RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NO.525 OF 1999

ALLAHABAD THIS THE 28th DAY OF Feb 2006

HON'BLE MR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. A.K. SINGH, MEMBER-A

Dr (Smt.) Nalini Lonial, W/o Sri Umesh Chandra Lonial, R/o 787 Tilak Road, Begum Bagh, District Meerut.

.....Applicant

(By Advocate Shri S.K. Om.)

V E R S U S

1. Union of India, through Secretary, Ministry of Defence, New Delhi.

2. General Officer Commanding, Headquarter 9, Infantry Division, C/o 56 APO.

3. Assistant Director, Medical Services, Headquarter C/o 56 APO.

4. Senior Medical Officer, 309 Field Ambulance C/o 56 APO.

.....Respondents

(By Advocate: Sri S. Chaturvedi.)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

The only question for consideration in this case is whether a long tenure on certain terms & conditions gives any vested right to the applicant to continue in the assignment on regular basis.

2. The brief facts of the case are as under:-

(a) The applicant was appointed as a doctor for a consolidated remuneration of Rs 500/- p.m. in 1981. There was no reference to any of the Rules or regulations which would govern the appointment of the applicant.

(b) In 1996, the remuneration of the applicant was Rs. 3500/- and in addition, there was a stipulation of 'annual increment' of Rs 200/-.

(c) The applicant was informed vide the impugned order that her services no longer being required, services were terminated.

2. Learned counsel for the applicant has argued that a person who has put in as many as 17 years of service cannot be so discharged from service and the same affects the equality clause of the constitution. He has also questioned about the notice period as well as about the competence of the authority which had issued the order of termination. In support of the same, the applicant has relied upon the following judgments:-

(a) 1994 ESC (2) in re Ms. Kalpa Vs. IGNOU.

(b) 1991 Suppl. (2) SCC 421 in re. *H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court.*

(c) 1993 JT (3) SC 617 in re. D.K. Yadav Vs. JMA Industries Limited.

(d) 2003 6 SCC 469 in re. State of W.B. Vs. Pantha Chatterjee.

(e) 2000 L.I.C 3133 in re. Prabhu Dayal

3. The respondents on the other hand contended that the appointment letter itself would reflect that the applicant was not regularly appointed and the appointment was only in the nature of a contract. Again, it has been stated in the counter that the applicant was not paid from the consolidated fund of India.

4. The case has been considered. In order to consider regularization or retention in service it is to be seen as to what sort of a right has been crystallized by the applicant by the act of the respondent in their having issued the appointment order in 1981, having revised the remuneration at a later stage and having retained her till 1988.

5. The appointment letter does not reflect any rules or regulations as to the appointment. It does not appear that the applicant was sponsored through the Employment Exchange or that the Staff Selection Commission or UPSC was consulted before appointing the applicant. The terms and conditions clearly go to show that the appointment was in the nature of a contract.

6. As regards notice period, of course, the conditions interalia stipulate one month and the notice was issued on 1.5.1998. It has been contended that the same was dispatched thirteen days

after the date of issue and as such, one month period has not lapsed and hence the termination is illegal. It is not the case of the applicant that immediately on receipt of the same, the illegality as contended by him was brought to the notice of the authorities, in which event, should would have been paid amount in lieu of notice or the notice would have been extended. The applicant had instead yielded to the notice and kept silence though the applicant filed a representation 23.5.98 she had only given some explanation over her absence and the legal issues raised in the O.A. have not been spelt out in her representation. The applicant would have perhaps a strong case for reinstatement had her appointment been on the basis of a specific provisions of any Act or Statutory Rules. For, in State *Bank of India v. N. Sundara Money, (1976) 1 SCC 822*, where the service conditions of the individual were governed by specific Rules, the Apex Court has observed as under:-

> *"10. What follows? Had State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw were he to be appointed in the same post today de novo. As for benefits, if any, flowing from service he will be ranked below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any*

> *advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any."*

7. The above does not assist the applicant on two scores that the appointment of the applicant is not on the basis of any such statutory provision and again, the penultimate sentence of the above judgment bars the Court from taking the above decision as a precedent.

8. As regards the competence of the authority, the argument is only to be rejected since, the appointment being of contractual nature, no rule stipulating as to who is the appointing authority, discharge by the local office cannot be fatal.

9. As regards continuous service for 17 years, the latest judgment of the Apex Court as under applies at all the fours to the case of the applicant.

10. In *Chanchal Goyal (Dr) v. State of Rajasthan,(2003) 3 SCC 485* the Apex Court has held:

> *The appellant was appointed by the Local Self-Government Department, Government of Rajasthan by order of appointment dated 27-11-1974, and posted as Lady Doctor under the Municipal Council, Ganganagar. There was a stipulation in*

the order of appointment that she was being posted purely on temporary basis for the period of six months or till the candidate selected by the Rajasthan Public Service Commission (hereinafter referred to as "the Service Commission") is available, whichever is earlier. The working period of the appellant continued to be extended. The appointment was made in exercise of powers conferred under Section 308 of the Rajasthan Municipalities Act, 1959 (in short "the Act") read with Rules 26 and 27 of the Rajasthan Municipal Service Rules, 1963 (in short "the Rules"). Though the appellant was selected by the Service Commission in October 1976 and August 1982 she did not join pursuant to such selection and continued on the basis of the orders of extension issued by the Local Self-Government Department of the Government. On 1-10-1988 the appellant's services were terminated on the ground that the candidate selected by the Service Commission was available. Challenging such dismissal, the appellant filed a writ petition bearing No. 3739 of 1988 before the Rajasthan High Court. Interim order of stay was passed on 12-10-1988 by the High Court with the direction that the appellant was not to be relieved from her post if she was not already relieved. Subsequently the interim order was made absolute by order dated 21-3-1989. By judgment dated 5-3-1993, learned Single Judge held that termination of the appellant's services was illegal since order was passed ignoring the fact that she had put in 14 years of service. The authorities were directed to adjudge her suitability within a period of one month and regularize her services with all benefits available to a substantively appointed member of the service. The State of Rajasthan filed appeal before the Division Bench of the Rajasthan High Court. In terms of interim orders, the appellant was allowed to continue in the service. But by the impugned judgment dated 11-4-1997, it was held by the Division Bench that the appellant continued merely as a temporary employee on the basis of appointment made under Rule 27 as she had not been selected by the Service Commission in accordance with the Rules. She had no right to hold the post. As noted supra the judgment is under challenge in this appeal.

2. *Learned counsel for the appellant submitted that by now she had put in 28 years of service: 14 years by the time the order of termination was passed and 14 years on the basis of interim directions given by the High Court and this*

Court. Though her appointment initially was conditional, in view of the long period of service rendered by her, it had assumed permanency and learned Single Judge was justified directing regularization of appointment on a substantial basis. The Division Bench overlooked the salient features and held that the temporary appointment originally made continued to hold the field. Reliance was placed on Director, Institute of Management Development, U.P. v. Pushpa Srivastava(1992) 4 SCC 33), Ashwani Kumar v. State of Bihar (1997) 2 SCC 1 , Daily Rated Casual Labour v. Union of India, 1997 SCC (L&S) 267, Narender Chadha v. Union of India (1986) 2 SCC 157, State of Haryana v. Ram Diya (1990) 2 SCC 701 and State of U.P. v. Dr Deep Narain Tripathi (1996) 8 SCC 454 to substantiate the plea. It was contended that in all these cases this Court took note of the long period of service rendered and the consequences and the benefits available to the employee concerned who had rendered such service without any blemish. It was also submitted that the principles of legitimate expectation are squarely applicable.

3. *Residually it was submitted that the appellant has been given the privileges available under the gratuity and pension fund benefit schemes available under the Rajasthan Municipal Services (Pension) Rules, 1989 (in short "the Pension Rules"). She has applied for voluntary retirement nearly two years back and no final decision has been taken. These benefits cannot be denied to her.*

4. *Learned counsel for the respondent on the other hand submitted that the appointment admittedly was on temporary basis with a clear condition that if a candidate selected by the Service Commission was available then even before the expiry of the period indicated, service would be terminated. The appellant cannot take advantage of the fortuitous circumstance that she continued for 14 years. She has, for reasons best known to her, not joined when she was selected twice: once in 1976 and again in 1982 by the Service Commission. Merely because she has continued for a long time, that has not crystallized into any enforceable right. She cannot claim lien over the post.*

10. In *J&K Public Service Commission* v. *Dr Narinder Mohan* (1994) 2 SCC 630 it was, interalia, observed that it cannot be laid down as a general rule that in every category of ad hoc appointment if the ad hoc appointee continued for a longer period, rules of recruitment should be relaxed and the appointment by

regularization be made. In the said case in para 11 the position was summed up as under: (SCC pp. 640-41, para 11)

11. *This Court in A.K. Jain (Dr) v. Union of India (1987 Supp SCC 497) gave directions under Article 142 to regularize the services of the ad hoc doctors appointed on or before 1-10-1984. It is a direction under Article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 — power is confided only to this Court. The ratio in P.P.C. Rawani (Dr) v. Union of India (1992) 1 SCC 331) is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularize the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf, while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In Union of India v. Dr Gyan Prakash Singh (1994 Supp (1) SCC 306) this Court by a Bench of three Judges considered the effect of the order in A.K. Jain case[8] and held that the doctors appointed on ad hoc basis and taken charge after 1-10-1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court (1991 Supp (2) SCC 421) this Court while holding that the appointment to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years' service. It is to be noted that the recruitment was only for clerical grade (Class III post) and it is not a ratio under Article 141. In State of Haryana v. Piara Singh(1992) 4 SCC 118) this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected*

employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only to Class III or Class IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularization be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules."

12. *In Union of India v. Harish Balkrishna Mahajan (1997) 3 SCC 194) the position was again reiterated with reference to Dr Narain case. Therefore, the challenge to the order of dismissal on the ground of long continuance as ad hoc/temporary employee is without substance.*

24. *The inevitable conclusion is that the Division Bench judgment is on terra firma and needs no interference. However, one factor needs to be noted before we part with the case. The appellant has already put in 28 years of service, has participated in the provident fund, pension and gratuity schemes, and additionally she has applied for voluntary retirement. We hope that the Government would appropriately consider the prayers made by her for extending the benefits of the schemes and*

accepting the prayer for voluntary retirement in the proper perspective early, uninfluenced by the dismissal of the appeal.

25. *Appeal dismissed. Costs made easy."*

11. In view of the above, we find no merit in the OA and the same is dismissed, with, of course, no cost.

MEMBER-A MEMBER-J

GIRISH/-