

Central Administrative Tribunal Principal Bench

OA No.4018/2016

New Delhi, this the 19th day of February, 2019

**Hon'ble Sh. Justice L. Narasimha Reddy, Chairman
Hon'ble Sh. Mohd. Jamshed, Member (A)**

Dr. Radha Dubey
W/o Shri Sandeep Kumar
Aged about 50 years
R/o C-301, Gauri Sadan, 5, Hailey Road
Designation M.D, Group 'A'
K.G. Marg, New Delhi-110001. Applicant

(By Advocate: Shri Shree Prakash Sinha)

vs.

1. Govt. of NCT of Delhi
Through Hon'ble the Lt. Governor
Raj Niwas, Delhi-110054.
2. Secretary
Health and Family Welfare Department
Govt. of NCT of Delhi, 9th Level
A-Wing, Delhi Secretariat, I.P. Estate
New Delhi-110002.
3. Director General
Director General of Health Services
Govt. of NCT of Delhi
F-17, Karkardooma
Delhi-110032.Respondents

(By Advocate: Shri Amit Anand)

ORDER (ORAL)**Justice L. Narasimha Reddy:-**

For all practical purposes, the applicant has taken the medical department of the Delhi Government for a ride. She was one of the several doctors who were appointed on ad hoc basis on 01.03.1996. By that time, the Health service in the Delhi administration was not constituted yet. After much of legal battle, between various groups, the Rules were framed in the year 2009 w.e.f. 23.12.2009 and the Service was constituted. The Rules provided for the selection of the doctors appointed on ad hoc basis by the UPSC through a mechanism evolved for that purpose. On being selected, they were to be appointed from the date on which the service was constituted.

2. The applicant applied for leave, in the year 2005 stating that her mother is ill. Leave was sanctioned for some period. However, stating to be on account of the prolonged illness of her mother, the applicant did not report to duty. Having waited sufficiently, the respondents terminated her services through order dated 23.11.2017. OA No.2745/2008 filed by the

applicant challenging the order of termination, was dismissed. Writ Petition filed by her in High Court was also rejected. In SLP No.23809/2015, the Hon'ble Supreme Court passed an interim order on 16.08.2010, directing that the applicant be taken back into service. Accordingly, she was taken back in service on 03.11.2010.

3. During the pendency of the SLP, the UPSC has conducted an examination and started the selection process. The SLP was disposed of on 19.08.2015 directing that the applicant shall be treated as eligible to be considered for regularisation by the UPSC. Liberty was given to her to claim other benefits in accordance with law.

4. The UPSC selected the applicant and the appointing authority issued an order dated 02.11.2015.

5. The applicant made a representation dated 07.09.2015 claiming that she is entitled to be regularised from 1996, together with the benefit of earned leave, half pay leave etc. for the period of her absence between 23.04.2006 and 23.11.2007 and that

she is entitled to the pay scale with other benefits as were available to other recruits of the year 1996 and that she is entitled to count her service for all purposes from 01.03.1996. Through an order dated 16.11.2015, the respondents rejected the claim of the applicant duly indicating the reasons therefor. The same is challenged in this OA.

6. The applicant contends that her initial appointment *albeit*, on ad hoc basis on 01.01.1996 was against a clear vacancy and once she has been appointed on regular basis by the UPSC, she deserves to be treated as a regular employee from 1996 onwards. It is also stated that the period of absence deserves to be treated as on duty and all the benefits are to be extended to her.

7. The applicant has also filed MA No.430/2019 with a prayer to permit her to amend the OA to incorporate the challenge to the service rules of 2009. However, we are not inclined to permit her to challenge the rules at this stage, particularly when the OA itself was filed for multifarious reliefs way back in the year 2006.

8. The respondents filed a counter affidavit opposing the OA. It is stated that the appointment of the applicant and several other doctors in the year 1996 was purely on ad hoc basis and the service came to be constituted only in the year 2009. According to them, the question of treating an employee in service before the constitution thereof does not arise. It is also stated that the applicant was re-induced into service on the basis of the interim order passed by the Hon'ble Supreme Court and in the absence of any specific direction and setting aside of the order of termination, the question of treating the period of absence as on duty, does not arise. Other contentions are also urged.

9. We heard Shri Shree Prakash Sinha, learned counsel for the applicant and Shri Amit Anand, learned counsel for the respondents at length.

10. The applicant was appointed along with several other doctors in the year 1996, on ad hoc basis. It is not necessary to refer to the prolonged litigation that ensued in the context of the *inter se* disputes between different categories of medical officers. Ultimately, in compliance with the orders issued by the courts, the

service was constituted by framing rules in the year 2009.

11. The ad hoc doctors have also initiated a round of litigation, which entailed in grant of certain reliefs to them. Ultimately, in compliance with the directions of the Hon'ble Supreme Court, the UPSC framed a typical procedure for the purpose of regularising such of the doctors who have been appointed on ad hoc basis. All the doctors who were in service as on i.e., on 18.12.2006 were treated as eligible.

12. The applicant, remained absent from 2005 onwards and her services were terminated on 23.11.2007. The OA filed by her challenging the order of termination was dismissed and so was the Writ Petition. In the SLP No.23809/2010, the Hon'ble Supreme Court issued the following directions:-

"Issue notice to the respondents on the special leave petition as also on the petitioner's prayer for interim relief, returnable in 16 weeks. Dasti, in addition, is permitted.

Having regard to the peculiar facts of the case, we deem it proper to direct the respondents, by an interim order, to take the petitioner back in service."

13. In compliance with these directions, the respondents inducted the applicant into service on 03.11.2010 w.e.f. 16.08.2010 when the SLP was pending, the UPSC conducted this examination for selection. Since the applicant was in service, though on the basis of interim order, she too was considered and declared eligible. The SLP was disposed of on 19.08.2015 through the following order:-

"An interim order was passed by the Motion Bench on 16.08.2010 directing the respondents to take the petitioner back in service. Accordingly, the petitioner was permitted to continue in service (vide an order of the Government of National Capital Territory of Delhi, Health & Family Welfare Department, dated 03.11.2010). During the pendency of the petitions in this Court, the respondents framed the Delhi Health Service (Allopathy) Rules, 2009. Under the above Rules, the suitability of the petitioner was required to be determined by respondent No.4 – the Union Public Service Commission. We are informed by the learned counsel representing respondent No.4, that the petitioner has been declared suitable for appointment under the Delhi Health Service (Allopathy) Rules, 2009. In the above view of the matter, we are of the view, that in the peculiar facts and circumstances of this case, the petitioner should be entitled to the benefits of this case, the petitioner should be entitled to the benefits granted to others, who were found suitable under the provisions of the Delhi Health Service (Allopathy) Rules, 2009. Ordered accordingly.

For the other claims (emerging out of the factual position, that the petitioner to agitate the same, if she is so advised, in accordance with law. And if the petitioner makes a representation to respondent No.1, for the above claims, the same will be disposed of by passing a speaking order.

The special leave petitions stand disposed of in the above terms.”

14. Accordingly, the applicant was appointed along with other doctors. It is stated that while other doctors were appointed w.e.f. 23.12.2009, the date on which the rules were notified, the applicant was treated as having been appointed w.e.f. 03.11.2010, the date on which she was inducted into service on the basis of the interim order.

15. One can understand if the applicant wants her appointment to be treated with effect from 23.12.2009 if the circumstances otherwise permit. However, she wants it to be treated w.e.f. 01.03.1996. In this regard, reference may be made to the judgment dated 23.05.2017 in OA No.604/2014. Similar prayer made in that OA was rejected. We are also of the view that once the Rules provide for a particular mechanism, the question of deviating from that does not arise. Added to that, in the case of the applicant, she was not even

in service as on 23.12.2009. As observed earlier, her services were terminated on 23.11.2007 and it was only on the basis of the interim order passed by the Hon'ble Supreme Court that she was re-induced on 03.11.2010.

16. Another prayer of the applicant is that the period of her absence must be regularised in all respects. It is clearly well settled and an undisputed legal preposition that the occasion to treat the absence of a particular employee on being reinstated into service would arise if only the order of termination has been set aside by a competent Court of Law, and would depend on the nature of directions issued in that behalf. For whatever reason, the order of termination passed against the applicant dated 23.11.2017 remained untouched. Even if it is assumed that it ceased to be in existence on account of subsequent developments, it is too difficult to expect that the period can be regularised. Various other contentions urged by the applicant are totally untenable in law and we do not find any force in them. The OA is dismissed, with cost of Rs.10,000/- upon the

applicant to be paid to the CAT Advocates' Library Fund within a period of four weeks from today.

**(Mohd. Jamshed)
Member(A)**

**(Justice L. Narasimha Reddy)
Chairman**

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