

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.121

CWP No. 26482 of 2018
DECIDED ON: OCTOBER 22, 2018

UNION OF INDIA & OTHERS

..PETITIONERS

VERSUS

DR. NEELAM AGGARWAL AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Namit Kumar , Sr. Panel Counsel,
for the petitioners.

Mr. Gurminder Singh, Sr. Advocate with
Ms. Harpriya Khaneka, Advocate
for the respondent-Caveators.

AVNEESH JHINGAN, J.

This writ petition has been filed seeking quashing of order dated 13.03.2018 (Annexure P-5) passed by the Central Administrative Tribunal, Chandigarh (for brevity 'the Tribunal') allowing the Original Application (OA) filed by respondents No.1 to 21 in this petition (hereinafter referred to as 'respondents') and granting the benefit of GPF-cum-Old Pension Scheme (for short 'OPS') prevalent at the time of their

initial appointment.

2. The factual matrix relevant to the issue raised and canvassed in the petition is that respondents were appointed on ad-hoc basis in Post Graduate Institute of Medical Education and Research Centre, Chandigarh (for short 'PGIMER') on different dates between the period i.e. 12.06.1996 to 24.12.2003 on the post of Lecturer. The post of Lecturer was later re-designated as Assistant Professor. The appointment letter stated that they were being appointed purely on ad-hoc basis and this appointment will not bestow on the person a claim for regular appointment or ad-hoc service rendered would not count for the purpose of seniority in that grade or for the eligibility of promotion to the next grade.

3. Due to some administrative exigencies, recruitment of doctors on regular basis was delayed and keeping in view the working and services provided by PGIMER and also considering larger public interest and exigencies of services ad-hoc appointments were made. Later, regular recruitment process was initiated for filling up vacancies for the post of Assistant Professor. The respondents also applied and got selected on various dates ranging between 21.12.2005 to 23.04.2011.

4. During the intervening period, the Government of India introduced a New Pension Scheme (NPS) for its new employees. NPS was mandatory for the Central Government employees who had joined on or after 01.01.2004. The employees of PGIMER were also covered under the NPS. Earlier, the employees were covered under the OPS. The PGIMER relying upon the letter No. V-17020/4/2007-ME-II, dated 28.06.2007 issued by the Ministry of Health and Family Welfare (for short 'Ministry')

clarifying the applicability of NPS held that the respondents would be covered under the NPS. The relevant portion of the aforesaid letter is reproduced as under:-

“the faculty who were working on regular basis on the lower posts and selected as Direct Recruits in the Grade of Professor, are governed by the earlier pension rules and those who are appointed on regular basis to any post as Direct Recruits on or after 01.01.2004, would be covered by the New Pension Scheme even though they may have been working on adhoc basis in any post in the Institute.”

5. Thereafter, the respondents made a representation for grant of benefits of the OPS. The matter was put before the Governing Body. The Governing Body in its meeting held in January, 2011 constituted a Sub-Committee to look into the grievance of respondents. The said committee recommended the case of respondents vide letter dated 14.09.2011. The matter was placed before the Governing Body in its meeting held on 28.04.2012. The Governing Body recommended that the respondents should be covered under the OPS. The decision was subject to the approval of Government of India. The matter was referred to Government of India i.e. Ministry of Health & Family Welfare. The same was rejected by the Ministry vide its letter dated 05.11.2013. It was decided that since the respondents were not appointed on regular basis as on 31.12.2003, hence, they would be covered under the NPS. The said decision was conveyed to the respondents. The respondents again submitted a representation for being considered under the OPS. The representation was again rejected vide letter dated 12.08.2014.

6. Aggrieved of the rejection, the respondents filed OA bearing No. 060/00848/2017. The Tribunal vide order dated 31.07.2017, directed the Ministry to consider and decide the representations, by passing a speaking order. In pursuance of the order dated 31.07.2017 passed by the Tribunal, the Ministry decided the representation and rejected the same vide letter dated 12.10.2017 and it was held that NPS would be applicable to the respondents.

7. The decision of the Ministry was assailed before the Tribunal by filing OA No. 0060/00105/2018. The said OA was allowed by the Tribunal vide its order dated 13.03.2018. It was held that respondents would be covered by OPS prevalent at the time of their initial appointment. Aggrieved of the said order, the present petition has been filed.

8. Learned counsel for the petitioners has vehemently argued that the Tribunal erred in allowing the OA and the same was liable to be dismissed on the principles of delay and laches, as the claim of the respondents was rejected in November, 2013. Learned counsel for the petitioners has placed reliance upon the judgments of Supreme Court rendered in the cases of “State of Tripura and others vs. Arabinda Chakraborty and others; 2014 (6) SCC 460” and “Union of India and others vs. A. Durairaj (Dead) by LRs; 2010 (14) SCC 389.”

9. On merits, it was argued that the respondents were appointed on regular basis only after 01.04.2004 and were governed by NPS. The grievance is that the Tribunal had wrongly framed the issue involved in the case.

10. The counsel for the petitioners placed reliance on the

conditions of appointment letter, stating that the initial appointment was purely on ad-hoc basis. It was clearly mentioned that it shall not bestow on the person a right to claim regular appointment and the ad-hoc service would not be counted for the purpose of seniority or for eligibility for promotion. The contention raised was that it is not a case where the respondents were regularized instead they were given fresh appointments after 01.04.2004.

11. Learned counsel for the respondents rebutting the contentions of the petitioners argued that the respondents were initially appointed against regular vacancies. They were given regular pay scales and due increments were granted to them. Further the respondents were entitled to medical and housing facilities given at par with the regular employees. Still further, it was submitted that at the time of regular appointment, the pay, which the respondents got alongwith increments, was protected. Whereas, in the case of fresh appointment the candidates were given fresh pay scales. For this he relied upon minutes of Sub Committee meeting.

12. To buttress his contention, learned counsel stoutly contended that OPS has already been applied to persons similarly situated non-faculty staff.

13. The contention raised by the petitioners lacks merit.

14. The Tribunal rightly rejected the contention of the petitioners that OA was liable to be dismissed on the principles of delay and laches.

15. The regular appointment of the respondents varies between 21.12.2005 to 23.04.2011. They moved representations, which were favourably considered upto governing body. It was only at the Government

level that their claim was rejected vide letter dated 05.11.2013. The respondents moved another representation, which was rejected vide letter 12.08.2014. Subsequently, representation was made. The same was not being considered, hence, the respondents filed OA before the Tribunal. The Tribunal vide its order dated 31.07.2017 issued direction that the representation be decided by passing a speaking order.

16. It is pertinent to note here that the petitioners never challenged the order of the Tribunal. Moreover, the relief claimed by the respondents is not such which creates administrative complications. No complication would be caused to other employees, as it will not affect the position regarding the seniority and promotion granted to others. The respondents had only claimed that OPS would be applicable to them. Even otherwise, such a plea ought not to be raised by Union of India, who is a welfare State, more particularly when no delay and laches can be attributed to the respondent.

17. The reliance upon the Supreme Court's judgments referred above does not enhance the case of the petitioners. The said cases are not applicable to the facts and circumstances of the present case. In *Arabinda Chakraborty's case (supra)*, the Apex Court was dealing with a case where the respondent was given a fresh appointment after termination of his earlier service. He never raised any grievance of fresh appointment after termination and after more than a decade, he raised the grievance about his seniority. His claim was stale and hence no relief was granted, as it would have affected the other employees who were granted the seniority or promotion over the years.

18. In A. Durairaj's case (supra), respondent was claiming retrospective promotion after a delay of two decades. Apart from the delay, it would have created administrative complications and therefore, the Court considered the fact that even if the challenge to the medical test undertaken in the year 1976 is upheld, still respondent would not have been eligible to be promoted without passing a written examination. Hence, failure to promote the respondent on ad-hoc basis had no bearing on his chances of regular promotion. Whereas, in the present case respondents are neither claiming seniority nor promotion. Even allowing their claim will not affect any other employee. This is not a case where claim can be dismissed on the ground of delay and laches.

19. Equally, contention of learned counsel for the petitioners that the Tribunal erred in framing the issue involved in the controversy also lacks merit.

20. The tribunal dealt with the issue by noting that significant question that arises for consideration in this case is, as to whether the services of the applicants would be reckoned from the date of their initial appointments, for all intents and purposes, including the benefit of OPS, in the given peculiar facts and special circumstances of this case or not?

21. The framing of the issue would not govern the outcome of the case. The primary issue for consideration was whether in the peculiar facts and circumstances of the case, respondents who had been appointed on ad-hoc basis before 01.04.2004 could avail the benefit of OPS?

22. The Tribunal has examined the issue in two different ways.

The relevant observation of the Tribunal on this aspect reads thus:-

“14. Ex-facie, the main celebrated arguments of the learned counsel for the respondents and their objections projected in the impugned orders, that since the PGIMER, Chandigarh, has not taken any approval of the Department of Personnel & Training (DoP&T) before extending the adhoc appointments, till the regular appointments of the applicants, so they are not entitled for the benefit of the GPF-cum-Old Pension Scheme, and if it is granted to them, then it will open floodgates of litigation, for other institutions, are not only devoid of merit, but mis-placed as well and deserve to be repelled for, more than one, (following)reasons.

15. At the first instance, it is not a matter of dispute, that having possessed the requisite qualifications and experience etc, in pursuance of the advertisement and having successfully completed the recruitment process as per statutory rules and regulations of the PGIMER, all the Doctors (applicants) were duly appointed as Assistant Professors, in their respective fields, during the period ranging from 1996 to 2003, by the Competent Authority. Since then, they are performing the same duties with devotion, which are performed by regular appointees. Similarly, the clinical duties of all the Doctors (applicants) are the same, as performed by regular incumbents. Subsequently, the PGIMER advertised the posts manned by the applicants, for filling on regular basis. The applicants, have requisite qualifications & experience, and were eligible for regular appointments against the said posts, as well. They were duly selected and appointed, on regular basis, without any interruption maintaining and protecting their continuity in service, pay scale and other service benefits, including the increments, which they were drawing as adhoc appointees.

16. In that eventuality, for the purpose of pensionary

benefits, the qualifying service of the applicants shall commence from the date, they took charge of the posts, to which they were first appointed, in temporary capacity, as that temporary service was followed, without interruption, by substantive permanent appointments in the same service/posts, as contemplated under Rule 13 (Chapter III) of the Central Civil Services (Pension) Rules, 1972 (Annexure A-28).

17. Not only that, as indicated hereinabove, the applicants continued working, as such, uninterruptedly and without any break. Even the Respondents No.2 & 3, have duly acknowledged the factual matrix, in this regard, in their written statement.”

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23. In the same manner, the second feeble argument & ground to reject the claim of the applicants, vide impugned order, Annexure A-1, that if the request of faculty members of the Institute is allowed, then it will give rise and would open flood gates of litigation by a number of representations from various other Institutions/organizations, is again not, at all, tenable. Once, it is held that the applicants are legally entitled to the benefit of GPF-cum-Old Pension Scheme, as discussed here-in-above, then their claim cannot possibly be denied on the ground that it will give rise to a number of representations and would open flood gates of litigations, by various other Institutions/organizations for grant of similar relief. It is now well settled principle of law that the legitimate and legal right of the applicants cannot be denied to them, in the garb of plea of opening of Flood Gate Litigations.

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26. This is not the end of the matter. What cannot possibly be disputed is that in the wake of

representations of the applicants, the Director of the PGIMER, vide letter dated 21.1.2010, favourably recommended their cases and forwarded it to be put up and the Governing Body of the PGIMER (Central Government), in its meeting, held in January, 2011, had constituted a 6 Member sub-Committee, to look into the grievance of the applicants. The Committee had also favourably recommended their case, vide letter dated 14.9.2011 (Annexure A-14). Then, the matter was considered by the Governing Body under Agenda No. F-6 on 28.04.2012 and it was resolved that all these faculty members were on ad-hoc basis for a long period and could have been regularized prior to 01.01.2004, had the Selection Committee met earlier.

27. Meaning thereby, had the meeting of the Governing Body was timely held, then the service of the applicants would have been regularized much prior thereto. In other words, since the respondents failed to convene the timely meeting of the Governing Body, so the applicants, cannot, possibly be blamed, in any manner, in this regard. Concededly, the Governing Body appreciated the circumstances and after detailed discussion, agreed to approve the proposal to grant the benefit of GPF-cum-Old Pension Scheme, to the applicants, as a special case, vide Agenda Item No. F-6, in its meeting held on 28.4.2012, and it was resolved as under :-

“The matter was discussed in detail. The Governing Body was informed about the recommendations of the Committee under Joint Secretary (HR) of the Ministry and that all these faculty members were on ad-hoc basis for a long period and could have been regularized prior to 01.01.2004, had the Selection Committee met earlier. The Governing Body appreciated the circumstances but at the same time

the fact remains that these faculty members were actually appointed on regular basis only after 01.01.2004. After detailed discussion, the Governing Body agreed to approve the proposal as a special case, which could not be cited as a precedence, subject to the approval of the government”.

28. Surprisingly enough, the Ministry of Health and the Competent Authority, without assigning any cogent reasons, and without any detailed discussion of legal / rule position and entitlement of the applicants, have taken a somersault, and rejected their claim, on speculative grounds. Admittedly, as per Regulation No. 61 of Schedule-1 appended to PGIMER, Chandigarh Regulations, 1967, its Director has been empowered to appoint Faculty, on adhoc basis, for two years. It was duly acknowledged and explained by Respondents No.2&3 in their written statement that since, the meeting of the Governing Body, is held once or twice a year, so keeping in view the public interest, exigency of service and heavy rush of patients, the institute filled up these vacancies on adhoc basis, in various disciplines in various departments, as a stop gap arrangement, till final process of recruitment is made. As the applicants, continued on their respective posts, till their regular appointments, so the mere fact the PGIMER has not obtained the approval of the DoP&T, is not a ground, much less cogent, to deny the legitimate claims of the applicants, in this relevant connection, as contrary projected on behalf of the respondents. It was for the competent authorities to get alleged approval from the DoP&T (if any), and the applicants cannot possibly be blamed, in any manner, in this regard, and their legitimate right cannot be taken away. Thus, any such administrative instructions,

requiring the approval of the DoP&T, for extension of adhoc service, pail into insignificance, in view of the failure of the authorities. The respondents, therefore, now cannot possibly be heard to say, rather estopped, from their own act and conduct, to deny the pointed benefits of GPF-cum-Old Pension Scheme to the applicants.”

23. Next contention raised by learned counsel for the petitioners was that according to the appointment letter, no benefit was to accrue to the said employees for raising a claim for regular appointment and service for seniority or for eligibility of promotion also does not advance their case. While dealing with this contention, the question that the present case was not of regularization but of fresh appointment after 01.04.2004 would be dealt together. The relevant terms and conditions of the appointment letter are extracted below.

“2. The appointment is purely adhoc and that such appointment will not bestow on the person a claim for regular appointment and that adhoc service rendered would not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

3. XX XX XX

4. XX XX XX

5. You will be governed by the Central Civil Services (Conduct) Rules, 1964 and Central Civil Services Classification Control and Appeal Rules, 1995, as amended from time to time.”

24. It is evident from the record that the respondents had not claimed regular appointment on the basis of their ad-hoc service. They are neither claiming seniority nor eligibility for promotion to the next higher grade. Condition No.2 of the appointment letter does not hamper their

claim. The petitioners have not disputed the fact either before the Tribunal or before this Court that the respondents were initially appointed as per statutory provisions against regular vacant posts. They were given regular pay scales and due increments. They were also entitled to medical and housing facilities at par with the regular employees. It was also not disputed that respondents possessed requisite qualification/experience and they were duly appointed Assistant Professors on their respective posts in pursuance of the advertisement in which they competed with the other candidates and were successfully selected in the recruitment process as per statutory rules and regulations of the PGIMER.

25. It is a fact on record that the respondents were performing the same duties, which were being performed by regular appointees. Respondents continued without any interruption i.e. maintaining and protecting their continuity in service, pay scale and other service benefits, including the increments, as being drawn by them as ad-hoc appointees. The said fact is fortified by the conduct of their appointing authority as pay protection was allowed to them on their appointment on regular basis. However, in the case of fresh appointments they were given a pay scale of fresh appointee. At this stage it would be relevant to reproduce the minutes of Sub-Committee meeting held on 14.09.2011.

“At the outset, the Chairman asked the details of the case from the Member Convener. It was informed to the members that there are about 23 faculty members who were appointed on adhoc basis (as per details in Annexure) without break prior to 01.01.2004 and have been working without break till their appointment on regular basis as Assistant Professors after

01.01.2004. They have represented for applicability of Old Pension Scheme in their case as they were appointed prior to 01.01.2004. It was also informed that the matter was earlier referred to the Govt. of India on 23.06.2009 and in response this Ministry of Health and Family Welfare, vide their letter dated 01.01.2010 intimated that the proposal was sent to DOPT and they have stated that

“Since PGIMER, Chandigarh, in their offer of appointment had Stated that only NPS will apply in these cases, it is for them to resolve the matter”.

The matter was placed before the Governing Body on 17.01.2011, the Governing Body recommended that Sub-Committee to examine the issue may be constituted in the Ministry as to whether any departure from the NPS can be considered in PGIMER or other similar institutions on the ground that the initial ad hoc appointments have taken effect from a date earlier than 01.01.2004. Accordingly a Sub-Committee was constituted under the Chairmanship of JS (HR).

The Committee was informed that all these faculty members have been appointed against the regular vacancies and pay protection was also allowed to them on their appointment on regular basis.

After due deliberations the Committee considered that there is a case / ground for extending benefits of CCS (Pension) Rules, 1972 (Old Pension Scheme) to these 23 faculty members. The request is further strengthened on the grounds that the meeting of Standing Selection Committee for selecting them on regular basis could not be held regularly, which is beyond the knowledge and control of these 23 faculty members. The Committee, however, further observed that it should be a onetime measure and should not be quoted as precedent in future.

This committee recommends for extending the benefit of

Old Pension Scheme to these 23 faculty members after approval by the Competent Authority”.

26. For the reasons mentioned above, the respondents were not treated as fresh appointees in *stricto sensu*. As per the terms and conditions of the appointment letter their services as ad-hoc appointees were not considered for the purpose of their regularization but on their successful appointment as regular employees the services rendered by them on ad-hoc basis were safeguarded for the purpose of pay protection. In view of above discussion the Tribunal rightly came to the conclusion that respondents would be governed by OPS prevalent at the time of their initial appointment.

27. Viewed from another angle, the respondents were denied benefit of OPS only on the ground that NPS would apply to employees who were appointed on or after 01.01.2004. It is undisputed that respondents were working against those very posts since 1999 onwards although initially on adhoc basis but that cannot be a ground to disentitle them from benefit of OPS.

28. The learned counsel for the petitioners was not in a position to dispute that PGIMER has extended the benefit of OPS to similarly situated non- faculty staff. No reason or justification has been put forth for denying the same benefit to the respondents. In case OPS is not made applicable to the respondents, it would result in discrimination and violation of Article 14 of the Constitution of India.

29. There is no other angle to the controversy involved in the present petition. In order to provide better health services to the public at

large and because of administrative exigencies, PGIMER was not able to make appointment on regular basis. In order to overcome the said problem respondents were appointed on ad-hoc basis. The governing body in its meeting held on 28.04.2012 took note of the fact that respondents could have been regularized prior to 01.04.2004, had the selection committee met earlier. Agenda item No. F6 of the minutes of meeting of governing body held on 28.04.2012 is quoted below:-

“The matter was discussed in detail. The Governing Body was informed about the recommendations of the Committee under Joint Secretary (HR) of the Ministry and that all these faculty members were on ad-hoc basis for a long period and could have been regularized prior to 01.01.2004, had the Selection Committee met earlier. The Governing Body appreciated the circumstances but at the same time the fact remains that these faculty members were actually appointed on regular basis only after 01.01.2004. After detailed discussion, the Governing Body agreed to approve the proposal as a special case, which could not be cited as a precedence, subject to the approval of the government”.

30. It would not be appropriate that the respondents suffer on the ground that the petitioners were not able to convene the meeting of governing body and the selection committee. Respondents continued on their respective posts till their regular appointment. The benefit of OPS cannot be denied to them merely because similarly situated employees in other departments would also become entitled to this relief. No error can be found in the order dated 13.03.2018 passed by the Tribunal in holding that OPS would apply to the respondents.

31. In view of the afore-said discussion, there is no merit in the

present petition, accordingly, the same is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

OCTOBER 22, 2018
SHAM

(AVNEESH JHNGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No