

6  
CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

1. O.A.NO.820/2003  
with
2. O.A.No.1479/2003
3. O.A.No.1520/2003
4. O.A.No.1521/2003

New Delhi, this the 18<sup>th</sup> day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.K.NAIK, MEMBER (A)

O.A.NO.820/2003:

1. Dr. Rajesh Kumar Chhoker  
s/o Sh. Sukhpal Singh  
aged about 35 yrs.  
r/o WZ-124 C/3,  
Virender Nagar  
New Delhi.  
and working as Lecturer  
in Shalakyia Speciality  
in A & U Tibbia College  
under the respondents.

2. Dr. Rajesh Sharma  
s/o Sh. Amar Nath Sharma  
aged about 33 yrs..  
r/o S D, DDA Flats  
Gulabi Bagh  
Delhi and working as Lecturer  
in Dravyaguna & Ras Shastra  
in A&U Tibbia College under  
the respondents.

... Applicants

(By Advocate: Sh. S.S.Tiwari)

Versus

1. Govt. of NCT of Delhi  
through Chief Secretary  
Govt. of NCT of Delhi  
Delhi Secretariat  
I.P.Stadium  
New Delhi.
2. Principal Secretary (Health)  
Govt. of NCT of Delhi  
Department of Health & Family Welfare  
Delhi Secretariat, I.P.Stadium  
New Delhi.
3. The Director (ISM&H)  
Directorate of I.S.M. & H,  
A&U Tibbia College Campus  
Karol Bagh  
New Delhi.

... Respondents

(By Advocate: Shri Vijay Pandita)

O.A. No. 1479/2003:

1. Dr. H.C. Gupta  
s/o Sh. O.P. Gupta  
r/o B-67, N.D.M.C. Flats  
Keshav Kunj, Vikas Puri  
New Delhi.
2. Dr. Abdul Nasir  
s/o Prof. A.H. Farooqi  
r/o Flat No.203, RZ-2541/28  
Tuglakabad Extn.  
New Delhi - 110 019. ... Applicant

(By Advocate: Sh. Madhav Panikar)

Versus

1. N.C.T. of Delhi  
through its Chief Secretary  
I.P.Sachivalaya  
New Delhi.
2. Principal Secretary (Health)  
Govt. of NCT of Delhi  
I.P.Sachivalaya  
New Delhi.
3. Director  
Directorate of Indian System J.M. & H,  
Tibbia College Campus  
Karol Bagh  
New Delhi. ... Respondents

(By Advocate: Sh. Vijay Pandita)

O.A. No. 1520/2003:

1. Dr. Srikanat Panda  
s/o Sh. Basudev Panda  
r/o c/o Dr. H.K.Panigrahi  
16/137, Street No.5  
Joshi Road, Karol Bagh  
New Delhi - 110 005.
2. Dr. Praveen Kumar  
s/o Sh. Babu Ram  
r/o c/o. Sh. Baleshwar Prasad  
G-23/138, Sector-7, Rohini  
Delhi - 110 085.
3. Dr. Nishi Arora  
w/o Sh. Pawan Kumar  
r/o 22, Manocha Apartments  
Vikas Puri  
New Delhi - 110 018.
4. Dr. Hemant Kumar Panigrahi  
s/o Sh. Arjun Panigrahi  
r/o 16/137, Street No.5  
Joshi Road, Karol Bagh  
New Delhi - 110 005.

5. Dr (Mrs.) Sujata Yadav  
w/o Dr. Alok Yadav  
r/o WZ-298, Shakur Pur  
Delhi - 110 034.
6. Dr. Shashi Kant Vedi  
s/o Sh. D.C.Vedi  
r/o 208, Ambedkar Nagar  
Kankarkhedā, Meerut Cantt.  
Meerut (U.P.)
7. Dr. B.S.Sharma  
s/o Sh. Hari Prasad Sharma  
r/o B-937, Shastri Nagar  
New Delhi - 110 052.
8. Dr. Dhanapunini Vinay Kumari  
w/o Dr. Parimi Suresh  
r/o 22, Manocha Apartments  
Vikas Puri  
New Delhi - 110 018. ... Applicants

(By Advocate: Sh. Ashwani Bhardwaj)

Versus

1. Govt. of N.C.T., Delhi  
through The Chief Secretary  
G.N.C.T. of Delhi  
Secretariat, I.G.Stadium  
New Delhi.
2. The Principal Secretary (Health)  
Govt. of NCT, Delhi  
Department of Health & Family Welfare  
Secretariat, I.G.Stadium  
New Delhi.
3. The Director (ISM & H)  
Directorate of ISM & H  
A & U Tibbia College  
Govt. of N.C.T., Delhi,  
Karol Bagh  
New Delhi - 110 005. ... Respondents

(By Advocate: Sh. Vijay Pandita)

O.A.No.1521/2003:

1. Dr. Mohd. Saleem  
s/o Sh. Abdul Waheed  
r/o 1307, Zeenat Mahal  
Farash Khana  
Delhi - 110 006.
2. Dr. Mohd. Arshad Ansari  
s/o Mr. Abdul Hafiz SB  
r/o E-61, A.F. Enclave-I  
Jamia Nagar, Okhla  
New Delhi - 110 025.

19

3. Dr. Mahmood Ahmed  
s/o Sh. Maqbool Ahmed  
r/o 199/5, Zakir Nagar  
Okhla, New Delhi - 110 025.
  4. Dr. Darakhshan Khanam  
d/o Mr. Shaheer Hasan Khan  
r/o Agency Hamdard Dawakhana  
Mohd. Ali Road  
Aligarh - 202 001.
  5. Dr. Ayesha Raza  
w/o Dr. Mohd. Aijaz  
r/o B-4/27A, DDA Flats  
Inderlok, Delhi - 110 035.
  6. Dr. Naseem Akhtar Khan  
s/o Sh. Matloob Ahmed Khan  
r/o c/o Dr. A.K. Gupta  
X/1717, Street No.17  
Rajgarh Colony  
Delhi - 110 031.
- ... Applicants

(By Advocate: Sh. Ashwani Bhardwaj)

Versus

1. The Govt. of N.C.T., Delhi  
Through The Chief Secretary  
G.N.C.T. of Delhi  
Secretariat, I.G. Stadium  
New Delhi.
  2. The Principal Secretary (Health)  
Govt. of NCT, Delhi  
Department of Health & Family Welfare  
Secretariat, I.G. Stadium  
New Delhi.
  3. The Director (ISM & H)  
Directorate of ISM & H  
A & U Tibbia College, Govt. of  
N.C.T., Delhi, Karol Bagh  
New Delhi.
- ... Respondents

(By Advocate: Sh. Vijay Pandita)

ORDER (Common)

Justice V.S. Aggarwal:-

By this common order, we propose to dispose of the aforesaid four OAs, since the facts are identical and controversy is also common. We take the facts from OA No.820/2003 and OA No.1520/2003.

*ls Aggarwal*

2. The Tibbia College Act had been enacted in the year 1952. In exercise of the powers conferred under Clause (c) of Section 16 of the Tibbia College Act of 1952, regulations had been framed. Regulation 7 pertains to the confirmation of temporary employees. It reads:

"7. Confirmation:

- (1) As and when regular vacancies in permanent posts occur the temporary employee holding the post of Secretary, Principal, Managers of Hindustani Dawakhana or Rasayanshala, who have completed not less than 3 years of service (including period of probation as laid down in Regulation 6) may be considered for confirmation and confirmed with the prior approval of the Chief Commissioner.
- (2) As and when regular vacancies in permanent posts occur, temporary employees, other than the Secretary, Principal Managers of Hindustani Dawakhana and Rasayanshala, may be considered by the Board for confirmation after they have completed 3 years satisfactory service (including the period of probation, if any) and if otherwise suitable may be confirmed under the orders of the Board."

3. The Tibbia College Act, 1952 was repealed by Tibbia College (Take-over) Act, 1997 w.e.f. 30.4.1998. By virtue of the present Act, 1997 referred to above, the management of the Tibbia College stood transferred and vested with the Government of Delhi.

*ls Ag e*

4. Section 2(e) of the Act defines "Government" means Lieutenant Governor of National Capital Territory of Delhi appointed by the President under Article 320 read with Article 239-AA of the Constitution.

5. Section 16 of the Delhi Tibbia College (Take-over) Act, 1997 which pertains to repeal of Tibbia College Act, 1952 further provided:

"16. **Repeal of Tibbia College Act, 1952.**— The Tibbia College Act, 1952 (Delhi Act No.5 of 1952) is hereby repealed with effect from the day of the coming into force of this Act:

Provided that anything done or any action taken under the Act so repealed which could have been done under this Act if it had then been in force shall be deemed to have been done or taken under the corresponding provisions of this Act:

Provided further that subject to the provisions of this Act the repeal of the principal Act shall not render invalid any order, notice, notification, recovery or other thing issued or effected thereafter, before the day of coming into force of this Act, nor shall it affect the enforcement of any liability incurred thereunder before the commencement of this Act."

6. Applicants (Dr. Rajesh Kumar Chhoker & Others) in OA 820/2003 and applicants in OA 1479/2003 seek setting aside of the order of 26.2.2003 and directing the respondents to consider their claim for regularisation in terms of the old recruitment rules dated 20.12.1985 with consequential benefits. The impugned order of 26.2.2003 reads:

"Reference his letter dated 27.1.2003 on the above mentioned subject. Dr. Rajesh Chhokar, Lecturer is informed that the request made by him vide his

CS Ag

letter dated 11.11.2002 for regularisation of his services has been considered by the Competent Authority.

The Competent Authority is of the view that the posts of Lecturer (Ayurvedic & Unani) are Group 'A' posts and the regular appointment against these posts can only be made through UPSC. In view of the facts that there is no provision in the R.Rs to regularize the services of the adhoc appointees, his request is turned down, as he is an adhoc appointee."

7. Some of the relevant facts are that on 7.7.1998, the Government of National Capital Territory of Delhi had invited applications for certain posts in the A & U Tibbia College, Karol Bagh which were to be filled up on ad hoc basis. In pursuance of the same, the applicants had applied and the representative order appointing one of the applicants reads:

"On the recommendation of the staff selection board, the Lt. Governor, Delhi is please to appoint Dr. Rajesh Kumar Ghhokar to the post of Lecturer Ayurveda in Shalakyia subject on a purely temporary and adhoc basis with effect from the date of his joining the post for a period of six months, or till regular appointment is made, which ever is earlier, on the following terms and condition:-

1- The post is purely on adhoc basis for a period of six months or till regular appointment is made, which ever is earlier. The appointment can be terminated at any time (on either side) by giving one month's notice or by paying one month's salary without assigning any reason or failure to complete the initial period of three months to the satisfaction of the competent authority.

2- The appointee shall be placed in the pay scale of Rs.8000-13500/- + NPA and other usual allowances.

3- .....

*Signature*

8. The said ad hoc appointment had continued and vide impugned order, the request of the applicants in this regard had been rejected.

9. Applicants' contention is that they continued to be governed by the old Act. There was no deemed repealing of the Rules and regulations that were framed under the Act of 1952. Therefore, they are entitled to be considered for regularisation, more so, when they continued to work sufficiently long period.

10. Respondents have contested the said applications. They insisted that the Tibbia College Act of 1952 was repealed by the Tibbia College Act (Take-over) of 1997. Due to change of management in the Tibbia College, the entire system of functioning was reviewed. The recruitment rules had to be re-notified. The appointment of the applicants was purely temporary and on ad hoc basis.

11. Similar plea raised by some other applicants had already been rejected in the case of Dr. Divpreet Sahni & Others v. Government of NCT of Delhi & Others in OA 988/2001 with connected Original Applications decided on 19.9.2002.

12. It is denied that the applicants are entitled to any of the reliefs, and it is insisted that the regular appointment can only be made in

*CS Ag*



accordance with the rules that have been enacted in which consultation of Union Public Service Commission is necessary.

13. Similar two Original Applications No.1520/2003 and 1521/2003 have also been filed by Dr. Srikanat Panda & Others and Dr. Mohd. Saleem & Others respectively. The facts basically are the same except that herein the applications were invited for filling up of certain posts with a consolidated salary of Rs.10,000/- on contract basis. The advertisement appeared on 14.10.2000. In pursuance of the said advertisement, some of the persons were appointed including the applicants, on contract basis for a period of one year or till the posts are filled up on regular basis, whichever is earlier. The representative order dated 15.2.2001 and relevant portion of the same reads:

"On the recommendations of the Staff Selection Board, the Lt. Governor, Delhi is pleased to offer the appointment to Ms. D. Vinaya Kumari d/o Shri Paini Suresh to the post of Lecturer (Subject - Prasuti and Stri Roga) in Ayurvedic and Unani Tibbia College, Karol Bagh, New Delhi on contract basis with effect from the date of his joining the post for a period of one year or till the posts are filled up on regular basis, which ever is earlier, on the following terms and conditions.

1. The appointment shall purely on contract basis for a period of one year or till the posts are filled up on regular basis, whichever is earlier. The appointment shall be liable to be terminated at any time (on either side) by giving one-month notice or by paying one month's salary without assigning any reason or failure to complete the initial

*ls Ag*

period of three months to the satisfaction of the competent authority.

2. The appointee shall be paid the consolidated salary of rs.10,000/- per month."

The applicants in these Original Applications (i.e., OA 1520 and OA 1521 of 2003) also, in similar manner seek a direction to regularise their service from their initial date of appointment and further contend that a decision had been taken by the Cabinet Committee of Delhi Government. The file may be called and necessary instructions issued.

14. The said Original Applications have also been contested.

15. The first and foremost question came up for consideration was as to whether the regulations framed after the Tibbia College Act of 1997, the Tibbia College Act, 1952 would automatically be repealed or not?

16. We know from the decision in the case of WATSON v. WINCH, [1916-17] All England Law Reports Reprint 972 that when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed). In that event, bye-laws would also become invalid unless they are preserved by the repealing statute.

17. Section 24 of the General Clauses Act of 1987 provides the necessary key to the controversy. It reads:

*As Ag e*

"24. Continuation of orders, etc., issued under enactments repealed and re-enacted.- Where any [Central Act] or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any [appointment, notification] order, scheme, rule, form or bye-law, [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted, unless and until it is superseded by any [appointment, notification,] order, scheme, rule, form or bye-law [made or] issued under the provisions so re-enacted [and when any [Central Act] or Regulation, which, by a notification under Section 5 or 5-A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this selection].

18. The basic principle remains the same which we have referred to above. This has been enacted to obviate the clauses, included in every repealing and re-enacted bill, to keep the order, scheme, bye-law or rule which is proposed to be superseded. It provides that if any Central Act or Regulation is re-enacted with or without modification, then, unless it is otherwise expressly provided, any [appointment, notification,] order, scheme, rule, form or bye-law issued under the repealed Act or Regulation, shall continue to be in force and shall be deemed to have been issued under the provisions

*B. A. G.*

re-enacted, unless and until it is superseded by any order, scheme, rule, form or bye-law.

19. The Supreme Court considered this question in the case of Chief Inspector of Mines and another etc. v. Karam Chand Thapar etc. AIR 1961 SC 838. Herein the Coal Mines Regulations were made under the Mines Act of 1923. Regulations had been framed in exercise of the powers conferred by the Act. The Act was re-enacted as Mines Act of 1952. In 1955 no regulations had been made, and on facing such a situation, the Supreme Court held:

"(20). The true position appears to be that the Rules and Regulations do not lose their character as rules and regulations, even though they are to be of the same effect as if contained in the Act. They continue to be rules subordinate to the Act, and though for certain purposes, including the purpose of construction, they are to be treated as if contained in the Act, their true nature as subordinate rule is not lost. Therefore, with regard to the effect of a repeal of the Act, they continue to be subject to the operation of S. 24 of the General Clauses Act.

(21) For the reasons given above, we have no hesitation in holding that the provisions of S. 31. sub-sec. 4 of the Mines Act, 1923, do not stand in the way of the full operation of S. 24 of the General Clauses Act, 1897, and that in consequence of these provisions the Coal Mines Regulations, 1926, continued to be in force at the relevant date and have to be deemed to be regulations made under the Mines Act, 1952."

20. Once again Section 24 of the General Clauses Act came up for consideration in the case of Harish Chandra v. The State of Madhya Pradesh, AIR 1965 SC 932. Herein the Madhya Bharat Iron, Steel and

*GAJ*

Scrap (Production, Procurement and Distribution) Control Order, 1949 was promulgated on 4.6.1949 in exercise of the powers conferred by Section 4 of Madhya Bharat Essential Supplies (Temporary Powers) Act (8 of 1948). By notification of 1949, the scrap dealers Association had been granted a special privilege of selling scrap. The Madhya Bharat Act referred to above was repealed by virtue of the Essential Supplies (Temporary Powers) Amendment Act, 1950 under which the Essential Supplies (Temporary Powers) Act of 1946, was extended to the Part B States. The Supreme Court held that the effect of the extension of Essential Supplies (Temporary Powers) Act, 1946 was not only to repeal the Madhya Bharat Essential Supplies (Temporary Powers) Act, 1948 but also the Madhya Bharat Scrap Control Order that had been so issued. Section 24 of the General Clauses Act will have no application. Once the statute under which bye-laws are made were repealed, those bye-laws are impliedly repealed and cease to have any validity unless the repealing statute contains some provisions preserving the validity of the bye-law notwithstanding the repeal.

21. Similar was the findings of the Supreme Court in the case of Dharangadhra Chemical Works v. Dharangadhra Municipality and Another (1985) 4 SCC 92. It was held that ordinance and the Government Rules are a stop-gap measure and it would automatically cease to operate as soon as the Municipality issued its own bye-laws under the appropriate Act.

*B Ag*

22. In the present case, the Tibbia College Act, 1952 was repealed by the Tibbia College (Take-over) Act of 1997 as already referred to above. It was not a case of re-enactment with or without modification.

23. Not only that, in the present case as we have already pointed above, all the appointments of the applicants had been made after the Tibbia College (Take-over) Act of 1997 and they have not been in exercise of any provisions of the Tibbia College Act, 1952 or the Regulations therein. In that view of the matter, the applicants indeed cannot take advantage of what is being urged vehemently at the Bar.

24. Not only that, if for the sake of argument it is taken that Regulation 7 of the regulations framed in the year 1961 under the Tibbia College Act, 1952 was alive on the date when the applicants were taken into service, still the applicants indeed have no ground to succeed. It only refers to the fact that temporary employees may be considered if they had three years satisfactory service. It does not confer any right for regularisation to such employees and otherwise also the applicants were either appointed on contractual basis or on ad hoc basis. It does not confer any right to such employee. In that view of the matter, even in the alternative, the applicants cannot take advantage of this particular plea. We accordingly hold that when Tibbia College (Take-over) Act was passed in 1997, the Tibbia College Act, 1952 stood

ls Aeg

repealed. Since the applicants are appointed after the Tibbia College (Take-over) Act, 1997 they cannot take advantage of the regulations that were already framed earlier.

25. Learned counsel for the applicants relied upon the decision in the case of Dr. G.P. Sarabhai & Others v. Union of India & Others, 1983 LAB: I.C. 910 [Civil Writ Petition No. 5/1981, decided on 13.8.1982]. In the afore-cited case, certain petitioners were appointed as Junior Medical Officers in E.S.I. Corporation initially on ad hoc basis for a period of one year. The appointment letter indicated that maximum period of the selection was one year and it was contemplated that selection would be regularised by the Union Public Service Commission and they were continued from time to time. It was in the backdrop of these facts that the Division Bench of the Delhi High Court had given the decision referred to and relied upon by the learned counsel. But the same had been considered by the Delhi High Court in the case of Sh. Sandeep & Others v. Delhi Subordinate Services Selection Board & Ors., C.W.P. No. 7386/2000 decided on 23.7.2002. The decision in the case of Dr. G.P. Sarabhai and Others (supra) was referred to and it was held that question, therefore, for consideration was whether the petitioners who were appointed as Doctors in the ESI Corporation, and had been continued for about seven years, could be asked to compete with the new entrants. It was held that they were not required to re-apply. The decision was held to be having no application where the petitioners had

*CS Ag*

undergone selection process with new entrants. It will have no application in the present case also because the applicants had been appointed purely on ad hoc and on contractual basis in different Original Applications and consequently, they cannot be asked to re-apply or claim a right for regularisation. As would be noticed hereinafter under the Tibbia College (Take-over) Act, of 1997, the appointment can only be made in consultation with the Union Public Service Commission. The appointment cannot be made de hors the rules and therefore, in the peculiar facts of the present case, the decision in the case of Dr. G.P. Sarabhai (supra) has no application.

26. On behalf of the respondents, it was vehemently contended, in our view successfully that a person who is appointed on ad hoc basis or even on contract basis, cannot claim regularisation as of right. The regularisation cannot be made de hors the rules.

27. In the case of Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan, (2003) 3 SCC 485, a similar situation had cropped up before the Supreme Court. Certain persons had been appointed on temporary basis for a period of six months. Certain orders of extension were issued. On 1.10.1998, services of Dr. Chanchal Goyal were terminated on the ground that the candidates selected by the Public Service Commission were available. The question for consideration before the Supreme Court was as to whether she could claim

*ls Ag*



regularisation as in the case of the applicants. The Supreme Court repelled the argument of Dr. Chanchal Goyal and held:

"8. Unless the initial recruitment is regularized through a prescribed agency, there is no scope for a demand for regularisation. It is true that an ad hoc appointee cannot be replaced by another ad hoc appointee; only a legally selected candidate can replace the ad hoc or temporary appointee. In this case it was clearly stipulated in the initial order of appointment that the appellant was required to make room once a candidate selected by the Service Commission is available."

Thereupon the Supreme Court went on to hold:

"10. In J&K Public Service Commission v. Dr. Narinder Mohan [(1994) 2 SCC 630] it was, inter alia, 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 regularisation 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,

*As Ag*

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 [1987 Supp SCC 497] 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 regularisation 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

CS Ag

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 regularisation 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."

28. Similar situation had arisen before the Supreme Court in the case of Union of India & Ors. v. Harish Balkrishna Mahajan, 1996(6) SLR S.C. 669. Therein Harish Balkrishna Mahajan was appointed on monthly basis. This Tribunal had directed that he should be regularised in consultation with Union Public Service Commission. The Supreme Court allowed the appeal and held:

"2. The respondent was temporarily appointed as a Medical Officer on monthly basis in the Central Government Health Scheme on August 10, 1982. During the unfortunate strike of the doctors as trade unionists, unmindful of the ethical and medical code of conduct, he was appointed and even continued in the service till August, 1987. When his services were terminated, he had gone to the Tribunal and filed OA No.701/89. The Tribunal in the impugned order dated 21.12.1994 directed the appellants to regularise the service of the respondent in consultation with the Public Service Commission. Thus, this appeal by special leave.

3. The controversy is no longer res integra. In similar circumstances, this Court had considered the entire controversy in J and K Public Service Commission & Ors. vs. Dr. Narinder Mohan and Ors. [(1994) 2 SCC 630] : [1994(1) SLR 246 (SC)]. Admittedly, the post of doctors in the Central Government Health Scheme are required to be filled up by recruitment through Union Public

ls Ag

Service Commission. Therefore, the direction to consider the case of the respondent in consultation with the Public Service Commission for regularisation is in violation of the statutory rules and Article 320 of the Constitution of India. The only course known to law is that the Union of India shall be required to notify the recruitment to the Public Service Commission and Union Public Service Commission shall conduct the examination inviting the applications from all the eligible persons including the persons like the respondents. It would be for the respondent to apply for and seek selection in accordance with Rules. Therefore, the direction is in violation of Article 320 of the Constitution."

29. Identical view was expressed by the Apex Court in the case of Dr. Surinder Singh Jamwal & Anr. v. The State of Jammu & Kashmir & Ors., JT 1996 (6) S.C. 725. The decision of the Supreme Court in the case of Jammu & Kashmir Public Service Commission v. Dr. Narinder Mohan, 1994 (2) SCC 630 was relied upon, and it was held that the applicant therein could apply afresh only.

30. This Tribunal had considered this controversy in the case of Dr. Divpreet Sahni & Others v. Government of NCT of Delhi & Others, O.A.No.988/2001, decided on 19.9.2002. Herein also the said persons had been appointed firstly on ad hoc basis for a period of six months. It was reiterated that they could continue with ad hoc appointment subject to the appointment of regular incumbents, and when regular incumbents became available, the question for consideration was as to if the said persons had gained any such right or not? The applications were dismissed holding:

*LS Ag*

22. .... it was clearly mentioned that appointments were to be made on ad-hoc basis. When a suggestion of ad-hoc appointment is made, only few persons would apply. On the other hand, when regular appointments are notified, a large number of eligible candidates are tempted to apply. To this extent, the applicants in these OAs have been selected from amongst a much lesser number of competitors than would have been the case if regular selection had been notified. Further, there is always the likelihood of favouritism when departmental committees are set up to interview candidates from the open market. When UPSC gets associated, objectivity and impartiality also steps in. That is precisely the reason why the UPSC and for that matter the State Public Service Commissions have been set up as constitutional bodies who devise their own procedure albeit in consultation with the department concerned, for selecting candidates for various services. We have in the foregoing paragraphs also noticed, after a discussion of the various Court cases relied upon by the applicants, that nothing will assist their case, whether it is the case of Dr. Jitender Singh (supra) or that of Medical Officers (Unani), or for that matter any other case. Consideration of the candidature of the applicants in the manner sought by them treating them as forming a separate block and by directing the UPSC to consider their claims wholly on the basis of their performance in ad-hoc service, is something unknown to the relevant rules and the procedure. Following of such a hybrid procedure cannot be sustained in law, and for this reasons are available in plenty in the cases of J&K Public Service Commission & Others (supra) and Shri Sandeep & Others (supra)."

31. The Supreme Court in the case of State of Madhya Pradesh & Another v. Dharam Bir, (1998) 6 SCC 165 further held that when ad hoc appointments are made they would continue to do so even after passage of time. The findings of the Supreme Court read:

"34. The respondent having worked in an ad hoc capacity on the post of Principal might have gained some administrative experience but the same cannot be treated as equivalent to his knowledge in the field of Engineering. A

*As Ag*

compounder, sitting for a considerably long time with a doctor practising in modern medicine, may have gained some experience by observing the medicine prescribed by the doctor for various diseases or ailments but that does not mean that he, by that process, acquires knowledge of the human anatomy or physiology or the principles of pharmacology or the field of action of any particular medicine or its side effects. The compounder cannot, merely on the basis of experience, claim a post meant exclusively for persons having MBBS or other higher degrees in medicine or surgery. The plea of experience, therefore, must fail. Moreover, this would amount to a relaxation of the Rule relating to educational qualification. Power to relax the Rule vests exclusively in the Governor as provided by Rule 21. This power cannot be usurped by the court or the tribunal."

32. At this stage, it is relevant to mention the decision rendered by the Supreme Court in the case of Ahmedabad Municipal Corporation v. Virendra Kumar Jayantibhai Patel, (1997) 6 SCC 650. The Supreme Court in that case went on to conclude that even sympathetic consideration will not outway the legal position.

33. Reverting back to the facts of the present case, it is patent that all the applicants were appointed either on contractual basis or on ad hoc basis. Even the advertisement clearly indicated that appointments were to be of such a nature. Passage of time will not change the nature of appointment. In the present case, otherwise also it is not an inordinately long period to confer any such right. The recruitment rules for the post have been notified. Consultation of Union Public Service Commission is mandatory. The regular Department Promotion Committee <sup>meeting</sup> had to be held. This clearly

*B. Ag*

28  
[ 23 ]

shows that in the facts of the present case, keeping in view the legal position, the applicants cannot contend that they are entitled to regular appointments. The plea necessarily must fail because regularisation cannot be made de hors the rules.

34. No other arguments have been advanced.

35. For these reasons, all the aforesaid four Original Applications are dismissed.

(S.R. Naik)  
Member (A)

(V.S. Aggarwal)  
Chairman

/NSN/