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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION(CIVIL) No. 7014/2015**

Date of decision: 12th January, 2016

DR. PRADEEP GARG Petitioner

Through Mr. Rajeev Awasthi, Advocate.

versus

DIRECTOR, ALL INDIA INSTITUTE OF MEDICAL
SCIENCES (AIIMS) Respondent

Through Mr. R.K. Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL):

Dr. Pradeep Garg vide letter dated 8th August, 2002 after due selection was appointed as an Assistant Professor (Obstetrics and Gynaecology) at the All India Institute of Medical Sciences, Delhi in the pay scale of Rs.11625-325-15200 plus non-practising allowance and usual allowances as admissible to Central Government Servants. The appointment was on an *ad hoc* basis for a period of three months from the date the petitioner would assume charge or till regular appointment was made, whichever was earlier.

The letter records the terms and conditions of employment. Clause (3) of the letter stipulated:-

“3. Other conditions of service such as benefits of provident fund, leave etc. will be in accordance with the rules and regulations of the Institute.”

Clause 6 of the letter mentions that the petitioner would be eligible for grant of house rent allowance as admissible to the Central Government servants of his status provided he would apply for institute accommodation and the same was not provided to him. The terms postulated that the petitioner could resign by giving one month notice or by depositing pay and allowances for the period by which the notice falls short. Clause 7 of the letter, read:-

“7. He/she should also note that he/she will have to conform to the rules discipline and conduct prevailing in this Institute and those imposed by the Institute on all their employees.”

2. The petitioner continued to work as Assistant Professor (Obstetrics and Gynaecology) till 10th April, 2012. In other words he had worked for nearly ten years. During this period, he had earned credit of 108 days of earned leave, having not taken the said permissible leaves during this period.

3. Thereupon, the petitioner had claimed encashment of earned leave of 108 days. The prayer was rejected vide letter dated 11th August, 2012. The petitioner wrote another letter dated 11th August, 2012 drawing attention of the respondents to OM No. 13018/6/86-Estt.(L), Government of India, DOPT, asserting that the memorandum accords benefit of encashment of earned leave to *ad hoc* employees. When there was silence and failure to respond, the petitioner filed a writ petition before this Court, which was transferred to the Central Administrative Tribunal after the All India Institute of Medical Sciences was notified under Section 14 of the Administrative Tribunals Act, 1985. The TA No. 5/2014 filed by the petitioner stands dismissed vide order dated 16th April, 2015, recording that no employee would be entitled to benefit of encashment of earned leave on termination of his service. The services of the petitioner were terminated and, therefore clause 3 of the DOPT's OM dated 28th February, 1988 would not entitle encashment.

4. Having heard learned counsel for the parties, we find it difficult to accept and agree with the reasoning given by the tribunal. Office Memorandum dated 28th February, 1988 relates to grant of leave to *ad*

hoc employees and paragraphs 2 and 3 thereof read as under:-

“ 2. The President is now pleased to decide that employees whose appointment is treated as ad-hoc for purely technical reasons, may be extended the benefit of leave as admissible to temporary employees of the Vacation Department under the CCS (Leave) Rules, 1972. In other cases of ad-hoc appointment of staff categorised as ‘Vacation Staff’ which are of brief periods, if vacation is allowed with usual pay & allowances/leave salary, no leave shall be admissible. In case they are not allowed such vacation, they may be allowed earned leave @ 2 ½ days per month of service, as allowed to similar employees in non-vacation Department, subject to the conditions that:-

(a) Their services are utilised by the Administration on which they are borne during the period of vacation;

(b) If their services cannot be utilised during vacation for any reason their services should be terminated on the commencement of vacation; and

(c) While granting the leave it should be in terms of full days and not half a day. They will also not be entitled to the benefit of encashment of earned leave on termination of their service.

3. Where the ad-hoc appointments made for brief periods initially, however, for some reasons, continue beyond a period of three years without break such ad-hoc employees may be extended the benefits of all kinds of leave as admissible to temporary employees of the vacation department, under CCS (Leave) Rules, 1972, from the date of their initial appointment.”

5. The aforesaid paragraphs in clear terms state that the

Government had decided to treat ad-hoc employees at par with temporary employees of the Vacation Department under the CCS (Leave) Rules, 1972. It is not disputed or under challenge that the petitioner being an ad-hoc employee would meet the said requirements and is not disqualified under the negative stipulations mentioned in paragraph 2 quoted above. Paragraph 3 of the said OM declares that *ad hoc* appointments though initially made for brief periods but continued beyond the period of three years without any break in service, would be extended benefits of all kinds of leave as admissible to temporary employees under the CCS (Leave) Rules, 1972 from the date of their initial appointment. It is not disputed that under the said clause, 108 days of earned leaves were credited and due. This period of 108 days has been calculated strictly in accordance with the OM dated 28th February, 1988.

6. Sub-clause (c) to paragraph 2 of the circular stipulates that grant of leave, would be in terms of a full day and not for half a day and further the *ad hoc* employees would not be entitled to benefit of encashment of earned leave on "termination" of the said service. The word "termination" is significant, and we feel has relevance. The word

"termination" has to contextually understood and interpreted. The said word has an element of stigma and negative import. This stipulation should not be broadened to include cases where the ad-hoc employment comes to an end by efflux of time or when regular appointment is made.

7. The 2nd sentence in sub-clause (c) of paragraph 2 does not in plain language state that no leave encashment will be allowed to ad-hoc employees. It was rather easy to state this position; that no leave encashment would be allowed or paid to the ad-hoc employees. On the other hand, stipulation is conditional that leave encashment would not be permissible in cases of "termination". Necessarily indicating and meaning, there could be cases where leave encashment would be allowed. i.e cases where ad-hoc employees employment is not "terminated". Earned Leave is not encashed or paid during ad-hoc employment. The expression "termination" in the context of sub-clause (c) to paragraph 2 as 'termination of service', has to be read as bearing and postulating a negative connotation. The word "termination" would therefore means "termination" of employment for any reason or cause, excluding cases where ad-hoc employment comes to an end by efflux

of time or when regular appointment is made. It would be apposite to refer to *Shashi Gaur vs. NCT of Delhi & Ors.* , (2001) 10 SCC 445, where the Supreme Court interpreted the term "termination", and has held that an order of "termination" would be akin to order of dismissal or removal and can be distinguished from other cases where service comes to an end by efflux of time. The above-said observation was made in the context of Sec. 8(3) of Delhi School Education Act, 1973.

8. Earned leave encashment would be justified for it is payment made for the extra days of work, as the employee could have taken leave but had worked. Encashment is not gratis or by way of a bounty. It is payment for work performed and done.

9. It is an accepted position that, the *ad hoc* appointment had continued for almost ten years. This was with the concurrence of the respondent. It is not debated or stated that the petitioner had not diligently performed his duties. No misconduct/delinquency was reported or disciplinary proceedings were initiated. Apparently on regular appointment being made, the petitioner's *ad hoc* appointment came to an end.

10. In these circumstances, we find merit in the present writ petition

and allow the same. We set aside the order dated 16th April, 2015 and also issue directions to the respondent-All India Institute of Medical Sciences to make payment toward earned leave for a period of 108 days as per DOPT's OM dated 28th February, 1988. The said payment will be made within a period of two months from the date a copy of this order is communicated. In case the payment is not made within a period of two months, the petitioner will be entitled to an interest of 8 per cent per annum from the date of this order. The writ petition is accordingly disposed of.

(SANJIV KHANNA)
Judge

(NAJMI WAZIRI)
Judge

JANUARY 12, 2016
VKR