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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.25 of 1987

Dr.(Mrs)Madhuri Singh ..... Applicant

Versus

Union of India & Others ..... Respondents

Hon.Mr.Justice U.C.Srivastava, V.C.

Hon.Mr.A.B.Gorthi, Member (A)

(By Hon.Mr.Justice U.C.Srivastava, VC)

The applicant is a M.B.B.S. doctor and has come before this Tribunal with a prayer for quashing the termination order which she had to face after 13 years of service and that too she has become overage in Government service. The applicant in pursuance of the advertisement dated 2.7.72 inviting applications for appointment to the post of Asstt. Surgeon, Grade I in the Ordnance Equipment Factory under the Ministry of Defence, Govt. of India, <sup>I applied for the said post</sup>. The applicant was duly selected vide order dated 26.2.73. The appointment order inter alia contains such conditions that <sup>II</sup> the post is temporary. Your appointment will be for a period of one year or till the Union Public Service Commission nominates suitable candidates, whichever is earlier. You will be on probation for a period of three months this period is extendable at the discretion of the Government. Vide order dated 26.6.80 i.e. after 7 years, her services were terminated by the Director General, Ordnance Factory Board, Calcutta. Against this order the applicant filed a Suit before the Court of Munsif City Kanpur for a declaration that her termination from the post was illegal and ultravires

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The Suit was decreed vide order dated 23.9.85 declaring the order of the authority to be illegal and ineffective. It was also observed by the Trial Court that the applicant was entitled to all the benefits. In pursuance of the order passed by the Munsif Court the applicant was reinstated vide order dated 9.6.86. But three months thereafter vide order dated 8.9.86 passed by the Director General (Member Personnel), Ordnance Factory Board, Calcutta, Govt. of India which was communicated to her by a letter dated 18.9.86 that her services have been terminated under the proviso to Rule 5(1) of the Central Services (Temporary Services) Rules, 1965. The fact that the applicant was appointed on adhoc basis, was substituted by the word temporary. The applicant then filed a Writ Petition before the High Court at Allahabad challenging the said order. It was admitted by the High Court and an interim order staying the operation of the termination order was granted. After the enforcement of the Act, the Writ Petition was transferred to this Tribunal for adjudication.

2. We have heard the learned counsel for the parties. The learned counsel for the applicant contended that the order of termination is wholly illegal, void and inoperative and the applicant after putting 13 years of service could not be terminated. It was the duty of the Department and the U.P.S.C. to get the services of the applicant regularised. She should not be penalised for their fault. For respondents mistake she should not be made to suffer. The ~~opposite~~ <sup>other</sup> opposite parties in their Counter Affidavit have said the the post was for

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one year but as the case of the applicant was not processed through the U.P.S.C. there was no question of regularising her. That post is still continuing. As the U.P.S.C. could not sponsor suitable Doctors, to tide over the situation, the services of the applicant were extended every six months with the prior approval of U.P.S.C. This clearly indicates adhoc nature of her appointment and she has been rightly terminated from her post. May be that so, but for that the applicant is not responsible. It is strange that the Departmental authorities tied over the matter for years together and ultimately terminated the services of the applicant on the pretext that the U.P.S.C. did not regularise her. An adhoc employee who continues for years together can be deemed to be a regular employee. In this case a reference has been made by the Supreme Court in the case of Narender Chadha Versus Union of India and Others 1986 SCC(L&S) 226 in which the Supreme Court also observed that if adhoc promotees or appointees are allowed to continue as such for long years without being reverted or challenged, they would be deemed to have been regularised. Observation made by the Supreme Court are binding on all the Courts of Tribunal under Article 141 of the Constitution of India. The learned counsel made a reference of 1987 SC 1342, 1988 SC 517 and 1990 SC 371 in support of the contentions made by him. for a casual employee working for years together is entitled to be regularised and they are also equally entitled to the same pay which regular employee gets. The applicant has claimed her regularisation

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for continuous service. A reference has been made in the case of Dr.A.K.Jain and Others Versus Union of India and Others 1988 SCC(L&S) 222 which was also a case of adhoc appointment. In the said case Adhoc Assistant Medical Officers were originally appointed for six months and later they were allowed to continue for four years. In this case the services of some were terminated for failure to avail of three chances for selection through U.P.S.C. and the rest facing termination on joining of Asstt. Divisional Medical Officers selected by the U.P.S.C. The Supreme Court observed that the services of those appointed on adhoc basis upto October 1, 1984 to be regularised and for relaxation of age enabling regular appointment to rest and salary adjustment. More precisely a direction was given to the opposite parties that if the adhoc doctors appointed after October 1, 1984 apply for selection by the Union Public Service Commission the Union of India and the Railways Department shall grant relaxation in age, to the extent of the period of service rendered by them as adhoc doctors in the Railways. In the instant case, we are of the view that the applicant has continued to remain in service for years together because of the failure of the Department and the U.P.S.C. who were sitting tight over the situation. There is no such case that the post has ceased to exist or any new incumbent better in all respects has been appointed. In view of the above, the application deserves to be allowed and the

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termination order dated 8.9.86 is quashed. The applicant shall be deemed to be continuing in service with all consequential benefits. The U.P.S.C. shall consider the case of the applicant for regularisation in accordance with law in the light of the observations made in this judgement within a period of two months from the date of communication of this order. The Original Application stands disposed of finally in these terms. There will be no order as to costs.

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Member (A)

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Vice Chairman

Dated the 14th March, 1991

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