



2024:DHC:10137-DB



\$~81

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

+ **W.P.(C) 17442/2024 and CM APPLs.74191-74192/2024**

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. R.V. Sinha, Mr. A.S. Singh, Mr. Amit Sinha, Ms. Shriya Sharma and Ms. Nidhi Singh, Advocates

versus

SYED AHMED

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

18.12.2024

%

C. HARI SHANKAR, J.

1. The respondent, who was initially appointed as Medical Officer (Unani) w.e.f.¹ 1 January 1987 on monthly wages in the Central Government Health Scheme², was taken over on the strength of the CGHS, Delhi, on *ad hoc* basis w.e.f. the date of his initial appointment, i.e. 1 January 1987, *vide* Office Order dated 28 June 1989 issued by the CGHS.

2. The respondent approached the Central Administrative

¹ With effect from

² CGHS



2024:DHC:10137-DB



Tribunal³ by way of an Original Application, seeking regularization as Medical Officer (Unani). The Tribunal dismissed the OA. Aggrieved, the respondent approached this Court by way of WP C 4467/1998⁴. By an interim order dated 21 July 1999, this Court directed the petitioners to consider the case of the respondent on the basis of an earlier decision rendered by the Tribunal in the case of Ayurveda doctors, and take a decision as to whether to send his dossiers for consideration for regularization to the Union Public Service Commission⁵. This Court was, thereafter, informed that the respondent's dossier had been sent to the UPSC, whereupon, by order dated 11 October 2000, the petitioners were directed to pass appropriate orders on the basis of the recommendations of the UPSC. With the said direction, this Court disposed of WP C 4467/1998.

3. Thereafter, on 1 January 2001, the petitioner issued an order regularizing the service of the respondent as Medical Officer (Unani) in the CGHS w.e.f. 19 January 2000.

4. The respondent superannuated as Chief Medical Officer⁶ on 31 March 2016.

5. Thereafter, *vide* Order dated 25 October 2018, the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy⁷, on the recommendations of the UPSC, promoted the respondent as

³ "the Tribunal" hereinafter

⁴ **Hakim Syed Ahmed v UOI & others**

⁵ UPSC

⁶ CMO

⁷ AYUSH



2024:DHC:10137-DB



CMO (Non Functional Selection Grade)⁸ w.e.f. 20 January 2014.

6. The respondent, thereafter, addressed a representation to the petitioners, requesting that his service be treated as regular from the date of his initial appointment as Medical Officer (Unani) on 1 January 1987, for the purposes of fixation of his pension, thereby rendering his qualifying service to be 29 years and 3 months. This was followed by a further representation dated 30 November 2018.

7. The petitioners, however, rejected the respondent's representations *vide* order dated 11 December 2018, on the ground that Office Memorandum⁹ dated 1 July 1991 issued by the Department of Personnel & Training¹⁰ envisaged counting of regular service, in the case of an *ad hoc* employee who was later selected by the UPSC for regular appointment, from the date of recommendation by the UPSC. As such, the communication opined that the respondent's service could not be treated as regular w.e.f. 1 January 1987.

8. Further representations, seeking counting, towards his pensionary service, of his total service of 29 years and 3 months, were made by the respondent on 3 September 2019 and 27 November 2019, which were again rejected by the petitioners by letter dated 12 December 2019, which again relied on the DOPT OM dated 1 July 1991.

⁸ CMO (NFSG)

⁹ OM

¹⁰ DOPT



9. The respondent, thereafter, filed OA 1253/2020 before the Tribunal, seeking regularization of his service w.e.f. 1 January 1987. He later filed MA 2258/2020 in the said OA, for permission to amend the OA and incorporate, therein, a relief for counting of his pensionable service from 1 January 1987. *Vide* order dated 6 November 2020, the Tribunal allowed the respondent to withdraw OA 1253/2020 with liberty to file a separate OA including the relief sought in MA 2258/2020.

10. On the basis of the liberty so granted, the respondent re-approached the Tribunal by way of OA 2064/2020, in which the Tribunal has rendered the impugned judgment.

11. Before the Tribunal, the respondent relied on Rule 3(q)¹¹ and Rule 13¹² of the Central Civil Services (Pension) Rules, 1972.

12. The Tribunal has, by the impugned judgment dated 9 May 2023, disposed of OA 2064/2020 without, however, pronouncing on the respondent's entitlement to counting of his service for the purposes of pension w.e.f. 1 January 1987. The impugned judgment

¹¹ (q) 'Qualifying Service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;

¹² 13. **Commencement of qualifying service** – Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that –

(a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

(c) the provisions of clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19.



merely observes that the reliance, by the petitioner, on the DOPT OM dated 1 July 1991 was inapt, as the said OM dealt only with regularization of service, and not with the date from which the service was entitled to be counted as qualifying service for fixation of pension. Paras 6.5 and 6.6 of the impugned judgment read thus:

“6.5 To summarize, we find that there is substance in the arguments put forth by learned counsel for the applicant that DOP&T O.M. dated 01.07.1991 deals with the question of regularization and does not delve upon the issue at hand i.e. countering of *ad hoc* service rendered prior to regularization as qualifying service. In this regard, the order of co-ordinate Bench of this Tribunal, referred to in para 6 of the OA, is relevant in the instant case also inasmuch as the period of *ad hoc* service can be counted towards the purposes of pension under Rule 13 of CCS Pension Rules subject to compliance of Rule 17 of the said Rules.

6.6 In view of the above discussion, we dispose of this OA directing the respondents to consider counting of period of service spent by the applicant on *ad hoc* basis towards qualifying service in accordance with Rule 3 (1) (q), Rule 13 and Rule 17 of CCS Pension Rules, within a period of four weeks from the date of receipt of a certified copy of this order.”

13. The petitioner has now carried the above order, dated 9 May 2023, to this Court, by way of the present writ petition.

14. We fail to understand why this writ petition was filed. The petitioners have only been directed to consider the counting of the *ad hoc* service of the respondent towards qualifying service for fixation of his pension. There is no imperative direction to the petitioners to grant the said request.

15. Having heard Mr. Sinha, learned counsel for the petitioners, we are not inclined to interfere with the impugned order. We clarify,



however, that the petitioners, in complying with the impugned order of the Tribunal, would decide the entitlement of the respondent independently, uninfluenced by any observation in the impugned order.

A parting observation

16. We feel it necessary to reiterate, here, what we have had occasion to observe once earlier, that it would be befitting for the Tribunal, in cases where the relief sought before the Tribunal, by the applicant before it, was sought before the respondents unsuccessfully, to pass orders on the merits of the entitlement of the applicants, rather than remand the matter. We may note, here, the following observation of the Supreme Court, dealing with remand in the context of Order XLI Rule 23¹³ and 23A of the Code of Civil Procedure, 1908, in *Shivakumar v Sharanabasappa*¹⁴:

“26.4. A conjoint reading of Rules 23, 23-A and 24 of Order 41 brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an appellate court is to follow the mandate of Rule 24 of Order 41 CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a retrial is considered necessary that the appellate court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine

¹³ **23. Remand of case by Appellate Court.**—Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23-A. Remand in other cases.—Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23.

¹⁴ (2021) 11 SCC 277



manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice.”

A remand, therefore, should be a last resort, where the Tribunal is dealing with a relief which has not been urged before the executive authorities, or does not have, with it, the material on the basis of which the claim could be decided on merits. Applicants before the Tribunal are, more often than not, employees who belong to the middle class or lower, and for whom repeated visits to the Court ultimately render their claim, even if it is ultimately granted, illusory. Greater empathy is required to be shown in the case of Government servants and applicants from the working class, as they approach the Court, or the Tribunal, more often than not at the end of their tether, when they face complete apathy from the executive. Quick and expeditious disposal of their claims, one way or the other, is the non-negotiable imperative, if the Tribunal is to retain the *raison d’etre* for which it was set up. Repeated remands do complete disservice to the employee, especially now that, unfortunately, nearly every order of the Tribunal, howsoever innocuous, is challenged before the High Court.

17. Where the Tribunal does not decide the *lis* on merits, the High Court, unfortunately, cannot do so either, as it would then be examining the issue as a court of first instance, which the judgment of the 7-judge bench of the Supreme Court in ***L. Chandrakumar v UOI***¹⁵ specifically proscribes. That proscription does not, however, inhibit the exercise of jurisdiction by the Tribunal, which is entirely

¹⁵ (1997) 3 SCC 261



empowered to decide the dispute on merits, even if it does not have, before it, an *a priori* view of the executive on the issue.

18. We, therefore, respectfully request the Tribunal, and its learned Members, to, if possible, decide the *lis* before them on merits, rather than remand the matter to the executive. We fail to see why the executive, when it has once had an opportunity to take a decision on the applicant's request, and has either rejected it or failed to take a decision, should get another opportunity to do so. It is for this reason that Section 20(2)(b) of the Administrative Tribunals Act, 1985, requires an applicant, who has represented to the executive authorities for redressal of her, or his, grievance, has to wait for six months before approaching the Tribunal. If the applicant has so waited for six months, and has approached the Tribunal thereafter, there is certainly no justification, save in an exceptional case, to grant the executive further time to examine the applicant's case, by remanding the matter to it once again. The ball should ideally be, thereafter, so to speak, in the "court" of the Tribunal, and should not bounce back to the executive, like a game of squash.

19. In the present case, we find no cause to interfere. The writ petition is dismissed.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

DECEMBER 18, 2024/yg

[Click here to check corrigendum, if any](#)