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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration (OA) No. 275 of 1987

Dr.P.N.Misra

... Applicant.

Versus

Union of India/others

... Respondents.

Hon'ble D.S.Misra, A.M.

Hon'ble G.S.Sharma, JM

(Delivered by Hon'ble D.S.Misra)

The applicant in the above mentioned application under Section 19 of the A.T. Act XIII of 1985, has sought a declaration for his continuation as Ayurvedic Physician in the C G H S dispensary at Allahabad and quashing of various instructions issued by the Government of India from 11.5.1978 to 7.3.1986 regarding the terms and conditions of his service,

2. The undisputed facts of the case are as follows: The applicant was appointed on the post of Junior Medical Officer vide order dated 27.5.86 passed by the Chief Medical Officer, Central Government Health Scheme (respondent no.4) w.e.f. 28.5.1986 to 22.8.1986 on short term contract basis (copy annexure 8) The Deputy Director (Administration) CGHS New Delhi (respondent no.3) vide his order dated 25.8.1986 appointed the applicant for the period 25.8.86 to 14.11.1986. Thereafter vide order dated 17.11.1986 the applicant was appointed upto 4.2.1987. He was again appointed as such for the period 6.2.87 to 6.4.87 (copy annexures 9, 10 and 11). The applicant apprehended on the basis of information received

from a reliable source that as he had continued for about 11 months, the respondent no.3 is intending to dispense with the services of the applicant and is trying to appoint some other incumbent on the said post on monthly wage basis. The applicant approached the tribunal before the expiry of the term of his last appointment inter alia seeking interim order directing the respondents to continue the applicant on existing post till a regularly selected candidate from the UPSC becomes available, or till the application is decided whichever is earlier. An interim order was issued to the respondents to allow the applicant to continue on the present post till a candidate selected by the UPSC becomes available.

3. In the reply filed on behalf of the respondents, it is stated that the applicant was appointed Ayurvedic Physicians on monthly wage basis to provide medical facilities to government servants. The post of Ayurvedic Physicians is to be filled through the Union Public Service Commission, which takes time in recommending adequate number of candidates and it is not possible to fill in all the vacancies of Ayurvedic Physician. To avoid dislocation of work during this intervening period, i.e., till the UPSC candidates become available, the post is filled up on short term contract basis through local Employment Exchange ^{by} ~~and~~ one day break is given after completion of every 90 days so that the contract officer is excluded from regular appointment in his own right. The ad hoc appointment of Ayurvedic Physicians had continued for some what long period. It is incorrect to say that the services of the

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applicant are proposed to be dispensed with merely to replace him by other incumbents. The terms and conditions of appointment of the applicant was voluntarily agreed to at the time of initial appointment and are in accordance with the guidelines laid down by the Ministry of Health and Family Welfare. It is stated that the applicant is not entitled to any relief and the application is liable to be dismissed.

4. The petitioner's grievance is that the policy of making appointments on monthly wage contract basis is wholly oppressive, unreasonable and against the public policy and therefore, is violative of Articles 14 and 16 of the Constitution of India. The petitioner although termed as employee on contract basis is required to discharge the identical duties like a regularly appointed Junior Medical Officer and he is also ~~always~~ required to work on holidays and during other off hours without payment of any remuneration or compensation for such extra work which is also violative of Article 23 of the Constitution. The respondents in making monthly wage basis contract appointment have denied the claims for which an employee after serving continuously for 3 years is entitled ~~inasmuch~~ they have taken care giving one or two days break after each two or three months and denying the benefit of continuous service to the employees. The applicant is entitled to be considered for appointment by UPSC for relaxation of 5 years in their age, or over 35 years as a government servant.

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5. The respondents filed copy of the Government of India, Ministry of Health and Family Welfare's letter dated 11th May, 1978 and subsequent letters on the subject of appointment of Medical Officers on monthly wage basis. Copies of some of these letters have been filed by the applicant. By a letter dated 14.8.87, the Government of India, Ministry of Health and Family Welfare have decided to grant 2½ days of earned leave after 30 days of service to the Medical Officers on monthly wage (contract) basis subject to the condition that (i) each short term contract will be treated as a fresh one and no carry forward of leave will be allowed and (ii) no encashment will be allowed. The letter further states that they will also be allowed one day's CL for one month's service with no carry forward to the next spell of contract period.

6. We have heard the arguments of the learned counsel for the parties and carefully perused the documents and copies of judgments filed by them in support of their various contentions. We have considered the matter and on going through the judgment of the Principal Bench in OA No. 716 of 1987 and 10 others, it is found that the matters involved in those petitions were identical to the case of the applicants. The judgment has discussed all the issues and referred to the decisions cited by the learned counsel for the applicant and other decisions, which are dealt hereunder. On the question of the validity of the contract between the applicant and the respondents, reference has been

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made to the observations of the Hon'ble Supreme Court in the following cases.

1. Roshan Lal Tandon V.Union of India and others,AIR 1967,SC, 1889.

2. Union of India V.Arun Kumar Roy 1986(1)SCC, 675.

The theory of contract between a government servant and the Government has been analysed and held that in case of employees under the Government, terms of contract of appointment should not prevail over the rules governing their service conditions. Once appointed, a government servant acquires a status and thereafter his position is not governed by the contract of appointment. We are of the opinion that in the light of the above mentioned principles enunciated by the Supreme Court, the services of the applicants could not be terminated except when persons selected by the UPSC became available, or the concerned authority is of the opinion that the particular petitioner is not upto the mark, or as a result of disciplinary action.

7. Regarding the practice of giving short term appointment on monthly wage basis, the respondents have admitted that this has been done to prevent the applicant making a claim for regular appointment, which is not permissible except with the approval of the UPSC. On a perusal of the UPSC(exemption from consultation) Regulations 1958, it is noticed that for various appointment coming within the purview of the UPSC, even a temporary appointment, which is likely to continue for a period of more than 1 year, has to be done with the approval of the UPSC. In

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the instant case, the short term contract for a period of 6 months/90 days and its renewal after a gap of 1 or 2 days, appears to have been done to circumvent the provisions of consultation with the UPSC. The respondents' contention is that there is a time lag between the existence of a vacancy and the availability of persons selected by the UPSC and they have to resort to the method of short term appointment on contract basis. While we do not discard this contention of the respondents, but we are unable to appreciate why the respondents can not approach the UPSC for continuation of the applicant and other persons employed likewise for their continuation in temporary capacity until UPSC is able to provide substitutes in their places. We are of the opinion that the procedure adopted by the respondents in making such short term appointment of physicians/surgeons for providing medical treatment does not lead to providing satisfactory medical treatment to the beneficiaries. An employee who is working under the constant fear of losing his job can hardly put his heart and soul in his work. In these days of prevailing unemployment among physicians/surgeons of all categories, the job seekers have no choice and they succumb to the terms and conditions imposed upon them by the employers. Such a practice tantamounts to sheer exploitation of unemployed physicians and surgeons. The practice of giving short term appointment and the power of hire and fire at sweet will of the employers has been denounced by the Supreme Court in its various judgments. In Ratan Lal and others Vs. State of

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U.P. Haryana and others, 1985(4) SCC, page 43. it was held by the Supreme Court in the case of teachers appointed by the Government of Haryana for a fixed period of 10 months that the said break was violative of Articles 14 and 16 of the Constitution of India.

8. Regarding the terms and conditions of employment of the applicants, it is noticed that the applicants have been working on fixed wages without any prospects of earning increments after the completion of the service for 1 year. The assertion of the applicants that the duties and responsibilities entrusted to the applicants are the same, as performed by other regularly appointed incumbents holding similar posts has been merely denied by the respondents without furnishing any details. However, they have not denied the allegations of the applicants that they were performing duties sometimes beyond office hours and even on holidays without any additional remunerations or overtime allowance admissible to government servants. Although by its order dated 14.8.1987, the respondents have provided for $2\frac{1}{2}$ days' earned leave after 30 days of service and 1 day casual leave for 1 month's service with no carry forward to the next spell of contract period, it does not conform to the doctrine of equal pay for equal work. This matter was decided by the Supreme Court in Dhirendra Chamoli and other Vs. State of U.P. 1986(1) SCC page 37, in which case persons engaged by Nehru Yuval Kendras on daily wages basis and discharging the same duties as were being

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performed by a class IV employees on regular basis, but receiving a fixed monthly pay, it was held that that the practice was violative of the mandate of equality enshrined in Article 14 of the Constitution of India. It also held that according to this Article, 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. Similarly in Surendra Singh and another Vs. Engineer in Chief CPWD and others, 1986(1)SCC 639 which was a case of daily wage workers of CPWD, the Hon'ble Supreme Court held that they were entitled to wages equal to regular and permanent employees, employed there to do identical work. In yet another case decided by the Hon'ble Supreme Court (Bhagwan Das and others Vs. State of Haryana and others, AIR 1987, S.C. 2049 regarding supervisors appointed on temporary basis under the National Adult Education Scheme by the Government of Haryana on the fixed salary of Rs.500/- per month, it has been held that they were entitled to the same salary and allowances as other Supervisors appointed in Education Centres and discharging the similar duties.

9. We will now consider the matter of breaks given to the applicants at the end of 6 months/90 days of service. It was held by the Supreme Court in the above mentioned case of Bhagwan Das and others Vs. State of Haryana and others, that the employees shall get the benefit of continuous employment from the date of their initial appoint-

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ments by disregarding breaks which have been given for a limited purpose. This matter was also considered and decided by the Principal Bench (Court no.1) of this tribunal in the case of Dr (Mrs) Prem Lata Chaudhari Vs. Employees' State Insurance Corporations 1987(3) ATC 879. In this case also the applicants were employed as Junior Insurance Medical Officers Grade II on purely ad hoc basis for a period not exceeding 90 days at a time and after every 90 days a break of 1 or 2 days was given and the total period of service was not allowed to exceed 9 months. They were paid a fixed salary of Rs. 650/- besides other allowances as admissible to other employees of the Employees' State Insurance Corporation. The Bench speaking through Chairman (Justice K. Madhava Reddy-J) observed " 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 violative of Articles of 14 and 16 of the Constitution." Learned Chairman further observed that " 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 as not affecting the continu-

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ty of their service." The above case decided by the Principal Bench is fully applicable to the case of the applicant and we hold that the break of 1 or 2 days in their service will be ignored and they shall be deemed to have continued in service ever since the day of their first appointment.

10. For the reasons mentioned above, we hold that the applicant will continue on the post held by him on contract basis until replaced by persons selected by the UPSC. He shall be deemed to have continued in service ever since the date of his first appointment and the days on which he did not actually discharge the duties on account of artificial breaks etc. at the end of every 6 months/ 90 days shall be treated as leave to which the applicant will be entitled at par with regular Junior Medical Officers. He will also be entitled to all the benefits of leave, overtime, conveyance allowance etc, as are admissible to other Central Government Employees. We also direct the respondents to treat the period of their service on contract basis as government service for the purpose of age relaxation for being considered for regular appointment by the UPSC on the post of Junior Medical Officer in the Central Health Service. The application is disposed of accordingly with the direction that the parties shall bear their own costs.

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A.M.

S. M. S. M.
J.M.