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

% **Date of Decision : 8th March, 2019**

+ **W.P.(C) 1286/2019 & CM Nos.5801-03/2019**

DR. SUNNY AND ORS. Petitioners
Through : Mr. Mohit Agarwal, Adv.

versus

UNION OF INDIA AND ORS. Respondents
Through : Mr. Ripu Daman Bhardwaj,
CGSC with Mr. Gyan Parkash,
Adv. for R-1 to 3.

+ **W.P.(C) 2361/2019 & CM Nos.11019-20/2019**

DR. RASHMI RAJ Petitioner
Through : Mr. Mohit Agarwal, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through : Mr. Ripu Daman Bhardwaj,
CGSC with Mr. Gyan Parkash,
Adv. for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (ORAL)

1. Issue notice to the respondents in W.P.(C)No.2361/2019.
2. Mr. Ripu Daman Bhardwaj, Central Government Standing Counsel accepts notice on behalf of the respondent nos.1 to 3.

W.P.(C)No.2361/2019 is identical with W.P.(C)No.1286/2019. Learned counsel agree that the order in W.P.(C)No.1286/2019 would also govern W.P.(C)No.2361/2019.

3. The writ petitioners challenge the order of the Central Administrative Tribunal (CAT). The petitioners were recruited as Junior Residents (Non-PG) BDS pursuant to a circular dated 26.05.2018. They approached the CAT on the ground that contrary to the prescribed policy which required junior residency tenure for two years and at least for one year, the respondents recruited them for a shorter period of only six months. The CAT rejected their applications on the ground that having accepted the engagement for six months, they could not question the tenure on the ground of an existing policy. This court had at the time of issuing notice on 11.02.2019 required the respondents to disclose certain particulars. The relevant part of the order dated 11.02.2019 reads as follows :

“The respondents shall file an affidavit especially dealing with the total number of Junior Resident seats, required to fill PG Courses in Delhi, within its control. In addition, the number of Junior Resident seats, not meant to lead to PG Courses (of 6 months, as in the present case), with collegewise break-up in either case, shall be disclosed in the affidavit. The selection procedure followed along with the appropriate guidelines/binding circulars shall also be filed with the affidavit. The affidavit shall be filed by the Director General of Health Services, Union Ministry of Health and Family Welfare within 10 days.

List on 08.03.2019.

In the meanwhile, status quo shall be maintained with respect to the petitioners’ post.”

4. The respondents have filed a short affidavit through one

Dr.Srinivasa Raghavan Venkatesh, Director General of Health Services. The affidavit states as follows :

*"It is respectfully submitted that this Honorable Court vide its Order dated 11-02-2019 directed that **"The Respondent shall file an affidavit especially dealing with the total number of Junior Resident seats, required to fill PG Courses in Delhi, within its control. In addition, the number of Junior Resident seats, not meant to lead to PG Courses (of 6 months, as in the present case), with college break-up in either case, shall be disclosed in the affidavit. The selection procedure followed along with the guidelines/binding circulars shall also be filed with the affidavit. The affidavit shall be filed by the Director General of Health Services, Union Ministry of Health and Family Welfare within 10 days."***

Further, it is respectfully submitted that as per the Order dated 11-02-2019 of this Hon'ble Court the desired information is submitted below:

Sr. No	Hospital	Total No. of Dental Residents (Non-Academic)	Total No. of Dental Residents (Academic)	Duration of Course
1.	VMMC & Safdarjung Hospital	12	NIL	6 months
2.	PGIMER & Dr.RML Hospital	8	NIL	6 months
3.	LHMC & Associated Hospitals	2	02	01 year
Total		22	02	

2. The residency scheme does not differentiate between dental and medical departments and the rule position of

residency scheme for Junior Residents even for dental departments is fixed for duration of 1 year. Residency Scheme under para 3 subsection a (iii) & a (iv) states that:

"The period of junior residency shall be either for one year in respect of house jobs for those not undergoing postgraduate course or three year junior residency in respect of Post graduate degree students/two year junior residency for post-graduate Diploma students.

The junior Residents will be on contract service and will be required to enter into separate contracts for one year in the case of Housemanship and for two years or three years as the case may be in respect of post-graduate courses."

5. The circular/instructions relied upon are embodied in the residency scheme, formulated by the Union of India on 05.06.1992. The respondents admit that the prevalent policy, in its relevant particular, states that the junior residency period may be at least for one year. The relevant part of the circular reads as follows :

"3. Selection of residents

a) Junior Residency

xxx

xxx

xxx

iii) As per the directions of the Supreme Court in its judgment dated 25.09.87 in Writ Petition Nos.348-352 of 1985, all the Universities are required to amend their Rules and Regulations to introduce a continuous three year post graduate degree course and a continuous two year post-graduate diploma course from the Academic year 1993. Accordingly, the period of junior residency shall be either for one year in respect of house jobs for those not undergoing Postgraduate course or three year junior residency in respect of Post-graduate degree students/two

year junior residency for post-graduate Diploma students.

iv) The junior residents will be on contract service and will be required to enter into separate contracts for one in the case of Housemanship and for two years or three years as the case may be in respect of post-graduate courses.

b) Senior Residency

xxx

xxx

xxx

iii) The selection of senior residents will be done by the same Selection Committee as for first year junior residents given in para 3(a)(i) above.

iv) The tenure of senior residency will be three years. However, the candidature of a person who is already working as Senior Resident in a Central Institution/Hospital may be considered for appointment as Senior Resident in another Central Institutions/Hospitals if his application is received through proper channel. In such cases the pay drawn in the previous post will not be protected. The total period, however, should not exceed the maximum period of Senior Residency of three years.”

6. It is evident from the above that the respondents do not dispute that the residency period prescribed by the circular is at least for one year. In these circumstances, learned counsel for the respondents did not contest the position that in the absence of a contrary direction or amendment to the circular, the engagement could not have been limited to six months as was done in this case.

7. In the light of the above discussion, this court is of the opinion that the impugned order of the CAT requires to be set aside. The respondents are hereby directed to extend the tenure of the petitioners who were selected pursuant to the circular issued for a period of six months. We notice that one of the petitioners (petitioner no.3 in

W.P.(C)No.1286/2019 - Dr. Sachin Surela) was not appointed by selection but was rather engaged on *ad-hoc* basis. Therefore, this relief would not be permissible to him.

8. As a consequence, the respondents shall issue fresh orders in favour of the other petitioners for the remaining period of six months. Those petitioners shall be entitled to salary and all other consequential benefits from the date they report for duties. The orders shall be issued by the respondents within a week.

9. These writ petitions are disposed of in the above terms.

Dasti.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

MARCH 08, 2019

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