

SUPREME COURT OF INDIA

Vireshwar Singh

Vs.

Municipal Corporation of Delhi

C.A.Nos.8414-8415 of 2014

(Ranjan Gogoi and M. Y. Eqbal JJ.)

02.09.2014

JUDGMENT

RANJAN GOGOI, J.

1. Leave granted.
2. The appellants are General Duty Medical Officers (GDMO) Grade-II who were appointed on ad hoc basis between 1986 and 1989. They are aggrieved by the denial of their claim to regularization with effect from the dates of their initial appointments. Regularization granted from the date of the recommendations of the Union Public Service commission (for short ~UPSC™), namely, 24.07.1998 as approved by the High Court of Delhi by means of the impugned order dated 05.07.2011 has been called into question in the present appeal.
3. The relevant facts are as follows.

The post of GDMO Grade-II is a Group ~A™ post governed by the Delhi Municipal Corporation Health Service Recruitment Regulations, 1982 (hereinafter referred to as ~the Regulations™). Under the said Regulations appointment in the post of GDMO Grade-II is required to be made through the UPSC. Between 1982 and 1986 (for convenience may be referred to as the Phase-I) 82 GDMOs were appointed on ad hoc basis for an initial term of six

months which was subsequently extended from time to time. In what may be again conveniently referred to as the Phase-II, between 1986-1989, another 69 number of GDMOs were appointed on ad hoc basis on terms similar to the appointments made in Phase-I. Both sets of appointments were not through the UPSC but were made on the basis of a selection held by a Specially Constituted Selection Committee.

4. The cases of the GDMOs appointed on ad hoc basis in Phase-I were referred to the UPSC for its recommendations for the purpose of regularization. The UPSC approved 63 cases while holding 10 candidates to be unfit for regularization. The recommendations of the UPSC were communicated to the Municipal Corporation of Delhi on 27.06.1991. Accordingly, by order dated 17.08.1992 the Municipal Corporation regularized the services of the 63 GDMOs recommended by the UPSC with effect from the date of recommendation i.e. 27.06.1991. Aggrieved by their regularization with effect from the date of the recommendation of the UPSC, the GDMOs appointed in the Phase-I approached this Court under Article 32 of the Constitution claiming regularization from the date of their initial appointments.

5. While the aforesaid writ petition was pending, the Municipal Corporation of Delhi sent the cases of the GDMOs appointed in Phase-II to the UPSC for its recommendations for regularization of the incumbents. The UPSC refused to consider any of the cases on the ground that the 10 GDMOs appointed in Phase-I, who were found by it to be unfit, had not been dismissed from service. This had led the GDMOs appointed in Phase-II to file a writ petition (Writ Petition (C) No. 1550/1996) before the Delhi High Court.

6. The writ petition filed by the Phase-I GDMOs before this Court under Article 32 was decided on 8.5.1998 holding that their regularization with effect from the date of recommendation of the UPSC was validly made and they were not entitled to such regularization from the dates of their initial appointments. The judgment of this Court is reported as Dr. Anuradha Bodi and Others Vs. Municipal Corporation of Delhi And Others[1] and will be specifically referred to at a later stage of the present order.

7. Six days after the judgment was rendered by this Court in Dr. Anuradha Bodi (supra) the Delhi High Court on 14.05.1998 allowed the writ petition (Writ Petition (C) No. 1550/1996) filed by Phase-II GDMOs by directing the UPSC to consider their

cases for regularization from the dates of their initial appointments. In compliance of the aforesaid order of the Delhi High Court, the UPSC recommended regularization of the said GDMOs from the dates of their initial appointments by its communication dated 24.07.1998.

8. There being an apparent conflict with regard to regularization of the GDMOs appointed in Phase-I and Phase-II, though made in identical circumstances and on the same terms, the Municipal Corporation of Delhi by its Resolution dated 17.01.2000 decided to regularize the services of both sets of GDMOs with effect from the date of their initial appointments. On the basis of the said Resolution dated 17.01.2000 a formal Order dated 16.08.2000 was passed to the said effect.

9. The Resolution dated 17.01.2000 and the formal Order dated 16.08.2000 came to be challenged by the regularly appointed GDMOs before the Delhi High Court. The writ petition filed was, however, withdrawn and instead the order dated 14.05.1998 passed by the Delhi High Court in Writ Petition (C) No. 1550/1996, which has led to the alleged Resolution dated 17.01.2000 and the formal Order dated 16.08.2000, were challenged in a Letters Patent Appeal by the regularly appointed GDMOs. It is at this stage that the Municipal Corporation of Delhi issued another Order dated 15.06.2007 and a Corrigendum dated 18.06.2007 to the effect that the regularization of both sets of GDMOs would be effective from the date(s) of communication of the recommendation of the UPSC. The said action of the Municipal Corporation was challenged in a writ petition (Writ Petition (C) No. 4619/2007) before the Delhi High Court by the present appellants.

10. The Letter Patent Appeals (LPA Nos. 708/2001 and 138/2003) filed by the regularly appointed GDMOs against the order dated 14.05.1998 passed in Writ Petition (C) No. 1550/1996 were disposed of by the Division Bench of the High Court on 05.02.2008 by holding that the challenge made in the appeals stood answered by the subsequent order of the Municipal Corporation of Delhi dated 15.06.2007. The Division Bench also took note of the fact that the said order dated 15.06.2007 was under challenge in Writ Petition (C) No. 4619/2007 and directed that the views expressed in the order dated 14.05.1998 in Writ Petition (C) No. 1550/1996 would have no relevance or bearing while deciding Writ Petition (C) No. 4619/2007.

11. Writ Petition (C) No. 4619/2007 was thereafter transferred to the Central

Administrative Tribunal and numbered as T.A. No. 398/2009. By order dated 09.12.2010 the learned Tribunal decided the aforesaid case (T.A. No. 398/2009) alongwith a connected matter holding that the Resolution dated 17.01.2000 with regard to regularization of GDMOs appointed in both phases from the dates of their initial appointments was contrary to the decision of this Court in Dr. Anuradha Bodi (supra). Accordingly, while the Resolution dated 17.01.2000 was quashed, the subsequent Order of the Municipal Corporation of Delhi dated 15.06.2007 was upheld. The aforesaid order has been confirmed by the Division Bench of the High Court by means of the impugned order dated 05.07.2011. It is the said order dated 05.07.2011 as well as the order dated 05.09.2011 refusing to review the order dated 05.07.2011 that have been challenged in the present appeals.

12. We have heard learned counsels for the parties.

13. An elaborate recital of the facts had been considered necessary to trace out the core issue in the case. Both sets of GDMOs i.e. in Phase-I and Phase-II were not appointed on the basis of a selection held by the UPSC as mandated by the Regulations in force. Their appointments were recommended by a Specially Constituted Selection Committee. Their appointments were ad hoc; initially for a period of six months which was subsequently extended from time to time. Being similarly circumstanced, undoubtedly, both sets of GDMOs will have to be treated equally and evenly for the purpose of regularization. In Dr. Anuradha Bodi (supra) after noticing the precise terms of appointment of the Phase-I GDMOs, the entitlement of the said GDMOs (Phase-I) to regularization with effect from the date of their initial appointments was considered by this Court in the light of the decision of the Constitution Bench in Direct Recruit Class II Engineering Officers™ Association Vs. State of Maharashtra and Others[2], particularly, in the backdrop of the two propositions (A) and (B) set out in paragraph 47 of the Report. A subsequent judgment of a three Judges Bench in State of West Bengal and Others Vs. Aghore Nath Dey and Others[3] throwing further light and clarity on the contents of propositions (A) and (B) laid down in Direct Recruit Class II (supra) had also been considered to come to the conclusion that the cases of doctors appointed on ad hoc basis in Phase-I fall within the corollary to conclusion (A) of Direct Recruit (supra) and therefore they are not entitled to the benefit of service rendered on ad hoc basis. Paragraph 12 of the report in Dr. Anuradha Bodi (supra) may be conveniently noticed at this stage. 12. If the facts of these two cases are analysed in the light of the aforesaid decisions, there can

be no doubt whatever that the petitioners fall within the corollary in Conclusion (A). The orders of appointment issued to the petitioners are very specific in their terms. Though the recruitment rules came into force on 6-8-1982, the appointments were not made in accordance therewith. They were ad hoc and made as a stopgap arrangement. The orders themselves indicated that for the purpose of regular appointment the petitioners were bound to pass the UPSC examination in the normal course [pic]in the direct competition. Hence the petitioners will not fall under the main part of Conclusion (A) or Conclusion (B) as contended by the learned counsel for the petitioners.

14. If the GDMOs appointed in Phase-II are similarly circumstanced as Dr. Anuradha Bodi and others, we fail to see how their claim to regularization with effect from the date of their initial appointments can be countenanced except perhaps if we take a view contrary to that has been recorded in Dr. Anuradha Bodi (supra).

15. Learned counsel for the appellants has tried to persuade us to charter the aforesaid course by placing reliance on two decisions of this Court in Narender Chadha and Others Vs. Union of India and Others[4] and Keshav Chandra Joshi and Others Vs. Union of India and Others[5] It is contended that the denial of benefit of long years of ad hoc service, in view of the ratio of the law laid down in the aforesaid two decisions, would be contrary to Articles 14 and 16 of the Constitution.

16. It is the view expressed in Narender Chadha (supra) which would require a close look as Keshav Chandra Joshi (supra) is a mere reiteration of the said view. In Narender Chadha (supra) the lis between the parties was one relating to counting of ad hoc service rendered by the promotees for the purpose of computation of seniority qua the direct recruits. The basis of the decision to count long years of ad hoc service for the purpose of seniority is to be found more in the peculiar facts of the case as noted in para 20 of the report than on any principle of law of general application. However, in paragraphs 15-19 of the report a deemed relaxation of the Rules of appointment and the wide sweep of the power to relax the provisions of the Rules, as it existed at the relevant point of time, appears to be the basis for counting of the ad hoc service for the purpose of seniority.

17. The principle laid down in Narender Chadha (supra) was approved by the Constitution Bench in Direct Recruit Class II (supra) as the promotion of the officers

on ad hoc basis was found to be without following the procedure laid down under the Rules. That apart, what was approved in the Direct Recruit Class II (supra) is in the following terms. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service. {Para 13}

18. In State of West Bengal and Others Vs. Aghore Nath Dey and Others (supra) a three Judges Bench of this Court has held that in view of the lis involved in Narender Chadha (supra) i.e. inter se seniority of direct recruits and promotees, the said decision cannot be applied to cases where the initial appointment was not according to the Rules. Paras 19 and 20 of the decision in State of West Bengal (supra) may be usefully extracted hereinbelow.

19. The constitution bench in Maharashtra Engineers case, while dealing with Narender Chadha emphasised the unusual fact that the promotees in question had worked continuously for long periods of nearly fifteen to twenty years on the posts without being reverted, and then proceeded to state the principle thus: (SCC p. 726, para 13) [pic]We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service.

20. The constitution bench having dealt with Narender Chadha in this manner, to indicate the above principle, that decision cannot be construed to apply to cases where the initial appointment was not according to rules.

19. All the aforesaid discussion would lead us to the conclusion that any departure from the views expressed and conclusions reached in Dr. Anuradha Bodi (supra) will not be necessary or justified. Accordingly, we do not find any merit or substance in the appeals under consideration. They are, therefore, dismissed but without any order as to costs.

[1] (1998) 5 SCC 293

[2] (1990) 2 SCC 715

[3] (1993) 3 SCC 371

[4] (1986) 2 SCC 157

[5] 1992 Supp (1) SCC 272