

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 3729/2013**

% **20th January, 2015**

DR. ROHIT CHOPRAPetitioner

Through: Mr. H.D.Sharma, Advocate

VERSUS

THE CHAIRMAN, MAULANA AZAD INSTITUTE OF DENTAL
SCIENCES AND ORS. Respondents

Through: Ms. Zubeda Begum, Standing Counsel
(GNCTD) with Ms. Sana Ansari,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition under Articles 226 and 227 of the Constitution of India is filed by the petitioner, an employee of the respondent no. 1/Maulana Azad Institute of Dental Sciences, seeking reliefs that he should be allowed to participate in the General Provident Fund (GPF) and the old pension scheme since 16.4.1999 when he was originally employed on *ad hoc* basis by the Government of NCT of Delhi/respondent no. 3. The petitioner prays for quashing of the communication dated 22.2.2012 which has denied this relief claimed by the petitioner on the ground that the petitioner was only a temporary

employee appointed on *ad hoc* basis w.e.f. 20.5.1999, and therefore, he cannot claim the benefits of a regular/permanent employee since 20.5.1999.

2. The facts of the case are that the petitioner was employed by the respondent no. 3 on *ad hoc* basis to the post of Demonstrator in the pay scale of Rs. 8,000-13,500 vide office memorandum dated 16.4.1999. Petitioner pursuant to the aforesaid office memorandum dated 16.4.1999 joined the post w.e.f. 20.5.1999. Petitioner thereafter vide memorandum dated 4.10.2005 was appointed to the post of Assistant Professor (Dental) in the pay scale of Rs. 10,000-15,200 but only on contractual basis. As per the petitioner, he was as per his service conditions prevailing with respondent no.3 contributing to the GPF and he was also a member of the pension scheme. The Department of the Government in which the petitioner was employed was subsequently carved out and converted into a society/respondent, namely, the society which is running the respondent no.1- Maulana Azad Institute of Dental Sciences. Petitioner claims that in terms of the scheme of transfer of respondent no.1 from the respondent no.3 the petitioner cannot on employment with respondent no.1 be subjected to less beneficial terms and conditions than were applicable to him as an employee of the respondent no. 3. Essentially, what the petitioner states that the terms and conditions of the petitioner have to be the same with the respondent no. 1, as were during his employment with the respondent no. 3.

Petitioner therefore contends that by the impugned order dated 22.2.2012 petitioner has wrongly been denied the benefits of regular employment w.e.f 1999 when he was appointed as Assistant Professor (Orthodontics) on regular basis w.e.f 8.7.2008.

3. The issue in the present case is that whether petitioner can claim benefits of the contribution to GPF as also a pension scheme, and to which he was a contributory as an employee of the respondent no. 3 since 1999. Putting it differently whether petitioner in spite of being only an *ad hoc* or temporary employee with the respondent no. 3 w.e.f 20.5.1999 can on his being appointed w.e.f 8.7.2008 to a regular post of Assistant Professor (Orthodontics) with the respondent no. 1 can claim benefits from a retrospective date prior to the date of being appointed at a regular post with respondent no. 1.

4. No doubt, by virtue of the scheme of transfer of the Department of Government of NCT of Delhi which has later been carved into the respondent no. 1 viz the Maulana Azad Institute of Dental Sciences, petitioner had to be given the same service conditions in which he was employed with the respondent no. 3, however, this clause only means that the petitioner will not be adversely prejudiced on transfer of the department of the Government of NCT of Delhi into a new society/respondent no.1 provided he continues to remain at the same post. It is not the case of the petitioner that at the time of joining the

respondent no. 1, on transfer of such department of the respondent no. 3 into a society being the respondent no. 1 that he was in any manner given a lesser post or lesser monetary emoluments than as were being paid to him during his employment with the respondent no. 3. The case of the petitioner is only that on his being subsequently regularized at a regular post w.e.f 8.7.2008 with the respondent no. 1, his entitlement to GPF scheme and pension scheme should be not from the date of his being appointed at a regular post with the respondent no. 1 but with retrospective effect from 16.4.1999 when he was appointed with the respondent no. 3.

5. In my opinion, the arguments which are urged on behalf of the petitioner to claim retrospective benefits of a regular employee from 16.4.1999, are without any merit and the reasons for the same are stated hereunder:

6. Firstly, it is not as if that the petitioner is in any manner being adversely affected on his being employed by the respondent no. 1 from the respondent no. 3 because petitioner with the respondent no. 1 was appointed at the same post and on the same *ad hoc* basis which he was working with the respondent no. 3. Petitioner also received the same monetary emoluments with the respondent no. 1 when his services were taken over by respondent no. 1 from respondent no. 3. Therefore, it is not permissible for the petitioner to argue that he has been prejudiced or adversely affected and petitioner cannot rely upon the clause of

the scheme of the transfer to claim that petitioner in fact by virtue of the said clause is entitled to benefits of regular employee from retrospective date in 1999 although petitioner's post changed and he became a regular employee only much later with the respondent no. 1 in the year 2008. An *ad hoc* employee can only get the benefits of service conditions which are applicable to the *ad hoc* employee, and therefore, I put it to the counsel for the petitioner whether he is interested again in continuing as an *ad hoc* employee with the respondent no. 3 or the respondent no.1 and which is the *ad hoc* post on which the petitioner was working with respondent no. 3, but counsel for the petitioner rightly replies that petitioner does not want to continue on the *ad hoc* post inasmuch as he has now been appointed to a regular post with respondent no. 1. Therefore, the argument urged on behalf of the petitioner of having been adversely prejudiced is an argument without merit and is rejected.

7. Another reason for rejecting the argument urged on behalf of the petitioner would be that the effect of an *ad hoc* appointment is that an *ad hoc* employee who has been regularized only in the year 2008 cannot claim benefits of the emoluments etc of a regular post during the period of the *ad hoc* appointment. In somewhat similar circumstances on the aspect of status/rights of a temporary/*ad hoc* employee, in the case of ***W. Morris Romel Roy and Ors. Vs. Airport Authority of India***, W.P.(C) No.3398/2013 decided on

28.11.2013 (which was a case with respect to a promotion claimed by a person appointed to *ad hoc* post), I have held as under:

“5. Promotion is from a lower post to a higher post, and therefore, before seeking promotion a person must be holder of a lower post. To be a holder of a lower post a person has to be employed in that post within a regular /permanent employment. A probationary employee, similar to an adhoc employee or a temporary employee, cannot be said to be a holder of a post, and therefore, not being holder of a post which is *a sine qua non* for promotion, a probationary/adhoc/interim employee cannot be an eligible candidate for promotion to a higher post. In my opinion, it is implicit in the very term of promotion that promotion is of a regular/permanent employee of an organization. Promotion surely can only be of a regular/permanent employee inasmuch as it would be an absurd position that if for some reason a probationary employee is promoted but thereafter for valid reasons his original period of promotion itself is held not to be successfully completed and therefore there takes place termination of services of such an employee. It is not the law that by participating and being successful in the selection process for promotion there is an automatic passing of an order by an employer that probationary officer has successfully completed the period of probation. The period of probation can only be successfully completed in accordance with the applicable rules or agreement, and on completion of the probationary period. Of course, there may be confirmation of the employee even prior to completing the probationary period, however, an order would be required that the probationary period stands successfully completed and the employee is now a regular/permanent employee. I put it to the learned senior counsel for the respondent to show me any judgment of any Court which lays down a ratio that promotion can be granted even to those employees who are not regular/permanent employees but are only probationary employees, however learned senior counsel for the respondent very fairly states that he does not have any judgment with him though it is argued that it is the general/ normal law that a

probationer should be held entitled to appointment to a higher post by promotion. I however cannot agree with this argument urged on behalf of the respondent that a probationary officer without his successfully completing the period of probation or without his being deemed to be confirmed in the job by making his appointment as regular/permanent, a probationary employee can/ must be considered for promotion.” (underlining added)

8. Therefore, once the petitioner was only an *ad hoc* employee either he has to exercise his option to continue on *ad hoc* basis with the respondent nos.1 or 3 and in which circumstances he can continue with the same terms and conditions at which he was working with the respondent no. 3, but, it cannot be said that the petitioner will claim different service conditions of a regular employee and to be appointed to a permanent post, and yet claim that he should be given retrospective benefit of the permanent post for the period he was working on an *ad hoc* basis on a post. Regular benefits/monetary emoluments of a regular post can only be granted to a regular employee from the date of his being appointed on a regular/permanent post and not w.e.f. retrospective date during the period in which the employee was working on a temporary/*ad hoc* post.

9. Learned counsel for the petitioner at one stage sought to argue discrimination against the petitioner as against other employees who were said to be employees of respondent no. 3 and whose services have been taken over by the respondent no. 1 on regular basis, however, a reading of the writ petition

shows that neither the names of the other persons who have been given different treatment are mentioned and nor the posts on which all those other employees are working with the respondent no. 3 have been stated. Therefore, discrimination which is neither pleaded nor any prayer is so made, cannot be examined by the Court.

10. In view of the above, I find no merit in the writ petition and the same is therefore dismissed. No costs.

JANUARY 20, 2015
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VALMIKI J. MEHTA, J