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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: October 30, 2023

+ W.P.(C) 13646/2023

SHARDA SHAH PESHIN AND ORS.

..... Petitioners

Through: Mr.Mayank Sapra, Mr.Raghu Raghav
Shridhar and Ms.Sruti Chandran,
Advocates

versus

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES AND ORS.

..... Respondents

Through: Mr.Vikrant Pachnanda and Mr.Mukul
Katyial, Advocates for respondent
No.1/AIIMS.
Mrs.Amrita Prakash, CGSC with
Mr.Vishal Ashwani Mehta, Advocate
for UOI.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****V. KAMESWAR RAO, J. (ORAL)****CM APPL. No.53893/2023** (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 13646/2023

1. The challenge in this writ petition is to an order dated April 10, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter, referred to as the 'Tribunal') in OA No. 374/2019. The said OA was filed by the petitioners being aggrieved of the order dated November 01,



2018 by which the respondents have rejected the representation of the petitioners seeking benefit of the Old Pension Scheme ('OPS', for short).

2. The three petitioners were appointed on *ad hoc* basis between the years 1995 - 1997. It was the case of the petitioners before the Tribunal that after they were appointed following due procedure of selection they were offered regular pay scales. They contributed to GPF account regularly till January 01, 2004 when the contribution was stopped on account of introduction of the New Pension Scheme ('NPS', for short). The petitioners subsequently were offered regular appointment after following due procedure of selection including advertisement seeking applications, written test and interview. Petitioner No.1 was appointed on regular basis on August 25, 2005 based on an advertisement issued in the year 2002, whereas petitioners No.2 and 3 were appointed on regular basis on September 17, 2009 and September 15, 2009, respectively based on an advertisement issued in the year 2007. On April 10, 2017, the petitioners made a request/representation to consider their case to be governed by the GPF-cum-OPS Scheme. It is the submission of the learned counsel for the petitioners that the said representation was not rejected but was referred to the Ministry of Health and Family Welfare, Government of India for a decision. Petitioner No.1 initially filed an OA No.2641/2018 before the Tribunal. The Tribunal vide order dated August 03, 2018 directed the respondents to decide the said representation dated April 10, 2017 within a period of 90 days. It is thereafter the impugned order dated November 01, 2018 was passed wherein instead of taking a final decision on the representation, the respondents intimated the petitioners as under:

“The matter has been considered by the competent authority of the institute and desired that the opinion / clarification from the



Department of Personnel and Training may be obtained whether the benefits of old pension scheme can be extended in such cases. Accordingly, the matter was referred vide Institute letter No. F.6-39/2000-Estt.1 dated 1.2.2018 to the Ministry of Health and Family Welfare being the Administrative Ministry for further clarification and direction in the matter. Clarification / communication from the Ministry on the issue is awaited even after reminders.

In view of above, it is to inform that the issue has already been taken up with the Ministry of Health and Family Welfare for clarification and once the clarification is received, it would be communicated to all concerned.

This issued with the approval of the competent authority.”

3. The stand of the petitioners before the Tribunal was based on Rule 13 of CCS (Pension) Rules, 1972 which stipulates that, subject to the provisions, qualifying service of a Government servant would start from the date the employee takes charge of the post to which he/she is first appointed either substantively or in an officiating or temporary capacity. Reliance is also placed on the judgment of the Chandigarh Bench of the Tribunal in ***Dr. Neelam Aggrawal & Ors. v. Union of India*** in OA No.060/0015/2018 wherein the benefit of OPS was granted to the applicant in the said OA who was appointed as *ad hoc* lecturer in PGIMER, Chandigarh. The appeals thereof before the High Court and the Supreme Court by the respondents were dismissed.

Learned counsel for the petitioners would further submit that though the petitioners were appointed from 1995 to 1997 against a Project, the said Project was taken over by AIIMS in 2001 with retrospective effect and in that sense, the petitioners' appointment was in AIIMS. That apart, he submits that pursuant to the advertisement issued in the year 2002 six vacancies were



notified against which one of the petitioners was qualified/appointed. In any case, their subsequent appointment in the year 2009 was against the sanctioned posts as advertised in the year 2007. That apart, he submits that on regular appointment, pay of the petitioners was protected and in that sense, the appointment of the petitioners for all purposes should be governed by the OPS.

4. We are unable to accept the pleas advanced by the learned counsel for the petitioners. We agree with the conclusions drawn by the Tribunal in paragraphs 9, 10, 11 and 12, which we reproduce as under:

*“9. I have gone through the records of the case thoroughly and heard the arguments carefully. The judgment of the Punjab and Haryana High Court in **Union of India vs Dr. Neelam Aggrwal** (supra) is distinguishable by the facts of the case therein. The applicants in OA No. 060/0015/2018 were appointed on ad hoc basis against regular vacancies of Lecturers (Assistant Professors). In the instant case, there is no mention or no averment or production of record which shows that the applicants were appointed on ad hoc basis against regular posts or vacancies. This is the material fact distinguishes the case of Dr. Neelam’s case from the case of the present applicants. The appointment letters for the three applicants, namely (Annexure-A1) clearly state that “appointment to the post of SR Research Officer/ Scientist II/Scientist-I/RO in the Project titled N-213.” It was clearly mentioned that the project was sponsored /funded by the Ministry of Environment & Forests. Hence, it is my considered view that the ratio of judgment in **Dr. Neelam’s** case (supra) is not applicable to the present case.*

10. Rule 13 of the CCS (pension) Rules, 1972 is, on the above analogy, is not applicable to ad hoc staff appointed to Research Projects even if there is no discontinuity between the ad hoc and regular services. The mere fact that the applicants were given



benefit of pay protection even after takeover of NPIC by AIIMS, it cannot be said that they were appointed against substantial posts on ad hoc basis and these posts were created automatically in AIIMS when the said take over happened. Such posts are created by the Governing Body of AIIMS subject to approval by the Administrative Ministry i.e. Ministry of Health & Family Welfare.

11. The contention by the counsel for the applicants that temporary Group D employees were given the benefit of their ad hoc services and were granted the benefit of OPS in pursuance of DOPT OM No. 49014/2/2014-Estt.(C) dated 26.2.2016, and such benefit should also be given to the present applicants is not acceptable as this OM is applicable only to those casual labourers who were in temporary status employment on the date of issue of OM dated 10th September 1993. To be specific this Om states:

“8. It is emphasized that the benefit of temporary status is available only to those casual labourers who were in employment on the date of the issue of the OM dated 10th September, 1993 and were otherwise eligible for it. No grant of temporary status is permissible after that date. The employees erroneously granted temporary status between 10.09.1993 and the date of Hon'ble Supreme Court judgment in **Union Of India And Anr. vs Mohan Pal, 2002** (3) SCR 613, delivered on 29 April, 2002, will however be deemed to have been covered under the scheme of 10.09.93.”

12. In view of the above, the claim of the applicants to be given the benefit of OPS because of their continuous ad hoc appointment as Project staff is rejected. However, during the arguments, the counsel for the applicants stated that the recruitment process for the appointment of one of the applicants



started well before 22.12.2003 and hence, that applicant is covered under OM No. 57/05/2021-P&PW(B) dated 3.3.2023. This is not part of the prayer or pleading of the applicants. The said applicant is free to make a submission to the respondents in that regard within the stipulated date 31.8.2023 and the respondents shall consider that case as per extant rules and regulations and/or DOPT guidelines.”

5. We find that with regard to the one of the petitioners i.e. petitioner No.1, the Tribunal has noted that she was appointed pursuant to a selection process initiated well before December 22, 2003, hence her case is covered by the OM dated March 03, 2023. The Tribunal was of the view that since no relief in terms of the said OM was sought before the Tribunal, liberty was granted to the petitioner to make representations to the respondents in that regard and the respondents were required to consider the case as per extant rules and regulations and /or DoP&T guidelines.
6. We have also been informed that the petitioners have made representations based on the OM dated March 03, 2023 to the respondents. We say nothing on the representations made by the petitioners, it is for the respondents to consider the same in accordance with the directions of the Tribunal.
7. We find no merit in the petition and the same is dismissed.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 30, 2023/v