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

+ **W.P.(C) 3876/2012**

ALL INDIA INSTITUTE OF MEDICAL SCIENCES..... Petitioner

Through: Mr. R.K. Gupta with Mr. A.K. Singh,
Advocates

versus

ASHIMA NEHRA WADHAWAN Respondent

Through: Mr. Amit Khemka with Mr. Rishi Sehgal
and Ms. Aditi Kharpate, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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11.12.2017

1. The petitioner/AIIMS is aggrieved by the judgment dated 31.01.2012 passed by the Central Administrative Tribunal, allowing an Original Application, registered as O.A. No.2009/2011, filed by the respondent in the year 2011. The respondent while working on the post of Assistant Professor (Clinical Psychology) in the petitioner/AIIMS, had filed the aforesaid O.A., being aggrieved by the decision taken by the Institute to the effect that the period of service rendered by her on the same post in the Post Graduate Institute of Medical Education and Research, Chandigarh (hereinafter referred to as 'PGIMER') would not be counted for the purpose of her promotion to the next higher post of Associate Professor in the petitioner/AIIMS.

2. By the impugned judgment dated 31.02.2012, the Tribunal had allowed the prayer of the respondent and thereby directed the petitioner/AIIMS to count the service rendered by her in the PGIMER, on the post of Assistant Professor, for the purpose of determining her eligibility for promotion to the post of Associate Professor in the petitioner/AIIMS. However, it was made clear that the respondent would not be entitled to seek seniority over others by counting the period as mentioned above only for the purposes of promotion. The petitioner/AIIMS had thereafter filed a Review Petition before the Tribunal which was also dismissed vide order dated 19.04.2012.

3. Before dealing with the arguments advanced by learned counsels for the parties, it is necessary to refer to the contours of the dispute, which are noted hereinbelow.

4. The respondent was appointed to the post of Assistant Professor at PGIMER on 26.07.2001, in the pay scale of Rs.11,625-325-15,200 plus allowances, as admissible to the Central Government employees. The letter of appointment issued by the PGIMER to the respondent had specifically stated in para 6 that she shall be governed by the Central Civil Services (Conduct) Rules, 1964 and Central Civil Service Classification Control and Appeal Rules, 1965, as amended from time to time. Initially, the respondent was given a temporary status but later on, she was regularised and continued on the subject post upto 13.10.2005. On 04.09.2004, the respondent applied through proper channel to the petitioner/AIIMS for appointment to the post of Assistant Professor. In her covering letter as also in column 16 of her application form, she specifically stated that *“protection of basic pay and work experience is requested so that I am able to qualify for my next*

promotion”.

5. The petitioner/AIIMS appointed the respondent on the post of Assistant Professor (Clinical Psychology) in the Neuro Sciences Centre on a regular basis on 23.09.2005. The respondent was relieved from the PGIMER on 13.10.2005 and her medical record was sent to the petitioner/AIIMS, New Delhi. She joined the subject post at the petitioner/AIIMS on 14.10.2005, without any break in service and continued to serve in the said Institution. Thereafter, the respondent requested the petitioner/AIIMS to call for her service book and GPF account to be transferred from her previous employer, PGIMER to AIIMS. The said request was acceded to and the petitioner/AIIMS wrote a letter dated 20.06.2006 to the PGIMER requesting it to send the respondent's entire service records, GPF, alongwith interest to AIIMS *“so that facilities based on her past services and account rules could be given to her.”* Prior thereto, vide letters dated 03.02.2006 and 26.05.2006, the petitioner/AIIMS had also written to the respondent calling upon her to furnish a copy of the documentary evidence to establish that she had successfully completed the probation period in her parent organization viz., PGIMER *“so that her protection of pay could be finalized accordingly”.*

6. It is an undisputed position that vide letter dated 15.09.2006, the petitioner/AIIMS granted pay protection to the respondent, based on her past experience at the PGIMER. Further, an office order dated 14.08.2010 was issued by the PGIMER sanctioning the transfer of one time lump sum prorata share of pensionary benefits in respect of the respondent, for the services rendered by her for the period between 30.08.1997 to 02.10.2005,

to the petitioner/AIIMS. Pursuant to the aforesaid sanction, PGIMER forwarded to the petitioner/AIIMS a demand draft on account of unutilized earned leave in respect of the respondent under cover of its letter dated 14.09.2010. Thereafter, vide a letter dated 21.09.2010, the PGIMER also forwarded the respondent's original service book to the petitioner/AIIMS for further action.

7. On 18.04.2007, the respondent requested the petitioner/AIIMS to consider her in the next Assessment Promotion Scheme (hereinafter referred as 'APS') for promotion to the post of Associate Professor (Clinical Psychology) but she received no response thereto. In the interregnum, as the respondent's lien had been retained with the PGIMER, based upon the recommendations of the Selection Committee at PGIMER, vide order dated 13.12.2007, she was promoted as an Associate Professor (Neurosurgery Clinical Psychology) w.e.f. 01.07.2006, under the APS in the PGIMER. Though the respondent accepted the said promotion, she requested the petitioner/AIIMS to consider her for promotion to the subject post w.e.f. 01.07.2006. However, the petitioner/AIIMS rejected the said request vide letter dated 13.05.2010 on the ground that the service rendered by the respondent in another institution prior to joining AIIMS could not be counted for seniority-cum-promotion, as per the rules.

8. Aggrieved by the aforesaid order, the respondent filed an Original Application before the Tribunal that was allowed under the impugned judgment and the review application filed by the petitioner/AIIMS was also rejected vide order dated 19.04.2012. Hence, the present petition.

9. Mr. Gupta, learned counsel for the petitioner/AIIMS submits that the Tribunal erred in failing to appreciate that as per the APS, the respondent

was required to put in at least a period of three years of regular service in AIIMS, which period was completed by her only on 14.12.2009 and therefore, as per the crucial eligibility of 30th June, 2009 she became eligible for consideration for grant of APS to the grade of Associate Professor only w.e.f. 10.07.2010 and was accordingly promoted from the said date. He submits that the Tribunal fell into error in applying its earlier judgment dated 04.04.2007, passed in the case of D.K. Mohapatra vs. UOI and Anr. in **O.A. 562/2006** to the case in hand, whereas it has no application either on facts or in law. He further submits that the respondent was given an offer of appointment dated 23.09.2005 wherein she was clearly informed that her initial appointment shall be temporary and may be terminated at any time with one month's notice, which she had duly accepted and thereafter joined the post without any demur and therefore, she had waived her right for making any such claim of continuity of service, knowing fully well that her appointment in the petitioner/AIIMS was a fresh appointment.

10. Per contra, Mr. Khemka, learned counsel for the respondent supports the impugned judgment by stating that the same is a well reasoned one and has rightly applied the decision in the case of D.K. Mohapatra (supra) to the facts of the case in hand. He also refers to the O.M. dated 11.09.1998, issued by the DoP&T, Government of India, which was the basis of the Tribunal passing the judgment in the case of D.K. Mohapatra (supra). Learned counsel refers to various orders passed by the petitioner/AIIMS including a Memorandum dated 23.09.2005, issued by the Institution to urge that the respondent was governed by the Central Civil Services (Conduct) Rules, 1964 and Central Civil Service Classification Control and Appeal Rules, 1965 not only during her employment with the PGIMER, but even

after she had joined the petitioner/AIIMS, and thus contends that service in both the Institutes is governed by the same Civil Service Rules. He submits that based on her past service on the same post of Assistant Professor in the PGIMER, the respondent was not only given pay protection by the petitioner/AIIMS, but was also treated as a member of the Old Pension Scheme which was applicable only to those employees who had joined the Government service before the cut off date, i.e. 01.01.2004. In these circumstances, it is canvassed that it was no longer open to the petitioner/AIIMS to ignore the respondent's past service rendered in the PGIMER, at the time of considering her request for promotion to the post of Associate Professor.

11. We have heard the arguments advanced by the counsels for the parties and with their assistance, perused the record.

12. The undisputed position which emerges from the record is that the respondent who while working as an Assistant Professor in the PGIMER had applied for the same post in the petitioner/AIIMS through proper channel with a request for protection of her basic pay and work experience so as to enable her to qualify for her next promotion to the post of Associate Professor. It is also an admitted position that upon joining the petitioner/AIIMS on 14.10.2005, not only was the respondent given pay protection but she was even made a member of the Pension Scheme under the Central Civil Service (Pension) Rules, commonly known as the Old Pension Scheme, which was applicable only to those Central Government Employees who were appointed prior to 01.01.2004. Parties are also *ad idem* that both the Institutes, the PGIMER and the petitioner/AIIMS have been constituted by the Central Government under the same policy and their

employees are governed by the same rules as are applicable to the Central Government employees and are thus bound by directions issued from time to time by the Central Government. Both the Institutes, though autonomous, are under the direct control of the Ministry of Health & Family Welfare, which is their nodal Ministry.

13. The Tribunal had allowed the OA of the respondent by relying on its earlier decision in the case of D.K. Mohapatra (supra) as also by referring to OM dated 01.09.1998 issued by the DoP&T, that provides for counting of past service at the time of lateral entry on direct recruitment basis, for promotion to higher grades. It would be appropriate to reproduce O.M. dated 01.09.1998, which reads as follows:

“Subject: Counting of past service at the time of lateral entry on direct recruitment basis for promotion to the higher grades-

The undersigned is directed to say that the question of counting of previous Group ‘A’ service to meet the condition of minimum eligibility service prescribed in the Recruitment/Service Rules at the time of lateral entry on the higher grades has been considered by the Government and it has been decided that since all appointments by the method of direct recruitment are in the public interest, the benefit of counting of previous Group ‘A’ service to meet the condition of minimum eligibility prescribed in the Recruitment / Service Rules at the time of lateral entry on direct recruitment as qualifying service for promotion to the higher grades will be admissible to an employee provided he/she has completed the prescribed eligibility service in the immediate feeder grade. However, the past service will not count for seniority in the new organization, as upheld in the Supreme Court’s judgment dated November 19, 1993 in the case of Renu Mullick vs. Union of India [JT 1993 (6) SC 527]. ”

14. Though Mr. Gupta, learned counsel for the petitioner/AIIMS has vehemently argued that the services rendered by the respondent in the

PGIMER cannot be counted for purposes of promotion in the petitioner/AIIMS, but on pointed queries raised by us, he has neither denied the applicability of the O.M. dated 01.09.1998 to the petitioner/AIIMS, nor has he been able to give any satisfactory reply to our query as to how was the respondent given the benefit of the Old Pension Scheme by the Institute. Her appointment having been accepted by AIIMS to be from a date prior to 01.01.2004, we are of the opinion that the respondent cannot be denied the benefit of her service for purposes of promotion. Once it is admitted that employees of both, PGIMER and the petitioner/AIIMS are governed by conditions of service applicable to the Central Government employees, in our view, the respondent would automatically be entitled to the benefits flowing from the O.M. dated 01.09.1998 and as a sequel thereto, entitled to counting of her period of service in the PGIMER, for purpose of promotion to the post of Associate Professor in the petitioner/AIIMS.

15. We have also examined the decision of the Tribunal in the case of D.K. Mohapatra (supra) relied upon in the impugned judgment and find that the same squarely applies to the facts of the present case. It is noteworthy that the challenge laid by the Union of India to the Tribunal's decision in the case of D.K. Mohapatra (supra) had failed both, before this Court as also the Supreme Court. What is critical is that both, PGIMER and the petitioner/AIIMS are under the direct control of the same nodal Ministry, i.e., the Ministry of Health & Family Welfare and furthermore, the respondent has been given the benefit of pay protection and covered under the Old Pension Scheme by the petitioner/AIIMS, on counting her past service in the PGIMER. In these circumstances, we find no infirmity in the impugned judgment passed by the Tribunal, for interference.

16. The petitioner/AIIMS is directed to count the period of the respondent's past service from 26.07.2001 to 13.07.2005, in the PGIMER as an Associate Professor, for her promotion to the post of Associate Professor in AIIMS and grant her all consequential benefits including further time bound promotions, if any.

17. The writ petition is accordingly dismissed as being meritless. There shall however be no orders as to costs.

HIMA KOHLI, J

REKHA PALLI, J

DECEMBER 11, 2017

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