

Dr. Mukund Kumar and ors. Vs. Union of India (Uoi) and anr.

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Court : Central Administrative Tribunal CAT Patna

Decided On : Jun-28-2000

Judge : P A L.R.K., Lakshman

Appellant : Dr. Mukund Kumar and ors.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Mr. Gautam Bose

Judgement :

1. The applicants 12 in number are Assistant Divisional Medical Officers of Eastern Railway (ADMO) posted in different Divisions of the Eastern Railway. They have prayed for the following reliefs : (i) For a direction to the respondents to determine the seniority of the applicants after taking into consideration their entire service including their initial ad-hoc period which was subsequently regularised through the Union Public Service Commission; (ii) The Respondents may be directed to give promotion to the applicants with the senior scale of Divisional Medical Officers retrospectively from the date (s) of their ad /hoc/temporary joining on the post of Assistant Medical Officer (Grade-II); and 2. The applicants were appointed as Assistant Medical Officer (Grade-II) after being selected through the process of written examination followed by oral test conducted by a selection committee consisting of three Heads of Department viz; Chief Medical Officer, Chief Personnel Officer and a Member nominated by the General Manager of the Railways in between 14.1.85 to 22.9.86 as at Annexure-A1 and A-1/1. The appointment was on ad-hoc basis for a period of six months from the date of

reporting for duty or till they were replaced by the Union Public Service Commission recruits. It is stated that the aforesaid ad hoc appointments of the applicants were continued in consultation with the Union Public Service Commission from year to year as per provision under Regulation No. 4 of the Union Public Service Commission (Exemption from consultation) Regulations, 1958, till they were made regular on being selected by the Union Public Service Commission vide letter dated 17.3.92 with changed designation as Assistant Divisional Medical Officer, Class I, on the recommendation of the 3rd Pay Commission. Thus, the applicants continued in the services of the Respondents Railways since the date of initial ad hoc appointment without any break or reversion. But it is alleged that the Respondents Railways are not treating them as regular by giving them seniority from the dates of their ad hoc appointments as Assistant Medical Officer (Grade-II). It is their case that they were appointed on ad hoc basis after undergoing selection process as per Rules and they continued without break till their regularisation as Assistant Divisional Medical Officer on being selected through the Union Public Service Commission. There is no distinction in the nature of functions and duties of the Assistant Medical Officer (Grade-II) and Assistant Divisional Medical Officer, Class I. Simply their designation from Assistant Medical Officer was changed to Assistant Divisional Medical Officer on regular appointment through the Union Public Service Commission as per recommendation of the 3rd Pay Revision Commission.

3. It is further stated that similarly situated persons approached the Principal Bench of the CAT in O.A. No. 1603 of 1987, Dr. P.Shrinivasalu and Ors. v. Union of India and Ors., in which their prayer for counting ad hoc services for the purpose of seniority was allowed.

The decision of the Principal Bench, as at Annexure-A-5, was upheld by the Hon'ble Supreme Court in SLP(C) No. 10714/93 by order dated 15.11.93, as at Annexures-A5/1 and A-5/2, Subsequently, the Principal Bench in O.A. No. 1555/96 decided on 9th day of January, 1998, (as at Annexure A-7) and in OA-471/98, decided on 29th day of 1999, as at Annexure-A8, also allowed the prayer of similarly situated persons for a direction to the Respondents to count towards seniority, the period of services rendered by them as Assistant Medical

Officer/Assistant Divisional Medical Officer prior to their selection through the Union Public Service Commission with consequential benefits. It is stated in the supplementary rejoinder that the Hon'ble Delhi High Court in CW No.2802 of 1997 and No. 2795 of 1997, brought by Direct Recruits Railway Medical Services Association, directed the Respondents Railways to allow the applicant (Dr. (Mrs.) Lalita S. Rao in OA-321 of 1996, decided on 16.4.99, the same benefit as was granted by the Hon'ble Supreme Court in Dr. P. Srinivasalu and Ors., vide Annexure- A9. The applicants are also entitled to the same relief.

4. The Respondents Railways have resisted the claim of seniority of the applicants. It is stated that a settlement was entered into by the Government and the Joint Council of Service Doctors Association, according to which, ad hoc appointments under Government were to be regulated by the order issued by the Department of Personnel and existing ad-hoc appointees to Medical posts in Group B were to be regulated subject to availability of vacancies in consultation with the Union Public Service Commission, wherever the matter was not subjudice.

Pursuant to the aforesaid settlement, the Ministry of Railways approached the Union Public Service Commission for regularisation of the ad hoc Doctors, who were working on the Railway at that particular time. The Union Public Service Commission interviewed 119 of such doctors and declared 105, including the applicants eligible for regularisation. Accordingly, services of the applicants were regularised. However, modality of fixation of seniority of Doctors regularised through the Union Public Service Commission (i.e. in the category of the applicants) and those who had qualified in the Union Public Service Commission examination/selection conducted by the Commission (i.e. Direct recruits) was decided by the Hon'ble Supreme Court on 18.6.93, in Dr. M.A. Hague and Ors. v. The Union of India and Ors., Writ Petition No. 1165 of 1986=1993(2) SLJ 64 (SC) as at Annexure-R4. The Hon'ble Supreme Court directed that the seniority of the direct recruits - both outsiders and insiders, should be determined according to the dates of their regular appointment through the Union Public Service Commission and the petitioner- applicants should be placed in the seniority list after those direct recruits, who are recruited till this date. Among themselves their seniority

would be governed by the dates of their initial appointments." 5. However, it is further stated that one Dr. P. Shrinivasalu and 20 Ors., insider direct recruit doctors, (i.e. doctors belong to the category of the applicants) had filed O. A. before the Principal Bench of the CAT, New Delhi, claiming the benefit of ad hoc services towards seniority. The Principal Bench of the Central Administrative Tribunal vide its order dated 16.3.93, in Dr. P. Shrinivasalu case allowed their prayer. Thus, the order of the Principal Bench was at variance to the aforesaid judgment of the Hon'ble Supreme Court in Hague's case.

Therefore, the Ministry of Rail way preferred a special leave petition against the order of the Principal Bench before the Hon'ble Supreme Court which was dismissed. The order of the Hon' ble Supreme Court became final and was to be implemented. The direct recruits (outsiders) again filed a writ petition No. 612/94, against the aforesaid decision of the Hon'ble Supreme Court before the Principal Bench, as confirmed by the Hon'ble Supreme Court, which was also dismissed on 4.10.94 vide Annexure-A/5. It is stated that in pursuance of the observation in the order dated 4.10.94, of the Hon'ble Supreme Court, as at Annexure-A/5, the direct recruits filed an O.A. bearing No. 2317 of 1994, before the Hon'ble Principal Bench of the CAT, New Delhi, which is still subjudice.

6. It is the further case of the Respondents that offer of the appointments to the applicants was subject to their getting selected through the Union Public Service Commission against the advertisement by the Commission. The applicants did not apply or qualified in the Union Public Service Commission advertised examination/selection till 1991. However, their services could not be filled as a regular measure through the Union Public Service Commission. The Commission was informed about the problem of shortage of doctors. The Commission replied that provision under the Union Public Service Commission (exemption from consultation) Regulations, 1958, did not contemplate obtaining concurrence of the Commission for continuance of ad hoc arrangement beyond one year, and the said regulation only indicated that the case of ad hoc appointment should be reported to the Union Public Service Commission. Thus, the applicants were not appointed in consultation with the Commission and the information given to the Commission for their confirmation as formal consultation. The Respondents after

settlement between the Government and the Joint Council of Service Doctors Association requested the Commission to conduct a special selection/assessment of the ad hoc Doctors, including the applicants, for their regularisation. The Commission desired to have interviewed the candidates and, accordingly, they (including the applicants) were advised to appear before the Commission for formal assessment/selection. The applicants, on being selected by the Union Public Service Commission, were regularised. Therefore, according to the decision of the Hon'ble Supreme Court dated 16.2.93, in Mr. Hague's case (supra) the seniority of the applicant is to be reckoned from the date of regular appointment to the service and not from the date of their initial ad hoc appointments. It is stated that after implementation of the 3rd Pay Commission report, the ad hoc appointment in Class II Posts are continued as stop-gap arrangement for meeting shortage of regular Assistant Divisional Medical Officer, Class I. Class II service is not part of the Indian Railway Medical Services since 1.1.73. Therefore, the claim of the applicants, who were ad hoc employees Class II, outside the cadre of the seniority in the cadre of Class I Assistant Divisional Medical Officer, is not tenable. They are entitled to seniority from the date of their regular appointments.

7. Heard Shri N. Prasad, learned Counsel appearing on behalf of the applicant and Shri Gautam Bose, the learned Counsel for the Respondents Railway and perused the record. The only point for consideration is as to whether the applicants are entitled to reckon their ad hoc period of services as A.M.O. towards seniority on regularisation of their services through UPSC. 8. Admittedly, the applicants were appointed on ad hoc basis for a period of six months from the date of their reporting for duties or till they were replaced by the UPSC recruits during the year 1985-86.

It is also not denied that the ad hoc appointments of the applicants were made after observing due process of selection by the selection committee under the Rules. It is also admitted position that they continued in their services uninterruptly till their regularisation on selection by the Union Public Service Commission.

9. Mr. Gautam Bose, learned Counsel for the Respondents Railways contended that the applicants were initially appointed on ad hoc basis only for a period of six

months which, of course, continued till they were regularised through the Union Public Service Commission. He further contended that they had been appointed initially as Assistant Medical Officer (Grade-II) and after selection through the Union Public Service Commission were appointed as Assistant Divisional Medical Officer (Class I). Accordingly, they are not entitled to reckon the period of ad hoc services for determination of their seniority. He has relied upon the decision of the Hon'ble Supreme Court in the case (i) Director, Institute of Management Development, U.P. v. Pushpa Shrivastav, 1992(4) SCC 33=1993(1) SLJ 124 (SC); (ii) P.D. Agrawal v.State of U.P., 1987(3) SCC 622=1987(3) SLJ 113 (SC); (iii) State of Tamil Nadu v. Paripuranam, 1992 (Suppl.) 1 SCC 420; (iv) The Union of India v. Professor S.K. Sharma, (1992) 2 SCC 728 and on the decision dated 18.2.93 in Writ Petition No. 1165 of 1986, Interlocutory Petition No. 1 of 1992 (Dr. M.A. Hague and Ors. v. The Union of India and Ors.).

It appears from the decisions of the Hon'ble Supreme Court in the aforesaid cases that the ad hoc appointees have not been held entitled to count the period of ad hoc services towards determination of their seniority as they are not Members of the services as per the Service Rules. It has also been held that it is not violative of Articles 14 & 16 of the Constitution of India. It may be pointed out that the case of Dr. M.A. Hague and Others (supra) relates to the ad hoc appointments of the Assistant Divisional Medical Officers, who were appointed in between 1968 and 1st October, 1984. The applicants in the O.A. who were initially appointed on ad hoc basis as Assistant Medical Officers, were redesignated as Assistant Divisional Medical Officer on regularisation through the Union Public Service Commission. Therefore, it is contended that the decisions of the Hon'ble Supreme Court in Dr. Hague & Others case is applicable to the case of the applicants.

10. The Hon'ble Supreme Court in the aforesaid Dr. Hague and Others' case, in the light of the judgment of the Constitution Bench in Direct Recruits Class II Engineering Officers Association and Ors. v. State of Maharashtra and Ors., (1990) 2 SCC 715=1990(2) SLJ 40 (SC) held as follows: "In the result, we direct that the seniority of the direct recruits- both outsiders and insiders should be determined according to the dates of their regular appointments through the Union Public Service Commission and the petitioner- applicant should be placed in the

seniority list after those direct recruits who are recruited till this date. Among themselves, their seniority will be governed by the dates of their initial appointments." 11. Thus, the learned Counsel for Respondents- Railway contended that the following decision rendered by the Hon'ble Supreme Court in the cases referred to above, and also, in the light of the principle enunciated in the Constitution Bench decision (supra), the ad-hoc period of services was not allowed to be reckoned for determination of the seniority of Dr. Hague and Others, and, accordingly the applicants are also not entitled to the relief prayed for.

12. On the other hand, the learned Counsel for the applicants contended that the decision of the Hon'ble Supreme Court in Hague and Others' case is not applicable to the facts and circumstances of the case of the applicants of this O. A. He pointed out that the appointments of Dr. Hague and Others, as Assistant Divisional Medical Officers were on ad hoc basis by way of a stop-gap arrangement pending the regular recruitment to the said post through the Union Public Service Commission. Dr. Hague and Others, applicants in the aforesaid case, were not appointed through the Union Public Service Commission according to the Rules, but, had been directed to be regularised by following the procedures laid down by the Hon'ble Supreme Court, vide order dated 24th September, 1987, and 1st November, 1988. They were not covered under any of the guidelines given in Direct Recruits Class II Engineering Officers Association's case (supra). They had not appeared in any written examination or interview conducted by the Union Public Service Commission for their regularisation in the Medical Services.

Whereas, the applicants in the instant case, as said above, were initially appointed on act hoc basis through a selection test followed by regularisation through the Union Public Service Commission.

Therefore, the case of the applicants is governed by the decision in the case of Dr. P. Shrinivasalu and Ors. v. The Union of India and Ors.

of the Principal Bench, Delhi, in OA No. 1603/87 which was upheld by the Hon'ble Supreme Court by Judgment dated 15.11.93.

13. In Shrinivasalu's case (supra) also, the applicants were initially appointed for a period of six months as Assistant Medical Officer on ad hoc basis and the said ad hoc period was extended from time to time.

Those appointments on ad hoc basis were made after selection which were held by a committee consisting of their Heads of the departments. Thus, the facts and circumstances in Shrinivsalu's case are exactly the same as are in the instant case. The Hon'ble Principal Bench, taking into consideration the judgment of the Delhi High Court in the case of Dr.

G.P. Sambhai v. The Union of India and Ors., (1983 Lab. I.C. 910) as well as the case of Shri G.S. Lamba v. The Union of India, (1983 Lab I.C. 910=1985(1) SLJ 676 (SC) held as follows: "The ad hoc period of service as to be counted towards seniority, as the said ad hoc period had ripen into the regularisation without any break and the Respondents are directed to prepare the seniority list in accordance with law in the light of the observation as made above. Let it be done within a period of three months from the date of communication of this order. No order as to costs." 14. It may be pointed out that the Union of India filed a Special Leave Petition (C) No. 10714 of 1993, against the aforesaid judgment and order of the Principal Bench. The Hon'ble Supreme Court by judgment dated 15.11.93 dismissed the Special Leave Petition in term of the following judgment: "Heard learned Counsel for the parties. The respondents were initially appointed as Assistant Divisional Medical Officers on ad hoc basis. Later on they went through the process of selection by the UPSC and were selected to the said post on regular basis. The question before the Central Administrative Tribunal was whether the respondents were entitled to count the period of their service in ad hoc capacity towards seniority. The Tribunal answered the question in the affirmative and in favour of the respondents. This Special Leave Petition by the Union of India is against the judgment of the Tribunal.

The learned Counsel for the Union of India has relied on the judgment of this Court in Dr. M. Hague and Ors. v. Union of India and Ors. (Interlocutory Application No. 1 of 1992 in Writ Petition No. 1165 of 1986) on February 18, 1993 we have been taken through the said judgment in Dr. Hague's case, the applicants before this

Court had not appeared in any written examination or process of selection by the UPSC. The applicants in that case were regularised under the directions of this Court. It was in these circumstances that this Court refused to grant the applicants in Dr. Hague's case the benefit of their ad hoc service seniority. The facts in the present special leave petition are entirely different the respondents herein were selected through the Union Public Service Commission and were regularised. They have been rightly given the benefit of their ad hoc service towards seniority by the Central Administrative Tribunal. The Special Leave Petition is dismissed." The Union of India further sought clarification from the Hon'ble Supreme Court with reference to the aforesaid order dated 15.11.93 which was also dismissed. It appears that some direct recruits Doctors filed an application for intervention which was also dismissed. One Dr.

Satish Chandra Agrawal also sought leave of the Hon'ble Supreme Court to file Special Leave Petition against the aforesaid judgment of the Central Administrative Tribunal in the case which was also dismissed with the following order dated 11.4.1993.

"we have had to repeatedly ask learned Counsel for the petitioners whether it is correct that persons similarly placed as they had approach to this Court, whether by way of an SLP or by way of a writ petition and these petition had been dismissed. We got no straight answer. Learned Counsel repeatedly stated. Learned Counsel repeatedly stated and states even now, that the petitioners had not filed such petition.

The point is had persons in a situation identical to that of the petitioners filed those petitions which had been dismissed by this Court. If so, judicial discipline requires that this petition must also be dismissed. We find an averment to this effect in the affidavit in reply. The rejoinder does not deny it, except to states that the petitioners were not parties.

It further appears that the direct recruit doctors filed Writ Petition No. 445 of 1994 under Articles 32 of the Constitution of India praying for the following reliefs : (a) the Principles for fixation of seniority laid down in Dr. M.A. Hague's case (1993-2-SCC 2131) should be upheld and to that extent the orders given in SLP (C) No.

10714/93 dated 15.11.1993 may be revised.

(b) or the matter should be referred to the large bench for considering the issue and settling the difference of opinion expressed by two division Benches in Dr. M.A. Haque's case (1993-2-SCC-213) and UOI v. P. Srinivasalu and Ors. Order dated 15.11.1993, in SLP (C) No. 10714/93.

(c) direct that the seniority of the direct recruits doctors may not be adversely affected." The Hon'ble Supreme Court dismissed the aforesaid prayer vide order dated 4.8.1994.

15. It further appears that the direct recruits Railway Doctors Association again agitated the matter in CW No. 2802 of 1997 and No.2795 of 1993 in the High Court of Delhi at New Delhi, which was decided on April 16, 1999 as at Annexure-R/4. The Hon'ble Delhi High Court discussing the entire matter raised before it dismissed the writ petition on the ground that Shrinivasalu 's case as decided by the Principal Bench had been upheld by the Hon'ble Supreme Court. It may be pointed out that the Hon'ble Supreme Court dismissed the aforesaid Special Leave Petition on the ground that in Dr. Haque's case the petitioner did not appear in any written examination or interview and had not gone through any process of selection by the Union Public Service Commission but in P. Shrinivasalu's case as he was selected through UPSC and regularised, his ad hoc service were allowed to be counted towards seniority.

16. The learned Counsel for the applicants referred to the decisions dated 9th day of January, 1998 and 29th day of January, 1999, passed in OA. No. 1555 of 1996 (Annexure-A-7) and in OA-417/98 (Annexure-A/8) of the Principal Bench and also, the decision dated 5.6.97, passed in OA-321/96, in Dr. (Mrs.) Lalita S. Rao's case in which the similarly situated persons have been granted the benefits of seniority of ad hoc period following Shrinivasalu's case.

17. In view of the aforesaid discussions, we find and hold that the matter is no longer res Integra. The decision in Haque 's case is not applicable to the case of the applicants. Rather the case of the applicants is fully covered by the decision in Shrinivasalu's case (supra), Accordingly, we allow this application with a direction

to the respondents to grant the same benefit to the applicants as has been granted by the Hon'ble Supreme Court in the case of the Union of India and Anr. v. P. Shrinivasalu and Ors. in SLP (Civil) No. 10714/ 93, vide order dated 15.11.93. The O.A. is accordingly, disposed of with no order as to costs.

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