



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: August 02, 2023

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W.P.(C) 7717/2017

OM PRAKASH AND ORS.

..... Petitioners

Through: Mr. Atul Kumar, Mr. Jayant Malik  
and Mr. Nishant Prakash, Advocate.

versus

EMPLOYEES STATE INSURANCE CORPORATION  
AND ORS.

..... Respondents

Through: Mr. V.K. Singh, Ms. Prachi Singh and  
Ms. Yakshi Rawal, Advocates for  
ESIC.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**V. KAMESWAR RAO (Oral)**

1. The challenge in this writ petition is to an order dated November 30, 2016, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short 'Tribunal') in O.A. 2735/2014 (O.A. in short), rejecting the same by holding in para 23 as under:-

*“23. Considering the ratio of the aforesaid judgment, we find that initial appointment of the applicants being purely adhoc and temporary, could not be counted towards seniority in view of the rules of seniority notified by various OMs, noticed and reproduced hereinabove. The OMs are binding and applicable in the case of applicants in absence of any statutory rules or regulations to the contrary. There is another aspect. Applicants are claiming seniority over and above private respondents. Though the private respondents have chosen not to contest this Application, however, the fact*



*remains that they were selected and appointed by direct recruitment in accordance with the procedure established by law and in consonance with the mandate of Articles 14 and 16 of the Constitution of India. Their appointment was between the period 1986-1991, i.e., between the period applicants were engaged on adhoc basis and till their regularisation. Private respondents having been appointed on substantive and regular basis right from the day of their appointment, cannot be made to suffer in the matter of seniority merely because the applicants have succeeded in seeking their regularisation. Since the date of regularisation is admittedly later in time, the appointment of applicants shall be deemed to be on substantive and regular basis from the date of their regularisation. They did not become members of the service during the period they were engaged on adhoc/temporary basis. The rights of private respondents cannot be affected to their disadvantage at the instance of the applicants, who entered government service through backdoor, though later regularized.”*

2. The O.A. was filed by the petitioners with the following prayers:-

*“(i) Call for the records relating to the present and quash and set aside the action and orders of the respondents in refusing the regularisation of the-applicants' services w.e.f. the dates of initial appointment and the refusal of the respondents to consider the said period of continuous service from initial appointment for the purpose of seniority, study leave, the scale of Senior Medical Officer, the scale of Chief Medical Officer etc being malafide, arbitrary, discriminatory and in violation of the fundamental rights of the applicants under Articles 14 and 16 of the Constitution of India.*

*(ii) Declare the action and orders of the respondents in refusing the regularization of the applicants; services w.e.f. the dates of initial appointment and the refusal of the respondent to consider the said period of continuous service from initial appointment for the purpose of seniority, study*



*leave, the scale of Senior Medical Officer, the scale of Chief Medical Officer etc. are null and void being malafide, arbitrary discriminatory and in violation of the fundamental rights of the applicants under Article 14 and 16 of the Constitution of India.*

*(iii) Direct the respondents to treat the applicants on, regular service w.e.f. the date of initial appointment and to consider the said period of continuous service from initial appointment for the purpose of seniority, study leave, the scale of Senior Medical Officer, the scale of Chief Medical Officer and all other consequential benefits.*

*(iv) Direct the respondents to grant the seniority to the applicants from the date of initial appointment on ad-hoc/officiating basis.*

*(v) Award sufficient compensation and damages from the respondents for the violation of fundamental rights of the applicant.*

*(vi) Award the cost of the application in favour of the applicant.”*

3. It is a conceded case that the petitioners were appointed as Doctors in ESIC on ad-hoc basis. They had approached this Court initially in a Writ Petition being C.W. 1902/85, which was later transferred to the Tribunal and numbered as T-492/86. Their claim was primarily for regularization. The said transfer petition was decided by the Tribunal in favour of the petitioners vide order dated February 19, 1987.

4. Suffice to state, the order of the Tribunal was upheld by the Supreme Court in Civil Appeal No. 2171/89 and 2172-91/89, ESIC vs. Dr. (Mrs.) Prem Lata Chaudhary & Ors.

5. In terms of order dated June 15, 1995, during the pendency of the



proceedings before the Supreme Court, the petitioners have been regularized from the years 1990/1991.

6. The petitioners initiated a second round of the litigation before the Tribunal being O.A. 2491/1997, which was decided on August 25, 2000.

7. The case of the petitioners therein was primarily with regard to denial of seniority from the date of initial appointment and regularisation. The said O.A. was dismissed on the preliminary objection taken by the respondents inasmuch as the ratio of the judgment decided by the Tribunal in O.A. 951/1991 & O.A. 2343/1993, shall be applicable to the facts of the case.

8. The order of the Tribunal was challenged before this Court in W.P.(C) 2173/2002, *Dr. R.K. Sharma & Ors. vs. ESIC* and connected Writ Petition being W.P.(C) 2956/2002. The said petitions were dismissed. The petitioners therein filed an SLP before the Supreme Court, which was withdrawn by the petitioners on November 22, 2013.

9. That subsequent thereto, they filed a review petition before this Court seeking review of order dated May 09, 2013. The said review petition was decided by this Court on February 21, 2014, observing in paragraph 8 as under:

*“8. Be that as it may, if the petitioners have an issue of seniority they are free to approach the Central Administrative Tribunal after impleading such persons whose seniority is like to be affected by the claim made by the petitioners.”*

It is pursuant thereto, that the petitioners had approached the Tribunal, wherein the impugned order has been passed.

10. The prayers as made in the Original Application were with regard to regularization. The plea of the petitioners was that they should be given the



benefit of continuity of service from the date of their initial appointment, that is regular appointment and also seniority.

11. There is no dispute that the order dated June 15, 1995, was not challenged by the petitioners, wherein they were given regular appointment from the years 1990/1991.

12. On a specific query to the learned counsel for the petitioners whether in the absence of a challenge to the order dated June 15, 1995 and also in view of determination of the issue by the Tribunal in T-492/86 on February 19, 1987, the petitioners can be granted regular appointment from the date of initial appointment (on ad-hoc basis), his answer was by relying on paragraph 2 of the office order dated June 15, 1995, which reads as under:

*“Accordingly, all the petitioners including ad-hoc Doctors who were placed earlier in Group-B pay scale of Rs. 650-1200/-, may be treated to be in continuous services from the date of their joining on ad-hoc basis in the Corporation as shown against each. A list of such Doctors is appended in the enclosed list.”*

13. According to him, it is the own case of the respondents that the continuous service of the petitioners shall be treated from the date of their joining on ad-hoc basis in the Corporation. So according to him, the ad-hoc service must be treated as continuous service for all purposes.

14. We are not in agreement with the submissions made by the learned counsel for the petitioners, more so in view of the conclusion drawn by the Tribunal in the impugned order, inasmuch as the ad-hoc service cannot be treated for any purpose that too for seniority. That apart, pursuant to the order of the Tribunal dated November 30, 2016, the services of the petitioners were regularized through the process of a selection board



constituted by the ESIC and on being found fit for regular appointment that the petitioners' services were regularized w.e.f. 1990/1991.

15. So it follows, the regular appointment being in the years 1990/1991, the seniority necessarily has to be from the date of regular appointment and not from the date of initial appointment on ad-hoc basis.

16. The reliance placed on paragraph 2 of the office order dated June 15, 1995, must be read only in the background that every engagement of the petitioners with one day break must be treated as continuous.

17. One of the plea of the learned counsel for the petitioners is also that in terms of 17(3) of the ESIC Act, the petitioners are entitled to regular appointment from the date of initial appointment. This plea is also unmerited inasmuch as, it is conceded by the learned counsel for the petitioners that the conclusion drawn by the respondents in the office order dated June 15, 1995 has not been challenged and the judgment of the Tribunal dated February 19, 1987 has attained finality till the Supreme Court.

18. Noting the conclusion drawn by the Tribunal and also the judgments referred to by the Tribunal in support of its decision, we are of the view that the impugned order cannot be interfered with. The petition is dismissed. No costs.

**V. KAMESWAR RAO, J.**

**ANOOP KUMAR MENDIRATTA, J.**

**August 02, 2023/akc**