

1

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.2413/2003**

**New Delhi, this the 14th day of January, 2005**

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.K.Naik, Member (A)**

1. Lovely Rani Arora  
D/o Sh. Baldev Raj Arora  
R/o 177B, South Anarkali, Delhi - 51.
2. Gunjan Sharma  
D/o Sh. Narender Mohan Sharma  
R/o G-27/237, Sector-3, Rohini  
Delhi - 85.
3. Jaya Bora  
D/o Sh. Chander Singh Bora  
R/o B-49, Vinoba Enclave  
Near C.R.P.F. Camp  
Jharoda Kalan  
New Delhi - 72. ... Applicants

**(By Advocate: Ms. Monica Kapoor)**

Versus

1. The Govt. of NCT of Delhi  
Through Directorate of Health Services  
E-Block, Connaught Place  
Saraswati Bhawan, New Delhi.
2. Medical Superintendent  
Babu Jagjeevan Ram Memorial Hospital  
Jahangir Puri, Delhi.
3. Medical Superintendent  
Maharishi Balmiki Hospital  
Pooth Khurd, Delhi. ... Respondents

**(By Advocate: Sh. Ajesh Luthra)**

**O R D E R(Oral)**

**By Mr. Justice V.S. Aggarwal:**

Respondents had invited applications in the year 2001 for appointment to various posts including that of Staff Nurse. The operative part of the advertisement reads:



-2/-

**"Applications are invited for the posts in Maharishi Balmiki Hospital as mentioned below. The application forms are available at the Office of Medical Superintendent of the Hospital on cash payment of Rs.10/- each (Rs.2/- for SC/ST/OBC candidates) during the office hours between 10.00 AM to 3.00 PM from the date of publication till 3<sup>rd</sup> September, 2001. The appointment to the above posts will be purely on contract basis initially for 89 days extendable upto one year subject to satisfactory work & conduct or till regular appointment, whichever is earlier:"**

**2. In other words, it was made clear that appointment was made to them for 89 days or till regular person joins whichever is earlier. The applicants had applied for the same. The offer of appointment also indicated:**

**"Consequent on his/her Selection, Director, DHS, is pleased to appoint Ms. Lovely Rani Arora on purely contract basis for a period of 89 days or till regular incumbent is appointed whichever is earlier. He/She is appointed to the post of Staff Nurse in the pay scale of Rs.5000-8000 with admissible allowances on the following terms and conditions.**

**1. Appointment being on ad-hoc basis or for a short term vacancy does not confer any right upon the candidate in getting further continuation of the job. ...."**

**3. Applicant No.1 had accepted the same and was so appointed but initial order of appointment specifically indicated that appointment was on ad hoc basis for a period of 89 days. Similar is the position of the other applicants.**

**4. Respondents had kept on extending the services of the applicants as Staff Nurse for a period of 89 days or till regular person joins.**

*ls Ag*

5. By virtue of the present application, a direction is claimed that their services should not be terminated without regular appointment to the post of Staff Nurse. It is also prayed that respondents may be directed to regularize the services of the applicants who have completed more than one year of service and that their salary should be paid from July, 2003.

6. The application is being contested.

7. The basic facts are not in dispute. It is contended that the applicants were appointed on contract basis. But regular Staff Nurses are recruited through Delhi Subordinate Service Selection Board, Delhi by a common examination. Applications are invited from the aspiring candidates from all over India. It is admitted that after joining of the regular Staff Nurses, there are six posts, which are lying vacant against which four Staff Nurses are working on contract basis, including the applicants.

8. It is denied that the applicants are entitled to regularization despite there being a specific rule for recruitment. It is also denied that the salary claimed for the period is due.

9. We have heard the parties' counsel and have seen the relevant record.

10. The main contention raised on behalf of the applicants was that they should be regularized because they have been working on contract basis for almost more than a year.

11. 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 regularized 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 & 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 will have no application in the present case also because the applicants had been appointed purely on ad hoc and on contractual basis.

12. 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

*18 Aug*

-5-

regularization as of right. The regularization cannot be made dehors the rules.

13. In the case of **DR. CHANCHAL GOYAL (MRS.) VS. 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 regularization 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 regularization. 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 vs. 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 regularization be made. In the said case in para 11 the position was summed up as under: (SCC pp.640-41, para 11).

LS Ag

\*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 vs. 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 vs. 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

1849

may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary 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 recommended 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."

14. Similar situation had arisen before the Supreme Court in the case of **UNION OF INDIA & ORS. v. HARISH BALKRISHNA MAHAJAN**, 1996(6) SLR SC 669. Therein, Harish Balkrishna Mahajan was appointed on monthly basis. This Tribunal had directed that he should be regularized in consultation with Union

ls Ag

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 regularize 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 Service Commission. Therefore, the direction to consider the case of the respondent in consultation with the Public Service Commission for regularization 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 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."

15. Identical view was expressed by the Apex Court in the case of **DR. SURINDER SINGH JAMWAL & ANR. VS. THE STATE OF JAMMU & KASHMIR & ORS.**, JT 1996 (6) SC 725. The

*ls Ag*

decision of the Supreme Court in the case of **JAMMU & KASHMIR PUBLIC SERVICE COMMISSION VS. DR. NARINDER MOHAN**, 1994 (2) SCC 630 was relied upon, and it was held that the applicant therein could apply afresh only.

16. This Tribunal had considered this controversy in the case of **DR. DIVPREET SAHNI & OTHERS VS. GOVERNMENT OF NCT OF DELHI & OTHERS**, OA 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:

"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

ls Ag

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)."

17. The Supreme Court in the case of STATE OF MADHYA PRADESH & ANOTHER VS. DHARAM BIR, (1998) 6

SCC 165 further held:

"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 compounder, sitting for a considerably long time with a doctor practicing 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."

18. At this stage, it is relevant to mention the decision rendered by the Surpeme Court in the case of AHMEDABAD

Ag

**MUNICIPAL CORPORATION VS. VIRENDRA KUMAR**

**JAYANTIBHAI PATEL**, (1997) 6 SCC 650. The Supreme Court in that case went on to conclude that even sympathetic consideration will not out-way the legal position.

19. Large number of decisions have been cited at the Bar further on behalf of the applicants, in support of their claim of the decisions rendered by the Supreme Court and of this Tribunal, namely, the case of **DR. JITENDER SINGH AND OTHERS V. UNION OF INDIA**, decided by this Tribunal in OA No. 1259/90 with some connected OAs: **Dr. Rekha Khare vs. Union of India & Ors.**, Civil Appeal No. 2969/97, decided by the Supreme Court on 21.4.1997; **Union of India & Ors. Vs. Ms. Anshul Sharma & Others**, CWP No. 319/2001, decided on 13.2.2002 by the Delhi High Court. Strong reliance has been further placed on the decisions of the Supreme Court in the case of **J & K Public Service Commission, etc. vs. Dr. Narinder Mohan & Ors. etc. etc.** JT 1993(6) SC 593; **State of M.P. & Anr. Vs. Dharam Bir**, (1998) 6 SCC 165; and **State of Karnataka & Ors. Vs. G. Halappa & Ors.**, 2002 (IV Apex decision(SC) 644.

20. All these decisions had been considered by the Division Bench of the Delhi High Court in the case of **Shri Sandeep & Ors. (supra)**. The facts therein were identical to the present case before us. The Delhi High Court held that the relief claimed could not be acceded to. Some of the decisions of the Supreme Court to which we have referred to above were held to be not applicable because therein the Apex Court had acted under



**Article 142** of the Constitution, which are not to be treated as precedent.

21. The aforesaid precedents, to which we have referred to above, clearly indicate that a person cannot claim regularization dehors the rules. The applicants had admittedly joined on contract basis for 89 days and merely because from time to time the same was extended will not confer any right of regularization. Rules for recruitment cannot be given a go bye.

22. Even in the advertisement, it was clearly mentioned that appointment shall be on contract basis for a period of 89 days. When such an advertisement is issued, few persons may apply. More may be interested when regular appointments could be notified. Thus, applicants cannot contend that they were strictly meritorious and a corresponding right of regularization should accrue to them. The Delhi Subordinate Services Selection Board, to which we have referred to above, did not make the induction even of the applicants. Thus, the applicants can seek consideration for regularization in accordance with the Recruitment Rules for the post when regular appointment takes place. They can apply whenever regular appointment is to take place and if law permits, they can also seek relaxation in age.

23. In that event, it was contended that the services of the applicants should not be terminated till regular appointment is made.

LS Ag —————

24. Perusal of the reply clearly indicates that there were six vacant posts against which four applicants are working on contract basis. When the posts exist and there is a requirement for the work, subject to their satisfactory performance, we find that there is nothing illegal, if they are allowed to continue till the regular incumbents join.

25. The last submission in this regard was that the salary of the applicants was not being paid. Applicants' learned counsel contended that salary has only been paid upto 10.9.2004 instead the applicants had served for the subsequent periods. For the subsequent period, if the salary has not already been paid, the respondents shall pay the same within one month. In default, the respondents shall be liable to pay simple interest at the rate of six per cent per annum.

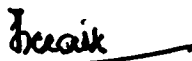
26. For these reasons, the plea of the applicants that they are entitled to regularization must fail and is dismissed and further we dispose of the present application with the following directions:

- a) The services of the applicants shall not be terminated till the regular appointment is made to the post held by the applicants, subject to their work and conduct being upto the mark.
- b) The applicants can only be considered for regularization in accordance with the Recruitment Rules of the post. They can apply whenever regular appointment is to take place and seek age relaxation, if permitted in accordance with law.

As Ag —————

-14-

c) Salary upto 10.9.2004 has been paid. For the subsequent period, if the salary has not been paid already, the respondents shall pay the same within one month from the date of receipt of a copy of the present order. In default, they shall be liable to pay simple interest at the rate of 6% per annum. This shall be subject to the applicants serving the Department for that period.

  
(S.K.Naik)  
Member (A)

/NSN/

  
(V.S.Aggarwal)  
Chairman