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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. NO. 820/91 New Delhi, dated the 4th ^{August} ~~July~~, 1995

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. R.K. SAXENA, MEMBER (J)

1. Smt. Geeta Sabharwal,
W/o Shri Anil Sabharwal.
2. Shri Parmanand Gaur,
S/o Shri Raja Lal.
3. Smt. Veena Iuthra,
W/o Shri S.K. Iuthra.
4. Smt. Veena Makhija,
W/o Shri K.K. Makhija.
5. Smt. Vijay Goel,
W/o Shri K.C. Goel.
6. Shri Udal Singh,
S/o Shri Chitter Singh.
7. Shri S.P. Gaur,
S/o Shri B.P. Gaur.
8. Shri Deen Dayal,
S/o Shri Umrao Singh
9. Shri K.K. Nandan,
S/o Shri K.K. Kitta.
10. Shri Abhey Ram,
S/o Shri Sukh Lal,
11. Shri Narain Prasad,
S/o Shri Ram Dev.

(All the above applicants C/o Safdarjung Hospital,
New Delhi) APPLICANTS
(By Advocate: Shri K. N.R. Pillai)
VERSUS

1. Union of India through
the Director General, Health Services,
Nirman Bhawan, New Delhi.
2. The Medical Superintendent,
Safdarjung Hospital,
New Delhi. RESPONDENTS
(By Advocate: Mrs. Raj Kumari Chopra)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Smt. Geeta Sabharwal and 10 others, ^{an} ~~call~~ as IDCs working in Safdarjung Hospital, New Delhi have approached the

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Tribunal to quash

(a) The order dt. 19.5.86 (Annexure A.7) modifying the date of effect of the regularisation of the applicants as LDCs;

(b) The order dated 27.3.91 (Ann. A.14) cancelling regularisation all-together, and

Praying for a declaration that the Order No. 6-1/79-Admn. II dated 3.12.85 (Ann. A.6) which regularised the services of the applicants from the date of their continuous service as LDCs be declared as valid and in force.

2. During the course of hearing the applicants' counsel Shri K.N.R. Pillai ^A stated at the bar that the applicants would be satisfied if they were regularised from a date immediately after Shri Tara Chand and Ms. Usha Oberoi, who had been regularised on 21.3.1983.

3. The applicants' case is that Serial No. 1 to 5 amongst them are nominees of the Employment Exchange, while Sl.No. 6 to 11 are Class IV staff working in Safdarjung Hospital. They state that as all 11 possessed the requisite qualifications for vacancies to the post of IDC in the Safdarjung Hospital, they were called to appear in a Typing Test, and having successfully cleared the same, they were further put through a process of Selection Committee ^{by a Selection Committee constituted} ~~conducted~~ for the purpose, in accordance with the procedure then in force and were duly empanelled as LDCs for appointment as and when vacancies arose. In all 13 such appointments were made; 7 in 1978, 4 in 1979 and 2 in 1981. Of the 13, one left service and, ^A one subsequently retired, leaving 11 who are the applicants before us. According to the applicants,

none of the appointment orders mentioned that the appointment were subject to the passing of the Staff Selection Commission Exam., but when between 1981 and 1983 the Staff Selection Commission held two or three examinations to give a chance to ad hoc LDCs working in various Govt. of India Ministries, in one of them held in 1982. Respondent No.2 gave the applicants only two days notice to appear, as a result of which even such of those who did appear could not get selected. In the other Examinations held, the applicants allege they were not given a chance to appear. The applicants' contend that at that stage itself they had raised objections that since they had passed a Regular Recruitment Test and had been appointed as Temporary LDCs like the others, they should not be subjected to the SSC Exam. The administration felt that the position required clarification, but mean time in the Seniority List issued as early as 1.1.79 (Annexure A. V) showed the applicants not as ad hoc but as temporary. Thereafter by order dated 3.12.85 (Annexure A.VI) the ad hoc appointments were regularised from the date of the applicants original appointment in 1978, 1979 and 1980, but as somebody questioned this order, revised orders were issued on 19.5.86, superceding the earlier orders, and regularising the applicants w.e.f. 30.11.85. The applicants state that in a seniority list issued as on 1.6.87 (Annexure A.VIII) the applicants' original appointment was described as adhoc, and upon their objection a revised seniority list was issued (Annexure A. IX) in which reference to their ad hoc appointment was omitted.

4. The applicants assert that some of them represented (Annexure A.X) against the shifting

of the date of regularisation from 1978-80 to 30.11.85 upon which the Deptt. of Personnel who were consulted by the Respondents, wrongly assuming that the original appointments were ad hoc, ruled that being ad hoc employees they had no right to regularisation, and as they had not passed the SSC Exam. they should be replaced by SSC nominees. They contend that without complying with the principles of natural justice, a ^h*presence* of giving a post decisional hearing was gone through, by issuing Memo dated 8.11.89 (Annexure A.XII), and although they did represent, the same were rejected by a non-speaking order dated 27.3.91 (Annexure A.XII), compelling them to file this O.A. The applicants admit that the Respondent No.2 did not however comply straightaway with the D.G.H.S.'s order to terminate their services forthwith as the hospital services would suffer, and the impugned order dated 27.3.91 (Annexure A. XIV) says that their services will be terminated when nominees from SSC report for duty.

5. The respondents in their reply have challenged the contents of the O.A. They state that after the creation of the SSC in 1976 all recruitments to posts of IDCs in Ministries and offices of the Govt. of India were to be made through that body, vide instructions contained in SSC's letter No. 1/1/76/RS dated 12.11.76 (Annexure A). Accordingly a requisition was sent by the

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Safdarjang Hospital authorities to the SSC, in reply to which the SSC by their letter dated 30.4.77 (Annexure B) informed that qualified candidates could be expected to be made available only in early 1978, and if the vacancies were required to be filled up urgently the respondents could make arrangements to fill them up through other authorised channels. Therefore, the local Employment Exchange was asked to sponsor candidates with the clear indicationⁱⁿ the requisition that the recruitment would be purely on ad hoc basis till candidates from SSC were made available. Simultaneously a circular was issued in the hospital allowing eligible departmental candidates to apply for the IDC posts till the SSC nominees were available. 27 candidates were sponsored by the Employment Exchange and there were 8 departmental candidates. A written test was conducted based on the SSC pattern and those who obtained 50% marks and above were selected for the typewriting test. 10 candidates sponsored by the Emp. Exchange were empanelled on the basis of their performance, and similarly 8 departmental candidates were separately empanelled based on their performance. Appointments to posts of IDCs were made from these panels as and when the need arose. In the offer of appointment letters as well as the orders of appointment it was made clear and explicit that appointments were purely ad hoc and temporary and the appointees against the vacancies would be reverted or retrenched as and when nominees sponsored by SSC joined duty, or in the case of leave vacancies, when the incumbents returned from leave. The respondents go on to state that they received Memo dated 7.8.82 (Annexure F) from the DPAR stating that a special

examination was scheduled to be held on 12.12.82 for ad hoc IDCs to make them regular. On this basis a circular was issued in the hospital on 11.10.82 (Annexure G) directing 17 LDCs including the applicants to submit their applications along with requisite documents by 13.10.82 positively to participate in the Exam., and in case they failed to appear in the Exam. on the specified date and time, their appointment to the post of LDC was liable to be terminated. 16 IDCs took the exam. out of which only 4 qualified. The result was declared on 21.3.83 with the instruction that the seniority of the finally qualified candidates may be fixed en bloc junior to the candidates who had been appointed as a result of the ~~regular~~ ¹⁹⁸¹ Clerks Grade Exam. (Annexure H). Out of the four, two were Shri Tara Chand and Smt. Usha Oberoi who were regularised w.e.f. 21.3.83.

6. The respondents further state that the office order dated 3.12.85 regularising the ad hoc IDC issued inadvertently, and it became necessary to modify it because the four IDCs who had qualified in the SSC Sp1. Exam. were regularised w.e.f. 21.3.83, and the applicants who had failed to clear the SSC Sp1. Exam. were not even eligible for regular appointment as IDCs, and hence the question of their regularisation from the date of their initial appointment as ad hoc IDCs did not arise. They further state that the office order dated 19.5.86, superceding the earlier order dated 3.12.85 was issued by an officer not competent to do so. As regular appointment to LDCs Grade could be made only after qualifying in the SSC Exam. as per instructions and the applicants had failed to do so, the order was ab initio void. The respondents assert that

they have acted strictly in accordance with Govt. rules and instructions, and the applicants not being entitled to the relief prayed for, this O.A. is fit to be dismissed.

7. The applicants in their rejoinder have rejected the stand taken by the Respondents and have broadly reiterated the contents of the O.A.

8. It may be mentioned that this O.A. was filed on 4.4. 91. It came up for hearing for the first time on 5.4.91, on which date interim orders were passed not to terminate the services of the applicants, which is still operating as ~~of~~ date.

9. We have heard Shri K.N.R. Pillai for the applicants and Mrs. Raj Kumari Chopra for the respondents.

10. Shri Pillai has asserted that the applicants were selected in 1978-79 by a properly constituted Selection Committee according to the procedure then in force for filling up vacancies of IDC in the Safdarjang Hospital. He has asserted that the respondents have not produced any statutory authority or order of the competent authority for changing the procedure. ~~Not~~ have they produced the rules by which recruitment of IDCs would be ^{made} exclusively through the SSC. He stated that the letters, dated 12.11. 76 (Annexure A) and 30.4.77 (Annexure B) are inadequate to support the respondents' stand, and the recruitment of the applicants was as per normal procedure in force till then. Secondly Shri Pillai has argued that having been kept as temporary employees since 1978-80, to

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be thrown out of livelihood now, when all the applicants have become overaged, would mean that they would have to face economic insecurity and would for that reason be highly arbitrary, unreasonable, unjust, perverse and violative of Articles 14 and 16 of the Constitution. In this connection he has cited the Hon'ble Supreme Court Ruling in J. Puthuparambil Vs. Kerala Water Authority JT 1990 (4) SC 390 wherein it has been held that the provision of ad hoc appointment is only intended to fill for short periods, posts that cannot be kept vacant, but once the services continued for long the services had to be regularised if the incumbents possessed the requisite qualifications. In this connection Shri Pillai has also placed reliance on the Direct Recruit Class II Engineering Officers Association case JT 1990(2) SC 264 wherein it has been held that once a Govt. servant is appointed in accordance with rules, his seniority will be reckoned from the date of his appointment. Reliance has also been placed on the Hon'ble Supreme Court's Ruling in Baleshwar Das Vs. State of UP 1980(3) SIR 422, wherein the practice of keeping posts temporary for long periods of time, and denying the claim of the incumbents on that score has been depicated. Thirdly Shri Pillai has contended that it is patently unfair to ask a person who has put in long spells of service and belongs to an advanced age group, to appear in a competitive examination such as the one held by the SSC, along with graduates and matriculates, whch would amount to ~~the~~ treating unequals as equals, and thus infringing Articles of 14 and 16. Reliance in this connection has been placed in the Hon'ble

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Supreme Court's Ruling in Dr. A.K. Jain Vs. UOI (1987) Suppl. SCC 497. Fourthly Shri Pillai has argued that the respondents are bound by the doctrine of promissory estoppel and Fifthly he has argued that the action of the respondents in cancelling the earlier orders, without giving the applicants an adequate opportunity of being heard and disposed of their representations by means of a non-reasoned order violates the principles of natural justice which is also violated by giving them only a post decisional hearing. On this point, reliance is placed on the Hon'ble Supreme Court's Ruling in H.I. Trehan & Ors. Vs. UOI & Ors. SIR 1980(1) Page 7

11. On the other hand respondents' counsel Mrs. Ch^hpra has reiterated the grounds taken by the respondents in their reply to the O.A. She has also placed reliance on the Tribunal's judgments in O.A. 1193/86 Ishwar Singh Tanwar Vs. UOI & O.A. No. 1199/86 Harvinder Girdhar Vs. UOI both decided on 2.2.87. She has also referred to the Hon'ble Suprme Court's Ruling in Lakshmi Pandey Vs. UOI SJ 1992 (44) 15.

12. We have given our careful consideration to the rival contentions. It is clear that after the creation of the Staff Selection Commission in 1976, recruitment to the posts of IDCs in the Ministries and other offices of the GOI were to be made exclusively through that body. The SSC was thus entrusted with the task of recruitment of IDCs earlier undertaken by the UPSC and this legal and factual position cannot legitimately be challenged by the applicants at this stage. The respondents sent a requisition to

that body in reply to which they were informed vide letter dated 30.4.77 (Annexure B) that the SSC would be in a position to sponsor candidates only by early 1978 ^{the} and vacancies were required to be filled up urgently, the respondents may do so through other authorised channels. It is in pursuance of this, that a requisition was placed on the local Employment Exchange and departmental candidates were also invited to apply, in pursuance of which after 27 names were received from the Employment Exchange and 8 departmental candidates offered their candidature. The respondents then held a written test and shortlisted the candidates, which was followed by a typewriting test and those who were successful were placed in two panels, one of those ^{now} sponsored by the Employment Exchange and the other of departmental candidates, for appointment as LDCs as and when the need arose. The copy of the appointment offer letter to applicant No.1 (Empl. Ex. sponsored) Mrs. Geeta Geeta Sabharwal dated 18.4.78 (Annexure C) states clearly that the appointment is on a purely adhoc basis pending nomination of candidates by SSC and similarly the appointment letter to applicant (departmental candidate) No.11 Shri Narain Prasad states clearly that the appointment is on a purely temporary basis pending nomination of candidates by SSC. Thus the applicants could have had no doubt that their appointments were purely ad hoc/temporary pending nomination of candidates by SCC. This position is reinforced by the contents of the appointment letter dated 29.4.78 (Annexure A II); dated 8.5.79 (attached to Annexure A.II) and 5.1.81 (Annexure A. III) which make it clear that the appointments were on a purely temporary, or ad hoc basis, till such time as

regular nominees sponsored by the SSC were made available. In the case of applicant No.5 Smt. Vijay Goesl, the appointment order dt. 8.9.78 did not explicitly states that the appointments would be till such time as SSC nominee became available, but even in that case the appointment was purely temporary. Appointment orders of applicant No.6 Shri Udal Singh and applicant No.8 have not been placed on record, but even in the case of these three persons also, there is little doubt that their appointments were on temporary/ad hoc basis pending receipt of names from SSC, in view of the contents of respondents circular dated 11.10.82 (Annexure A IV) calling upon all the 17 IDCs working on ad hoc basis, including the 11 applicants to fill in the application forms for appearing in the SSC Special Exam. for LDCs. The applicants are not correct when they say that only two days was given to them to appear in this examination. The circular dated 11.10.82 only asked the applicants to fill in the application forms by 13.10.82 i.e. within two days for appearing in the Special Exam. which was to be held two months thereafter, on 12.12.82. Thus the applicants cannot legitimately complain of shortness of time to prepared for the examination.

13. The applicants did appear for the exam. but were not successful. Four candidates including Shri Tara Chand and Smt. Usha Oberoi, immediately below whom the applicants seek to be placed, were successful and they were regularised w.e.f. 21.3.83. To regularise the applicants who failed to qualify in the SSC Spl. Exam. from the same date as those who have qualified in that exam. would be treating unequal equally, and would thus itself violate Articles 14 and 16 of the Constitution. The appli-

cants who failed to qualify in the SSC Spl. Exam. cannot claim parity with those who did qualify, and having appeared in that exam. and failed to qualify in it, cannot at this stage question as to why they were made to appear in that exam. The applicants have not at any stage averred that they had represented at that stage itself against being made to appear in the SSC Spl. Exam., and if they had any grievance against being made to appear they should have voiced it at that stage, and not after appearing and failing to qualify.

14. In the light of what has been stated above, none of the arguments advanced by Shri Pillai enables us to grant the relief prayed for by him. In so far as his first argument is concerned, it is clear that the appointments of the applicants was on a purely temporary/adhoc basis, of which they were well aware of pending nomination of candidates by SSC, and whatever mode of selection was locally adopted by the Safdarjang Hospital authorities, could not replace the selection by SSC, which after its inception in 1976 was exclusively responsible for making all regular appointments against vacancies of IDCs in Ministries and other offices of the GOI. Conceding the second and third argument would in effect mean putting the applicants who had failed in the SSC Spl. Exam. on par with those who had qualified, and thus treating unequal equally, which apart from violating the sanctity

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of the SSC Spl. Exam. would violate Articles 14 and 16 of the Constitution also. Coming to the fourth argument, there cannot be any promissory estoppel against statutory rules. As regards the fifth argument, that does not give the applicants an enforceable right to be regularised from 21.3.83 in view of the preceding analysis.

15. Furthermore there may well be other persons also appointed as LDCs in the Safdarjang Hospital on regular basis through the SSC after 21.3.83 none of whom have been impleaded and whose rights and interests would be prejudicially affected if the applicants are regularised and given seniority w.e.f. 21.3. 83 without giving such persons even an opportunity of being heard.

16. In this connection two recent cases directly on the question of regularisation of ad hoc/temporary employees may be noticed. In State of Haryana Vs. Piara Singh & Ors. 1992 (2) SCALE 384, their Lordships of the Supreme Court have held

" Normal rule, of course, is regular recruitment through the prescribed agencies but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be made to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regular selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee."

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17. In Dr. A.A. Pargaonkar Vs. State of

Maharashtra & Ors. (1994) 28 ATC 415, the question of law that arose for consideration was whether the appellant who was appointed temporarily against a permanent post was entitled to be regularised under Temporary Govt. servants Extension of Permanancy Resolution issued by the ¹ Maharashtra State Govt., or under any other equitable principle, as she had been working continuously since then and had worked 9 years without break on the date the Govt. advertised the post to be filled through the Public Service Commission. Rejecting the appellants claim that she stood regularised under the 1975 Resolution, their Lordships of the Supreme Court observed:

"Nor the claim of the appellant that she having worked as lecturer without break for 9 years on the date of the advertisement was issued, she should be deemed to have been regularised, appears to be well founded. Eligibility and continuous working for however long period (emphasis supplied) should not be permitted to overreach the law. Requirement of rules of selection through Commission cannot be substituted ¹ by humane consideration. Law must take its course".

18. In the competus of the facts and circumstances of the case, we find ourselves unable

to grant the relief payed for by the applicants. At the same time we cannot help noticing that some of the applicants have put in service continuously, even if on ad hoc basis, since 1978, and their failure to qualify in the SSC Spl. Exam. of 1983 implies that they ¹ have to be retrenched, thereby losing their very means of livelihood which has sustained them these 15-18 years, which will undeniably be very harsh on them. Under the circumstances, should ¹ the respondents be inclined to give the applicants another opportunity to appear in the next SSC Exam., by granting them

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age relaxation, and regularise such of those who are successful in that exam. from the date of the result of that exam., nothing contained in this judgment will prevent them from doing so.

19. This O.A. is disposed of accordingly. Interim orders passed earlier are vacated. No costs.

Durbas

(Dr. R.K. SAXENA)
Member (J)

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(S.R. ADIGE)
Member (A)

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