accordance with the Central Health Service Rules, 1982, and the Government of India in the Ministry of Health & Family Welfare is the/controlling authority. A perusal of the said Rules would show that the methods of recruitment to the service are those mentioned in Rule 6 of the Rules and after the initial constitution of service, its future maintenance has to be kept in the manner provided under Rule 8 etc. which is basically by direct recruitment on the basis of written examination conducted by the Commission followed by an interview or selection by interview only by the Commission in accordance with the age limit and educational qualifications and experience as may be prescribed, in consultation with the Commission. Of course, the exact method of recruitment is prescribed by the Controlling Authority in consultation with the Commission on each occasion and the appointments

are made finally by the Controlling Authority. So, there can be no room for doubt that the appointments of the petitioners not having been made by the competent appointing authority in accordance with the rules, the petitioners cannot be said to have been recruited to the Service as such and their appointment by the Directorate of Health Services, Delhi Administration is purely on ad hoc basis.

7. The crucial question, which still survives, for consideration however is whether even as ad hoc appointees the petitioners can be shunted out unceremoniously just on the expiry of a total period of 180 days with an intermittent break of a day or so on the expiry of first 90 days. There can be no two opinions that the Government can make short-term appointments even against permanent posts so as to meet its immediate requirements pending appointments to the said posts on regular basis. In other words, short-term appointments, even for a specified period can be made by the Government, but the critical question is whether once having made such appointments it will be open to the concerned authority to dispense with the services of temporary/ad hoc employees at any time at its sweetwill even when the need for filling the posts on temporary/ad hoc basis still persists. In other words, will it be just and fair on the part of the Government to terminate the services of a temporary employee who may have been appointed for a specified period even though the post has not been filled up by a regular incumbent and there is still need for manning such post uptil the time it is occupied by a regular appointee. On a careful consideration of the matter, we venture to reply in the negative. It

is for the obvious reasons given below.

8. In the first instance, it is now well settled that though the origin of government service is contractual in the sense that there is always an offer and acceptance in every case, but once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than that of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. (See: Roshan Lal Tandon Vs. Union of India and others: AIR 1967 SC 1889 and Union of India Vs. Arun Kumar Roy: 1986(1) SCC 675). In the latter authority the Supreme Court observed:-

> "It is now well settled that a government servant whose appointment though originates in a contract, acquires a status and thereafter is governed by his service rules and not by the terms of contract. The powers of the government under Article 309 to make rules, to regulate the service conditions of its employees are very wide and unfettered. These powers can be exercised unilaterally without the consent of the employees concerned. It will, therefore, be idle to contend that in the case of employees under the government, the terms of the contract of appointment should prevail over the rules governing their service conditions. The origin of government often-times is contractual. There is always an offer and acceptance, thus bringing it to being a completed contract between the government and its employees. Once appointed, a government servant acquires a status and thereafter his position is not one governed by the contract of appointment. Public law governing service conditions steps in to regulate the relationship between the employer and employee. His emoluments and other service conditions are thereafter regulated by the appropriate statutory authority empowered to do so."

In this view of the matter, therefore, the services of the petitioners could be terminated only if the same were no longer required or if the concerned authority was of the opinion that the performance of the particular petitioner is not upto the mark of he is not otherwise suitable for the post. The third eventuality for termination of services can arise by was of disciplinary action but we have grave doubt that the services would stand automatically terminated by efflux of time under the contract for a short term viz., 180 days in the instant case.

9. The resort to this dubious device of short-term appointment on a consolidated pay just like monthly wages seems to stem from an apprehension on the part of the respondents that if a Junior Medical Officer is allowed to continue for an indefinite time, it may become difficult to resist his claim for regularisation of his services on permanent footing. As seen above, a regular appointment to the service can be made only in consultation with the Union Public Service Commission. It is perhaps with a view to obviate the necessity of consultation with the Union Public Service Commission that short-term appointments are being made on feudal system of hire and fire. It may be pertinent, in this context, to notice the relevant provisions of U.P.S.C.(Exemption from Consultation)Regularations,1958 issued by the Ministry of Home Affairs vide G.S.R No.789 dated 1-9-58. Regulation 4 thereof dispenses with consultation with the U.P.S.C. in the following

categories:-

4. It shall not be necessary to consult the Commission in regard to the selection for a temporary or officiating appointment to a post, if -

(a) the person appointed is not likely to hold the post for a period of more than one year; and

(b) it is necessary in the publice interest to make the appointment immediately and the reference to the Commission will cause undue delay -

Provided that -

(i) such appointment shall be reported to the Commission as soon as it is made;

(ii) If the appointment continues beyond a period of six months, a fresh estimate as to the period for which the person appointed is likely to hold the post shall be made and reported to the Commission; and

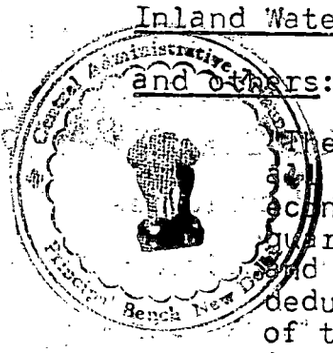
(iii) if such estimate indicates that the person appointed is likely to hold the post for a period of more than one year from the date of appointment the Commission shall immediately be consulted in regard to the filling of the post".

10. Evidently, the short-term contract for 180 days is designed to circumvent the provisions of Service Rules and the proviso to Regulation 4 which obligates the concerned authority to report even short-term appointment to the Commission as soon as it is made and consult the Commission if the temporary/officiating appointee is likely to hold the post for a period of more than one year. This is sought to be ensured by automatice operation of the Clause in the contract itself that the appointment shall come to an end by efflux of time on the expiry of 90 days in the first instance and on the expiry of 180 days in all. Surely, devising a method like this is neither conducive to efficient and smooth functioning of the department itself nor it is just and fair to the appointees on whose head the sword of Damocles keeps on hanging all the time the grim prospect of an in uncertain and dark future stares in the face. It is tantamount to sheer exploitation of unemployed and needy young doctors.

11. Apart from the above mentioned intrinsic infirmity from which the short-term appointments of Junior Medical Officers suffer they are also violative of the mandate of equality enshrined in Articles 14 and 16 of the Constitution of India in many a way. In the first instance such contract contravene the well established principle of 'first come last go' in public employment inasmuch as the services of the Junior Medical Officers stand automatically terminated on the expiry of 180 days in all, irrespective of the fact whether the need for filling the said post still survives or not. Indeed, it is the case of the respondents that they fill up the vacancies in such an eventuality by appointing a fresh incumbent on the same terms and conditions and they go on adopting this process periodically so long as the Medical Officers on regular basis are not appointed by the Ministry of Health and Family Welfare through U.P.S.C. Obviously, therefore, the wholesome principle of 'first come last go' in public employment is given a go bye which is clearly arbitrary and violative of Articles 14 and 16 of the Constitution of India. In Jarnail Singh and others Vs. State of Punjab and others: 1986(3) SCC 277 the ad hoc services of the aggrieved employees had been arbitrarily terminated as no longer required while others who were junior to them had been retained and regularised. Perhaps it was pursuant to a condition embodied in their service contract that "their services can be dispensed with at any time without notice or reason". The Supreme Court deprecated this approach on the ground that it violated the salutary principle of equality and non-arbitrariness and want of discrimination as enshrined in Articles 14 and 16 of the Constitutionof India. Hence the order of termination of the services of the

appellants therein were held to be illegal and violative of Articles 14 and 16 of the Constitution. Reference in this context be also made, with advantage, to the case of Manager, Govt. Branch Press Vs. D.B. Bellappa:AIR 1979 SC 429. In that case, the service of Belliappa, a temporary class IV employee was terminated without assigning any reason although in accordance with the conditions of his service, three other employees similarly situated, junior to Belliappa in the said temporary cadre, were retained. The order of termination was held to be violative of equality/as clause enshrined in Articles 14 and 16 of the Constitution.

12. That apart, the short-term contract of service of the petitioners is wholly unjust, unconscionable and is against the very letter and spirit of our Constitution which aims at securing social and economic justice, it violates the mandate of the great equality clause in Article 14 as observed by the Supreme Court in Central Inland Water Transport Corporation Vs. Brojo Nath Ganguly and others: 1986(3) SCC 156:- (Para 89)



> "The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. . . . . It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal."

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13. Last but not the least, short-term contracts in question not only offend the doctrine of 'equal pay for equal work' but also deny to the petitioners all other service benefits like leave, continuity in service and H.R.A.etc in accordance with the well established canons of public service. Surely, these facilities cannot be denied to a government servant who is in public employment and discharges the same kind of duties which his other counter parts do.

14. These principles have been lucidly enunciated in a long catena of decisions by the highest court of the country. In Rattan Lal and others Vs. State of Haryana and others:(1985) 4 SCC 43, it was the practice of the respondent-State of Haryana to make substantial number of ad hoc appointments of School Teachersin the existing vacancies at the commencement of an academic year and terminate their services before the commencement of the next summer vacations or earlier and to appoint them again on ad hoc basis at the commencement of the next academic year. The State of Haryana had been appointing teachers for quite some period as stated above and in some cases, the appointments were made for a period of six months only and they were renewed after a break of few days. The said break was held to be violative of Articles 14 and 16 of the Constitution.Observed the Supreme Court -

> "If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave etc. available to all the Government servants. These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary "hiring and firing" policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation."

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14. In Dhirendra Chamoli and another Vs. State of U.P.(1986) 1SCC 637 a large number persons were engaged by Nehru Yuvak Kendras on daily wages basis and though they were doing and discharging the same duties the same work as were being performed by Class IV employees appointed on regular basis, they were not being paid the same salary and allowances as were being paid to the other Class IV employees. While deprecating this practice the Supreme Court said :-

> " It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendras knowing fully well that they will be paid only daily wages and, therefore, they cannot claim more. This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so such unemployment, the choice for the majority of people is to starve or to take employment on whatever explitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value."

15. Like-wise in Surinder Singh and another Vs. Engineer-in-Chief, C.P.W.D. and others(1986) 1 SCC 639, which was a case of daily-wage workers of C.P.W.D, it was held that they were entitled to wages equal to regular and permanent employees employed there to do identical work. The learned Counsel for the respondent-Central Government reiterated the same argument as was put forth in Dhirendra Chamoli case (supra) and also urged that the doctrine of "equal pay for equal work" was a mere abstruct xxxxxx doctrine and was not capable of being enforced in a court of law. Repelling this contention, their

Lordships observed-

> "The Central Government like all organs of the State is committed to the Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work. In Randhir Singh V. Union of India, this Court has occasion to explain the observations in Kishori Mohan Lal Bakshi Vs. Union of India and to point out how the principle of equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine accepted thoroughout the world, particularly by all socialist countries. For the benefit of those that do not seem to be aware of it, we may point out that the decision in Randhir Singh case hasbeen followed in any number of cases by this Court and has been affirmed by a Constitution Bench of this Court in D.S.Nakara Vs. Union of India. The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill come from the mouths of the State and State Undertakings."

16. Only recently, the Supreme Courthad to consider another similar case, namely, Bhagwan Dass and others Vs. State of Haryana and others: AIR 1987 SC 2049. In that case, the Government of Haryana had appointed Supervisors on temporary basis under National Adult Education Scheme sponsored by the Government of India on the Birth Anniversary of Mahatama Gandhi in 1978 (October 2, 1978), they were paid Rs.500/- per mensum as fixed salary besides a fixed sum by way of travelling allowance. Their duty was to visit Adult Education Centres and Education Centres established in various villages both during the day time as also occasionally at night. They claimed parity in the matter of salary etc. with the Supervisors appointed in the Education Department on the ground that they were doing the same work as was being done by their counter-parts, respondents 2 to 6 therein and were discharging similar duties as Supervisors in Education Department who had been

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absorbed as regular government servants. Another salient feature of that case(as is in the instant case) was that the appointments of the petitioners therein were initially made for 6 months and after giving a break of a day of so, they were re-appointed by fresh orders. It was contended that it was being done deliberately with a view to deny them the benefits enjoyed by the employees similarly situated and discharging similar duties and functions as Supervisors in the regular cadre. One of the defences raised by the respondent-State of Haryana was that the mode of recruitment of the petitioners therein was different from the mode of recruitment of the supervisors employed in the Education Department on regular basis inasmuch as the whole time supervisors were selected by the Subordinate Service Board after competing with candidates from any part of the country while in the case of the petitioners therein, normally the selection at best was limited to the candidates from only a cluster of a few villages. Repelling all these contentions, their Lordships observed that:-

> "Once the nature and functions and the work are not shown to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "equal pay for equal work" doctrine. It was open to the State to resort to a selection process where at candidates from all over the country might have competed if they so desired. If however they deliberately chose to limit the selection of the candidates from a cluster of a few villages, it will not absolve the State from treating such candidates in a discriminatory manner to the disadvantage of the selectees once they are appointed provided the work done by the candidates so selected is similar in nature".

17. As regards the effect of the breaks given at the end of six months their Lordships held that-

> "having regard to these facts and circumstances and the very temporary nature of the scheme itself, we do not think that the respondent State can be accused

contd..

of making appointments on a temporary six months basis with any ulterior or oblique motive."

However, their Lordships further observed that -

"that however does not mean that the petitioners should be deprived of the legitimate benefits of being fixed in a pay scale corresponding to the one applicable to respondents 2 to 6 by treating them as employees who have continued from them as employees who have continued from the date of initial appointment by disregarding the breaks which have been given on account of peculiar nature of the scheme. While therefore, the petitioners cannot claim as a matter of right to be absorbed as permanent and regular employees from the inception they would be justified in claiming pay on the basis of the length of service computed from the date of their appointment depending on the length of service by disregarding the breaks which have been given for a limited purpose."

Reference in this context be also made to some very recent judgments of the Supreme Court in Daily Rated Casual Labour employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch Vs. Union of India: JT 1987(4) SC 164 and Dr. A.K. Jain & others etc. Vs. Union of India and others: JT 1987(4) SC 445 as also a judgment of this Tribunal (Court No.1)(Principal Bench) in Dr.(Mrs.)Prem Lata Choudhary Vs. Employees' State Insurance Corporation : (1987) 3 Administrative Tribunals Cases 879. In the last mentioned case, the applicants who were all medical graduates were employed as Junior Insurance Medical Officers ~~xx~~ Grade II by the E.S.I.C. on ad hoc basis. Initially, they were offered appointment on purely ad hoc basis for a period not exceeding 90 days at a time and after every 90 days a break of one or two days was given and the total period of service on ad hoc basis was not allowed to exceed 9 months. They were paid

a fixed salary of Rs650/- per month besides the other allowances as admissible to other employees of the E.S.I.C. drawing a basic pay of Rs.650/-. Some other terms of their appointments were also similar to those in the instant case.

18. The Bench speaking through learned Chairman (K. Madhava Reddy, J.) observed that -

> "As stated above, the posts exist and there is a need to fill up these posts either on temporary, ad hoc or regular basis. In fact, after the services of the applicants were terminated at the end of a period of 9 months, other doctors with identical qualifications are sought to be appointed again on "temporary ad hoc basis". So long as the posts continue and there is a need to make even "temporary ad hoc" appointment, the mere fact that such appointees if continued beyond a period of 12 months are likely to claim that they are regular appointees, cannot be a ground for terminating their appointment. That would be wholly arbitrary and voilative of Articles of 14 and 16 of the Constitution."

18. Earlier dealing with the provisions of Section 17 (3) of the Employees State Insurance Corporation Act, 1948 which provided that all appointments to posts corresponding to Group 'A' and Group 'B' posts under the Central Government shall be made in consulatation with the U.P.S.C. provided that the said Section shall not apply to an officiating or temporary appointment for an aggregate period not exceeding one year, the learned Chairman observed that-

> "It would be noticed that the exception made under the proviso is to the power exercisable under sub section(3) which makes consultation with the UPSC obligatory. In other words, by virtue of the power conferred by this proviso, the Corporation could without consultating UPSC, make temporary/officiating appointments for a maximum period of one year. But neither sub section(3) nor the proviso prohibits appointment beyond a period of one year on an officiating basis in consultation with the UPSC. The proviso is intended to enable the

the Corporation to make the appointments even without consulting the PSC for a period not exceeding one year on an offidating or temporary appointment; it does not prohibit appointment beyond a period of one year on an officiating and temporary basis in consultation with the UPSC."

Lastly as regards the principles of "equal pay for equal work" the learned Chairman obserbed that -

"Whether an Insurance Medical Officer Grade II is appointed on ad hoc or temporary or officiating or on regular basis after selection, duties and responsibilities attached to the post discharged by all of them are identical. It is now well settled that among persons appointed to a post carrying a particular scale of pay and discharging the same duties and responsibilities attached to that post, no distinction can be made in the matter of pay and allowances merely on the ground that some are temporary or ad hoc or officating and others are appointed on regular basis. The principle of equal pay for equal work is so well entrenched in service jurisprudence that it is too late in the day to dispute that proposition."

The Learned Chairman concluded by saying -

"Therefore, there is no justification for not allowing the basic pay of Rs700 and allowing only Rs.650 p.m. Since the applicants are discharging the same duties and responsibilities as are discharged by regular Insurance Medical Officers Grade II, they would be entitled to the same pay scale i.e. Rs.700-1300 and allowances and also to the same benefits of leave, maternity leave, increment on completion of one year and benefit of their service conditions....."

"The intermittent breaks in service given at the end of 90 days' period of service were artificial and unwarranted. The orders of termination at the end of every period of about 90 days are held to be illegal and invalid and do not operate as valid termination of their services; they are to be disregarded and as not affecting the continuity of their service".

contd....

20. Having regard to the facts and circumstances of this case, the aforesaid observations, to our mind, would aptly apply to the facts of this case. Although the respondents have sought to justify the payment of consolidated monthly pay of Rs.650/- (plus of course usual allowances as admissible in the pay scale of Rs.650 plus N.P.A.) on the grounds, firstly, that the appointment being on ad hoc basis for 180 days with one working day break in between the petitioners would not be entitled to the regular scale of pay of Rs.700-1300/- (pre-revised), secondly, that the petitioners are not a substitute for regular Medical Officers appointed by the Ministry of Health & Family Welfare through U.P.S.C. as Delhi Administration/Directorate of Health Services are not the appointing authority in respect of Medical Officers in the pay scale of Rs.700-1300; thirdly, there is no prescribed method of selection of Junior Medical Officer (ad hoc) such as interview, written tests and no codal formaltiy like medical examination and verification by police of character and antecedents is made and they are appointed strictly on the basis of seniority as per the list furnished to them by the Employment Exchange and lastly, that Junior Medical Officers (ad hoc) are appointed for routine check up of patients in dispensaries and they are generally not given any responsibility of any store/instruments and they only perform and carry lesser responsibilities/duties in comparison to a regular Medical Officer appointed by the Ministry of Health & Family Welfare on regular basis in the pay-scale of Rs.700-1300, we do not think that any of these contentions will justify an unequal treatment in the matter of pay and other service conditions adverted to above. The terms and conditions laid down in the appointment letters issued to the petitioners are surely unfair, arbitrary and harsh.

Obviously, the petitioners have accepted the same because they had no choice but to accept the posts or decline them and remain unemployed; the employment position in the country being what itsis with ever growing specter of unemployment looming large. Hence, we quash the impugned orders in all these applications and hold that all the Junior Medical Officers, Grade II appointed purely on ad hoc basis would be entitled to the same pay scale of Rs.700-1300 and allowances as also the same benefits of leave, maternity leave, increment on completion of one year and other benefits of service conditions as are admis sible to the Junior Medical Officers appointed on regular basis in the pay scale of Rs.700-1300. Further notwithstanding the break of one or two days in their service as stipulated in their appointment letters etc, they shall be deemed to have continued in service ever since the day of their first appointment. As far, the days on which they did not actually discharge the duties on account of artifical breaks etc. at the end of every 90 days, we direct that the said period would count as duty for continuity of service and the same will be treated as leave to which the applicants will be entitled at par with regular Junior Medical Officers Grade II. Lastly, we direct the respondents to report the cases to the U.P.S.C. of all those petitioners who are likely to continue on these posts on ad hoc/temporary basis for more than one year as required by proviso (iii) to clause (b) of Regulation 4 of the U.P.S.C.(Exemption from the Consultation) Regulations, 1958 dated 1.9.58 adverted to above, for consultation and upon consultation with the U.P.S.C. they shall be continued in service in the light of the advice of the U.P.S.C.

till regular appointments are made to these posts. Accordingly we allow all these applications and direct the respondents to implement the above order within three months from the dateof the receipt of this order.

(Birbal Nath)
Administrative Member

(J.P.Jain)
Vice Chairman

Central Administrative Tribunal Principal Bench New Delhi

Section Officer
Central Administrative
Principal Bench
New Delhi

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