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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION(OA) No.424 of 1987.

Dr. Radhey Gopal Misra ... applicant.

Versus

Union of India and 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 and quashing of various instructions issued by the Government of India from 11.5.78 to 7.3.1986 regarding the terms and conditions of his service.

2. The facts of the case are that the applicant was appointed as Junior Medical Officer for the period of 27.7.1986 to 20.10.1986 by the Chief Medical Officer Allahabad(respondent no.4) vide his order dated 25.7.86(copy annexure 8). Subsequently respondent no.4 again appointed the applicant for the period 22.10.1986 to 13.11.1986 and 15.1.1987 to 14.1.1987 and 17.3.87 to 15.5.87 (copies annexures 9,10 and 11). The applicant apprehends on the basis of information obtained from reliable source that as he has continued for about 10 months, the respondent no.4 is intending to dispense with his services and is trying to appoint
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some other incumbent on the said post. 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 the existing post till a regularly selected candidate from the UPSC become 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 Physician 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. 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 applicant is proposed to be dispensed with merely to replace him by other

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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, etc. The applicant is not entitled to any relief, and the petition 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 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 applicants. By a letter dated 14.8.1987, 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 C.L. 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. In an identical case (OA no. 275/87) P.N. Misra Vs. U.O. India and others, we have given detailed reasons for coming to the conclusion that the term and condition of the service given to the applicant by the respondents is arbitrary, illegal, and violative of Articles 14 and 16 of the Constitution of India. Those observations are fully applicable to the instant case.

7. For the reasons mentioned above, we hold that the applicant will continue on the post held by him on
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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.

Bhmn
A.M. 11/5/88

S. Bhargava
J.M.

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