

CAT/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

O.A. No. 307 of 1986
~~XXXXXX~~

1988

DATE OF DECISION 05-04-1989

Dr. (Mrs.) Sushila S. Kella & Ors. Petitioner

Shri N. J. Mehta Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri J. D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr. P. M. Joshi : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

J U D G M E N T



OA/307/86

05-04-1989

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman

The petitioners are working as Junior Medical Officers/Lady Medical Officers "JMOs/LMOs" since 1982, initially on daily wages and, thereafter as fixed term employees, initially described ad hoc and temporary and later fixed period contracts, with breaks in service of one day. The petitioners contend that their names were forwarded by the employment exchange that they underwent selection by a selection committee and were appointed. While regular JMOs/LMOs are allowed a scale of Rs.700-1300 plus allowances and other benefits of annual increments, leave, LTC, bonus etc., the petitioners are only given a fixed pay of Rs.650/- and no other benefits. The petitioners contend that the regular employees are doing the same work and have the same duties as they have to perform and, for some time, they were appointed ad hoc and as ad hoc employees are given similar benefits available to the regular employees. The respondents have arbitrarily and unilaterally dropped the word ad hoc in their terms of appointment at the time of extension. The petitioners have challenged the orders of their appointment on the ground of being arbitrary and unjust, exploitive and discriminatory and the practice of breaks of one day as arbitrary. The petitioners contend that they are workmen under the Industrial Disputes Act and are entitled to the benefits of its provision regarding exploitation. The petitioners resist the submissions made by the respondents during the hearing that there are no ad hoc doctors now being taken and that the petitioners have been appointed on fixed short term contract basis in pursuance of the Spreme Court's judgment that the identical duties of ad hoc appointees with that regular appointees entitles them on the basis of equal pay for equal work at the same emoluments and that fixed short term contract appointees are not affected by such a judgment. They therefore, have claimed the relief in terms of declaring the applicants

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to be entitled to equal salary and all other benefits payable to the doctors doing similar work and also declaring the artificial breaks as illegal and unconstitutional.

2. In reply, the respondent contends that the appointment of the petitioners was necessary because regular employees soon could not be recruited through U.P.S.C. and the vacancies were required for short term periods which were to be terminated as and when regular employees from U.P.S.C. could be made available. For these reasons appointments were given on fixed term basis but, were renewed as and when found necessary. The appointment orders carry explicitly a provision that they are short term in nature and confer no right of absorption or permanent appointments. The appointment orders also stipulate that besides fixed pay, no other benefits are allowed. Having accepted the appointment the petitioners are estopped from challenging its terms. The respondents also contend that being appointed under a contract the petitioners are not employees and do not attract rights and obligations under service conditions and, therefore, the Tribunal has no jurisdiction in this case. The respondent states that now no ad hoc employees in this category are taken by the respondent. Regular JMOs/LMOs are having other administrative duties like general supervision over the whole staff, writing of the C.Rs. (Confidential Report) of staff working under them, custody of stores, placing indents for medicines, granting leave to the staff, correspondence with C.O. etc. In reply to our query the respondents have filed a further reply dated 23-4-1987 stating that there are no other ad hoc doctors in the dispensary and hospitals and the applicants who were earlier appointed on ad hoc are now working on fixed contract basis. The administrative duties given to regular employees like supervision over the staff, maintaining of office discipline, writing of C.Rs. of staff members, custody and stores, placement of supply orders for medicines, commitment of financial expenditure etc. are only done by

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regular employees and not by fixed term contract employees. In reply to our query, the respondents have filed a statement saying for basic pay of Rs.2,000/- per month and other allowances viz. Dearness Allowance, H.R.A., C.C.A. Non-practicing allowance ad admissible from time to time are now being paid to short term contract appointees. Earned Leave for ~~2~~¹ days of 30 days' service subject to each short term contract being treated as a fresh one and no carry forward of leave only is also being allowed and no encashment of leave is allowed. Casual Leave for one day of one month's service which will not be carried forward to the next contract, effects from 14-10-87 is allowed.

3. The judgments cited

1. Ratan Lal and Ors. V/s. State of Haryana and Ors. (1985) 4 Supreme Court Cases
2. Surinder Singh & Anrs. V/s. The Engineer in Chief, C.P.W.D. & Ors., AIR 1986 S.C. 584,
3. Randhir Singh V/s. Union of India (1982) 3 SCR 298 : (AIR 1982 SC 879),
4. Kishor Mohan Lal Bakshi V/s. Union of India (Supra)
5. D.S. Nakara V/s. Union of India, (1983)2 SCR 165 : (AIR 1983 SC 130),
6. Central India Water Transport Corporation Ltd. & Anr. V/s. Brojo Nath Ganguly & Anr, (1963) 3 SCC 156.
7. State of Assam V/s. Kanakchandra AIR 1967 S.C. 884 17 GLR 229 77 (LIC 1088).
8. Dharendra Chamoli & Ors. V/s. State of Uttar Pradesh AIR 1977 SC 1677.
9. A.T.R. 1988 (1) C.A.T. 556 Dr. (Mrs.) Sangeeta Narang & Ors. V/s. Delhi Administration & Ors.
10. AIR 1986 S.C. 132 H.D.Singh V/s. Reserve Bank of India & Ors.
11. AIR 1988 S.C. 1504 Jaipal & Ors. V/s. State of Haryana.
12. A.T.C. 1987 (3) 879 Dr. (Mrs.) Prem Lata Choudhary V/s. E.S.I.C. (Delhi).

We have been considerably assisted by learned advocates Mr.N.J.Mehta and Mr. J.D.Ajmera respectively for the petitioners and the respondents who have exhaustively dealt with the various judgments

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of the Supreme Court and of the High Courts and of this Tribunal which have helped to settle many questions before us in this case and to throw light on the issue dealt with in this case.

4. We have seen the appointment orders of the petitioners and the administrative duties as contended by respondents are of regular medical officers. Other duties are substantially the same as of those of the petitioners. The memo dated 11-2-1974 to which reference is made in the appointment orders about the detailed duties to be performed has not been produced but, a perusal of the appointment order leaves no room for doubt or ambiguity that the relationship of the respondent with the petitioners is clearly of master and servant. The mere fact that there is a contract in terms of fixed term appointment which is terminable by the respondent does not change the character of the employment. The judgments cited (Kanakchandra etc.) shows that the criteria adopted for determining the posts of civil posts are more than fulfilled. In the present case the jurisdiction of the Tribunal is defined in Section 14 of the Administrative Tribunals Act. The petitioners are holding a civil post under the Union and service matters in their relation as defined in (Q) of Section 3 of that Act lists remuneration, tenure, leave, discipline or any other matter whatsoever have been included in that term. Accordingly, the mere fact that the respondents have stated that the petitioners are holders of short term fixed contract appointments does not make them anything other than employees and, therefore, the jurisdiction of the Tribunal extends to them.

5. The respondent do not deny that the petitioners were appointed on daily wages basis and later on ad hoc basis. The petitioners have produced a letter on 28-4-1986 in which Director (Medical) from the Ministry of Communications has stated that following the judgment of the Supreme Court relating to appointees on ad hoc basis being given the same benefits as to regular appointees, the petitioners' case has been distinguished because they are working on fixed term on short term contract basis. The respondents have stated that they are having no ad hoc appointees now. It is clear, therefore, that the nature of appointment was altered from ad hoc to fixed term in the light of the Supreme Court's

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judgment accepting equal pay for equal work in the case of ad hoc appointees. A dilemma faced by the respondents in avoiding to give the petitioners regular appointments or status equivalent thereto until appointees recommended by the U.P.S.C. were available has been discussed in (1987) (3) A.T.C. 879 Dr.(Mrs.) Prem Lata Choudhari V/s. E.S.I.C. and while not expressing any final opinion on the question whether on continuance of a temporary ad hoc employees he becomes a permanent employee of the corporation, the Tribunal in that case has held that intermittent breaks in service given at the end of 90 days' service were artificial and unwarranted and the orders of termination at the end of further period of about 90 days are to be held illegal and invalid and do not operate as valid termination of their service; they are to be disregarded and have not affecting the continuity of service. We find ourselves in agreement with this view.

6. The petitioners have shown adequately from the statement at Annexure 'A' and from the appointment orders that the breaks in service were contrived. Such breaks in service are caused on the facts shown to be artificial. The plea that the appointment was for a short period and was brought about because regular employees through U.P.S.C. were not available and was meant for the duration of the period for which such regular employees were not available is quite acceptable, but there is no reasonable nexus between the termination of fixed term appointments with the expectation of the availability of the regular employees. In absence of such nexus the conclusion is reasonable that treating the period of such appointments was contrived to cause an adverse consequence regarding the dues of the employees regarding their terms.

7. The plea of estoppel raised by the respondents is also not weighty. No doubt the petitioners accepted the terms offered to them but, are the terms not exploitative and discriminatory when the advantage is so weighted on one side? The respondents have to act in public interest and in a fair manner and have to give terms which are not discriminatory

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and must be comparable with those given to employees who perform similar duties. The petitioners have a claim for remedy if they satisfy us that the terms offered to them suffer from infirmities regarding ~~exploit~~ exploitation. It is not necessary to burden the record with an elaborate discussions of the judgments earlier cited for the view that the circumstances in which the petitioners have accepted the terms of the contract should be ignored and the petitioners should be held to the letter of such terms which should be allowed to act as an estoppel. We do not consider that the petitioners are at all debarred from raising the plea about equal payment for equal work on this account.

8. The remaining question is whether regular Medical Officers perform duties which are distinguishable from those cast upon the petitioners by virtue of their appointment orders. The respondents have stated the administrative duties which are required to be performed by the regular Medical Officers. The petitioners have cited a specific doctor namely Umashanker Verma who is performing the same duties but is placed in pay scale of Rs.700-1300 and when he is absent or on leave the petitioners 1 to 5 perform these duties. In reply the respondents have stated that Dr. Verma is not performing identical duties as that of the applicant or that they are performing the duties which the regular medical officers perform. We consider that the critical issue in this case is whether the duties of the petitioners are identical with those of the regularly appointed medical officers and whether the difference in the terms given to the petitioners bears a reasonable approximation to the difference of their duties viz. Regular Medical Officers. We note that when ad hoc appointments are made the terms which had to be given to the ad hoc employees performing the same duties as of regular officers were identical following the judgment of the Supreme Court in Ratal Lal's case. Thereafter, ad hoc appointments have been terminated and short term appointments have been resorted to. However, the question is whether the short term appointments are having duties which are different from those earlier given to ad hoc appointees and to regular Medical Officers. Unfortunately, neither the petitioners nor the respondents

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have produced the memo dated 11-2-1974 and compared the same with the duties of ad hoc appointees and regular medical officers. The petitioners have however, stated in sub para (v) of para 6 of their petition that all the applicants are performing "purely technical duties i.e. they are only giving treatment to the patients by diagnosing and prescribing medicines for them. Their duties are connected with the treatment of patients alone. They are not performing any administrative, managerial, executive or supervisory duties. They are not writing confidential records of any other employees, nor they have any powers to issue any appointments or termination of services to any other employees. By no stretch of imagination, they can be classified as appointed even in supervisory capacity." The respondent on the other hand has detailed certain administrative supervisory and material management duties which are to be performed by regular employees. In A.I.R. 1988 SC 1504 in disposing of several writ petitions it has been held that the doctrine of equal pay for equal work would apply on the premise of similar work but, it does not mean that there should be complete identity in all aspects. The respondents have relied upon A.I.R. 1988 SC 1291 in which it was held that the work of Stenographers and of Personal Assistants cannot be regarded as identical for the purpose of invoking the doctrine of equal pay for equal work because the duties of the Personal Assistants are different in some respects although the work of Stenographer may be common and that no mathematical or quantitative weighing of the duties of Stenographers and Personal Assistants can be made in determining their similarity and identity. The manner in which the respondents have sought to distinguish the duties of the ad hoc and later fixed contract holders from those of the regular appointees clearly shows that the difference in the duties is marginal peripheral and so far as the work of the doctors as such is concerned, not significant. Writing C.Rs. issuing and managing stores and ensuring punctuality or supervision in a dispensary or in a hospital may be important but, the bulk of the duties are regarding the treatment of patients so far as the doctors are concerned. In this

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respect there is hardly any material distinguishing them. Even so, the petitioners have shown certain dispensaries in which they worked, they were called upon to do the work of such regular appointees which removes any doubt.

9. As stated earlier, we do not feel called upon to decide whether the petitioners could be given the identical benefits to which regularly appointed servants are entitled to. However, in the light of the judgments referred to and the ratios decided therein, there is no doubt that the petitioners are entitled to regard their service as having suffered no break and that orders causing such break require to be declared as illegal and void. The petitioners are also entitled to the same pay and other benefits regarding leave including C.L. and allowances as are admissible to ad hoc and regular employees. They are not entitled to the benefits of seniority or security of service to which the regular employees are entitled and in that regard a valid distinction could be made. We, therefore, declare that the petitioners are entitled to the relief of being paid according to the scale and benefits applicable to other doctors doing similar work. They are also entitled to the declaration of the action of the respondents in giving artificial break in service as illegal and unconstitutional and the service of the petitioners are being regarded as continuous from the first date of the appointment whether it was ad hoc or on fixed term contract basis. The respondent authorities are directed to calculate the dues of the petitioners on the basis of the above declaration within six months of the date of this order. In the circumstances of this case, we do not consider that interest claimed by the petitioners should be paid to them. With these observations, we find that the application has merit and allow it to the extent stated. There shall be no order as to costs.

P. H. Trivedi

(P. H. Trivedi)
Vice Chairman

P. M. Joshi

(P. M. Joshi)
Judicial Member