

SUPREME COURT OF INDIA

Central Council for Research In Homeopathy

Vs.

Bipin Chandra Lakhera & Ors.

C.A.No.3286 of 2007

(Markandey Katju and GyanSudha Misra,JJ.,)

20.04.2011

ORDER

1. Heard learned counsel for the appellant and respondent No. 1. As regards the other respondents in respect of whom service is complete no one has entered appearance on their behalf so far.

2. This Appeal has been filed against the impugned judgment & order dated 24.03.2004 passed by the High Court of Sikkim in

3. The facts have been given in the impugned judgment and order and hence we are not repeating the same here, except where necessary.

4. The short question in this Appeal is whether ad hoc service of respondent No. 1 from 1984 before his regularisation with effect from 05.01.1996 can be added for the purpose of seniority. We are of the opinion that it cannot. Admittedly, respondent No. 1 was appointed as Research Assistant (Homeopathy) in the service of the appellant on purely ad hoc basis by order dated 03.02.1984 till 31.03.1984 or till the post is filled on a regular basis whichever was earlier. This appointment was done without any regular selection.

5. It may be noted that respondent No. 1 herein (Writ petitioner before the High Court) had not applied for appointment in response to any advertisement issued by the appellant. In his application respondent No. 1 stated that "I have come to know through some reliable sources that there is a post of Research Assistant lying vacant in the Central Council for Research in Homeopathy." Accordingly, respondent No. 1 was offered the post on a purely ad hoc basis vide order dated 03.02.1984 clearly stating that his appointment was till 31.03.1984 or till a regularly selected candidate joins, whichever was earlier. Thus, this appointment was made without following any procedure. The tenure was extended by the appellant from time to time.

6. The post of Research Assistant was advertised in 1986 and respondent No. 1 applied for the post and was called for an interview before a Selection Committee on 29.06.1987 but was

not found suitable. However, he was continued on ad hoc basis in view of an interim order passed by the High Court in a writ petition.

6. The post was again advertised in 1995 for regular appointment and respondent No. 1 again applied, and this time he was successful and given regular appointment with effect from 05.01.1996.

7. It has been held by this Court in *Ch. Narayana Rao Vs. Union of India & Ors.*¹, and *State of West Bengal & Ors. Vs. Aghore Nath Dey & Ors.*², that ad hoc service before regularization cannot be counted for seniority.

8. It was contended by learned counsel for respondent No. 1 that some others similarly situate have been given retrospective regularisation. This is not correct. No one has been given benefit of ad hoc service for the purpose of seniority. The persons mentioned in the writ petition are those persons who had been selected earlier, whereas respondent No. 1 had not been selected. Such persons have been given seniority only from the date of their regular appointment after selection.

9. It has been pointed out in paragraph 17 of the counter affidavit filed by the Council before the High Court that these persons were given seniority from the date of their regular appointment after a regular selection. Thus, Dr. Gautam Rakshit was appointed on ad hoc basis on 10.08.1987, but thereafter he faced a regular selection and was selected and given regular appointment on 12.04.1988. He has been given seniority from 12.04.1988 and not from 10.08.1987. Similar is the case of Dr. (Miss) I.M. Kumar, Dr. G.K. Mathew and Dr. Mohan Singh. Hence, their cases are clearly distinguishable.

10. In view of the decision of this Court in *Ch. Narayana Rao's* case (supra), we allow this Appeal and set aside the impugned judgment and order of the High Court and dismiss the writ petition. No costs.

Judgment Referred.

¹(2010) 10 SCC 0247

²(1993) 3 SCC 0371