

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 10th day of April, 2000

Transfer Application No. 1323 of 1987

District : Meerut

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiuddin, J.M.

Dr. Surya Nath son of Sri Ram Ratan,
C/o Dr. Diwakar Tripathi,
74, Enhance Bhawan, Sadar Kabari Bazar,
Meerut.

(Sri S.C. Budhwar, Advocate)

(Sri Sudhir Agrawal, Advocate)

.... Applicant

Versus

1. Union of India through the Secretary
Ministry of Health and Family Welfare
(Department of Health), Nirman Bhawan,
New Delhi.
2. Directorate General of Health Services,
Nirman Bhawan, New Delhi.
3. Central Government Health Scheme,
New Delhi.
4. Central Government Health Scheme,
Meerut.
5. Union Public Service Commission through
its Secretary, Dholpur House, New
Delhi.

.... Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. S. Dayal, A.M.

This T.A. was originally filed as writ petition no. 13478/1984 and was subsequently transferred to this Tribunal on coming into operation of the Administrative Tribunals Act, 1985. The writ petition was filed for the following reliefs :-

(i) issue a writ of certiorari, order or direction in the nature of certiorari calling for the records

of the case and quashing the advertisement dated 5-2-1983 (Annexure-4) and consequential selection and appointment in pursuance thereof.

(ii) issue a writ of certiorari, order or direction in the nature of certiorari calling for the records of the case and quashing the order dated 16th July, 1984, terminating the services of the petitioner.

(iiia) issue a mandamus to the respondents to treat the applicant as substantively appointed and/or to regularise the services of the petitioner after sending his name and his service record of the Union Public Service Commission as a departmental candidate.

(iiib) a writ of mandamus, order or direction in the nature of mandamus directing the respondents not to give any effect to the said advertisement dated 5-2-1983 (Annexure-4) and consequential selection and appointment in so far as the post of the petitioner is concerned and further the respondents be commanded not to give any effect to the impugned order dated 16th July, 1984 (Annexure-8).

(iv) issue any other writ, order or direction to which the petitioner be in law entitled.

(v) award costs to the petitioner.

2. The brief facts of this case are that the applicant was selected by a selection committee headed by the Director General Health Services and appointed on 25-7-1980 by DD(A) CGHS on ad hoc basis pending filling up of the post by the nominees of the Union Public Service Commission. The appointment of the applicant in the CGHS Lucknow was terminated by notice dated 12-10-1981 because of the fact that regularly selected lady Dr. ^{Doctor} through Union Public Service Commission came to join on that post. The applicant

was again appointed on 10-11-1981 in CGHS Delhi on ad hoc basis pending filling up of the post by the nominees of the Union Public Service Commission. The order of appointment included Condition nos. 8 and 10 which are reproduced as below :-

x x x x xx x x x x x x

8. The appointment does not confer any claim or right of permanent absorption in the CGHS Organisation.

x x x x x x x x x x x x

10. His services are purely on ad hoc basis and are liable to be terminated at any time without assigning any reasons or notice."

3. The applicant was transferred to Meerut on 29-12-1981 against the vacancy caused by the transfer of Dr. (Mrs) Savitri Devi who was transferred to CGHS Delhi. The order of transfer and posting of the applicant was purely on ad hoc basis under the CGHS Meerut with his services will be terminated as and when a regular Lady ^{Doctor} is posted to CGHS Meerut. The applicant was required to be relieved of his duties under CGHS Delhi as Ayurvedic Physician on 31-1-1981. The transfer order also mentioned that the applicant would be shifted from CGHS Meerut as soon as the Lady Ayurvedic Physician will be available for posting against the vacancy of Dr. (Mrs) Savita Devi. The applicant has claimed that there were 13 posts which were being occupied by ad hoc appointees but the Union Public Service Commission issued advertisement on 5-2-1983 for only 7 posts. Of these 7 posts one post was for ST and SC candidates and remaining 5 posts were unreserved. Of the seven posts two were for males and five were for female candidates. Ad hoc appointment of the applicant was continued by the letter issued on 25-11-1983 for the period upto 31-12-1983 or till the posts were filled on regular basis whichever was earlier. The services of Junior Medical Officers

in various organisations/establishments in the CGHS were further extended upto 30.6.1984 vide letter dated 10.1.1984 and another letter was issued extending the services upto 31.3.1985 or till the Union Public Service Commission nominess joined whichever was earlier. The services of the applicant were, however, terminated by an Office Order dated 16.7.1984 (AN) on the joining of a regular Lady Ayurvedic Lady Physician under CGHS, Meerut.

4. The arguments of Sri Sudhir Agrawal, counsel for the applicant and Km. Srivastava have been heard. The pleadings on record have been taken into consideration.

5. Learned counsel for the applicant has challenged the termination of ad-hoc appointment of the applicant on several grounds. The first of these is that as per law laid down by a Bench of the Central Administrative Tribunal, the services of the Ayurvedic Physicians, who were appointed on ad-hoc basis and continued for a period of a year or more, were required to be regularised. Learned counsel for the applicant has in this connection relied upon the order of the Hyderabad Bench of the Tribunal in O.A. No. 957 of 1991 dated 21.8.1994. In this case the applicant was working as an Ayurvedic Physician from 25.3.1986 was terminated on 21.10.1988/

He filed on OA which was allowed and the termination order was quashed. Subsequently, a notification was issued for filling up of 12 vacancies of Ayurvedic Physicians. The applicant applied for it and also made representation to the respondents to the effect that she should be considered like Allopathic Doctors and should be regularised on the basis of evaluation of work and service records of the applicant. This was based on the judgement of the Principal Bench in OA no.1251/1990 reported in ATR(1992) CAT 586 and followed by the Bombay Bench in the case of Allopathic Doctors. In this case the respondents were directed to consider the applicants for the purposes of regularisation of their services as Medical Officers in Indian Medicines under the CGHS. Learned counsel for the applicant has also cited the order of the Division Bench of this Tribunal in OA No. 938 of 1991 dated 26.5.1995 in which the respondents were directed to refer the case of the applicant and those similarly situated as Ayurvedic Physicians to the Union Public Service Commission for the purpose of regularisation of their services as Medical Officers in Indian Medicines under CGHS as they should be treated as forming a separate block for the purpose of regularisation which should be based on service record of the applicant. Learned Counsel for the applicant has also relied upon the order of the Apex Court in Civil Appeal No. /1997 between Mrs. (Dr.) Rekha & Bata Khare Vs U.O.I & Ors. The appellant in this

in this case had filed an O.A No.372/1995 which had been dismissed by the Tribunal by the order dated 14.8.1996 on the ground that the Appellant had applied for direct recruitment on the said post held by her in response to the advertisements issued by the Union Public Service Commission but she was not selected. It was contended in the Appeal on behalf of the applicant that only suitability of the applicant for regular appointment on the basis of Physician and Gyaneocologist shall be ascertained and that ~~it~~^{she} was not required to compete with other applicants. This contention of the Appellant was accepted by the Apex Court and directions were given to the respondents accordingly. Thus, it is claimed that the law laid down with regard to regularisation of Ad-hoc appointments on the Allopathic as well as Ayurvedic sides is now clear that they should be regularised on the basis of examination of their records and evaluation of the work. Learned Counsel for the respondents, however, ~~this~~ contends this proposition. She relies upon the case of Dr. Pramila Srivastava Vs. Director General Health Services, New Delhi and Ors (1992) 21 ATC 736. It has been held in this case that regularisation cannot be claimed merely on the basis that an employee has worked for more than one year or possesses minimum educational qualifications. It cannot be dehort^{s/the} the rules made for recruitment to a particular Post. The doctrine of precedents was examined and it was held that in

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Dr. A.K. Jain Vs Union of India. 1988 SCC(L&S) 222, in Dr. S.K. Pathak Vs Union of India, T.A. no 699 of 1986, Dr. Jitender Singh Vs Union of India & Dr. Santita Narang Vs Union of India no general proposition of law was laid down requiring regularisation of services ~~periods~~ of ad-hoc doctors. The learned counsel for the respondents also sought to rely upon the judgement of the Apex Court in U.O.I and Ors Vs Devendra Sahi, 1995 SCC (L&S) 1987. It has been held in this case that regularisation of the Assistant Medical Officer in North Eastern Railway appointed after 1.10.1986 on ad-hoc basis merely on the basis of consideration of service record was not warranted and if the person was also subjected to interview, such a process adopted by the Union Public Service Commission cannot be considered as faulty.

5. The challenge to the order of termination has been made on yet another ground and i.e that there ~~was~~ persons junior to the applicant who were working as Ayurvedic Physicians and yet order of termination was served upon the applicant, while the juniors continued in service. In response to this issue the respondents have mentioned in their counter reply that persons junior to the applicant were continued because there was stay from the High Court. Learned counsel for the applicant contended that those who approached the Courts when their services were about to be terminated have been given favourable treatment while the applicants who accepted a transfer from his post in Delhi in terms of the order of his posting to Meerut was left unprotected and has been subjected

to adverse discrimination by the respondents.

Learned counsel for the applicant has placed reliance on the State of U.P & Ors Vs St9har Singh, A.H.R. 1974 SC 423. It has been laid down that if a transferee is reverted to a junior post and his juniors continued on higher posts such reversion would amount to reversion by way of punishment. Even otherwise the Apex Court has held that such an order would be liable to be quashed on the ground of contravention of Articles 14 and 16 of the Constitution of India. The learned counsel for the applicant has also relied on the judgement of Allahabad High Court in Buddh Prakash Pandey Vs. State of U.P 1991 LAB IC 11 Pt III. In this case the termination of the services of the applicant was held to be in contravention of Articles 14 and 16 of the Constitution of India. It appears that the applicant was earlier working in General Section alongwith Several of his juniors and was subsequently transferred to section of Training and Visit scheme, and his services were terminated in the Training and Visit Scheme holding him to be the juniormost. This termination was held to be unreasonable and arbitrary. The learned Counsel for the applicant has also relied on an order of this Tribunal in TA No. 699/1986 dated 25.2.1991 between Dr. S.K. Pathak and Ors. Vs. U.O.I & Ors. It has been held in this case that the appointment was made on Ad-hoc basis and was till filling up of the post by the nominee of the Union Public Service Commission, the termination of Ad-hoc appointee in situation where vacancies were available and applicant could

have been adjusted against the vacant post was arbitrary. Learned counsel for the respondents has sought reliance upon the judgement of the Apex Court in Vs State of Maharashtra & Ors- 1997 SCC (L&S) 779. In this case it has been held that the arguments that the services cannot be terminated if vacancies exist~~s~~ cannot be accepted. It is held that the applicant has no right to the Post and since newly selected candidates have been posted, he is to give post to the duly selected candidates. The learned counsel for the respondents relies upon the Apex Court judgement in Dr. Kishore Vs State of Maharashtra & Others, 1997 SCC (L&S) 779, in which it has been held that if a Medical Officer is appointed on a temporary basis for the specified period dehors the rules, termination of his service on posting of a duly selected candidates was valid.

6. We have considered the arguments advanced by Learned counsel for the applicant carefully. The argument that the services of the applicant should have been regularised by evaluating his work and considering his service record only instead of termination is not a valid arguments for regularisation. The applicant had before he filed this OA. I ceased to be in service ~~as~~. Prior to that also he had been appointed more than once on ~~ad-hoc~~ basis and thus the appointments were furtuitous in nature and dehors the rules for selection. The nature of the applicant's appointment was a term appointment given for stipulated duration.

The applicant was last given appointment up to 31.3.85

or till the Posts were filed up on regular basis which is ever was earlier on the existing terms and conditions. The applicant in his order of posting to CGHS Meerut was appointed only till a Lady Ayurvedic Physician was available for posting against vacancies of Dr.(Mrs) Sarita Devi, he was relieved on 6.7.84 on the joining of regular lady Ayurvedic Physician under CGHS Meerut. Therefore, his claim that he should have allowed to continue as vacancies were available else were is not tenable.

7. The learned counsel for the applicant has stated that the termination of the applicant was made by Chief Medical Officer, Meerut, who was not authorised to pass such an order. He has stated that his appointment order was made by Director General of Health Services. We find that earlier order of appointment given to the applicant were signed by Deputy Director (Administration) CGHS(1) and first order mentioned that the Director General of Health Services was pleased to select him for appointment to the Post of Ayurvedic Physician. The second order of appointment did mention that the Director General of Health Services was pleased to appoint him ~~made~~ on Ad-hoc basis. but, it contained

the conditions that he could not raise to any claim for permanent absorption in CGHS Organisation and that his services were liable to be terminated at any time without as-signing any reasons and notice. His transfer to Meerut was made by Deputy Director (Administration) CGHS(1), who had initially appointed him, and it was stated that his service were to be terminated as soon as a regular lady Ayurvedic Physician is posted to CGHS Meerut. Thus the intimation given by the Chief Medical Officer CGHS Meerut is only persuant to this condition and does not confer any right on the applicant to claim further continuation, since the termination was inherant in the order of posting to Meerut itself, which was made by the appropriate Authority. Intimation regarding the termination given by Chief Medical Officer in fulfillment of that condition cannot be taken to be an order without jurisdiction.

8. Since the applicant by virtue of Ad-hoc service in CGHS did not earn any right to be continued or regularised ~~regularised~~ dehors the rules, we do not consider his claim for relief to be admissible.

9. We, therefore, do not find any merit in the Original Application and same is dismissed with no order as to costs.

/m.k.s/

J.M.

Raghvendra
Shan
A.M.