



2024:DHC:9056-DB



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

+ **W.P.(C) 11527/2017**

**ASSOCIATION OF QUALIFIED AND
TRAINED TECHNOLOGISTS, AIIMS
AND ORS.**

.....Petitioners

Through: Mr. Shanker Raju and Mr.
Nilansh Gaur, Advocates

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Anurag Ahluwalia, CGSC
with Ms. Hridyanshi Sharma, Advocates for
R1

Dr. Harsh Pathak and Mr. Mohit Choubey,
Advocates for R3 & 4

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT (ORAL)

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20.11.2024

C. HARI SHANKAR, J.

1. The petitioners had been appointed as Laboratory Technician in the All India Institute of Medical Sciences¹. The first two paragraphs of their appointment orders, all of which were issued on 8 July 1997, read thus:

“With reference to his application/interview dated 10.04.1997 for the post of Laboratory Technician Sh. Naveen Nischal Sharma is

¹ “AIIMS” hereinafter



informed that the Director, AIIMS has approved of his ad-hoc appointment to the post of Laboratory Technician on a pay of Rs. 1320/- p.m. in the pay scale of Rs.1320-30-1560-EB-2040 plus usual allowances as admissible to the Central Govt. servants of his status stationed at Delhi/New Delhi *on a purely temporary basis* for a period of three months with effect from the date he assumes the charge of the post or till regular arrangement is made whichever is earlier, on the following terms and conditions:-

I. His appointment will be *on a purely temporary basis* for a period of three months only, This appointment does not entitle him to any regular appointment unless meanwhile he/she is selected for appointment on a regular basis and his/her appointment is approved by the Competent Authority. His/her appointment may be terminated at any time without any prior notice and without assigning any reasons.”

2. Admittedly, the aforesaid appointment of the petitioners continued uninterruptedly till they were regularized on the post of Laboratory Technician on 8 December 2004.

3. The issue in controversy is whether the petitioners would be entitled to the benefit of the Old Pension Scheme² or the New Pension Scheme³. The NPS, which came into effect on 1 January 2004, it may be noted, replaced the OPS.

4. The petitioners contend that they were entitled to count their entire period of service from 8 July 1997 towards their pension, thereby entitling them to the benefits of the OPS, as the NPS had come into being only w.e.f.⁴ 1 January 2004.

² “OPS”, hereinafter

³ “NPS”, hereinafter

⁴ with effect from



5. The Tribunal has dismissed the petitioners' petition on the ground that the appointment of the petitioners was *ad hoc* whereas Rule 13⁵ of the Central Civil Services (Pension) Rules⁶ entitles counting of the period of service towards pensionary benefits only in the case of an appointment on substantive, officiating or temporary capacity which continues without interruption till substantive appointment.

6. That the petitioners continued without interruption till their service was regularized on 8 December 2004 is not in dispute.

7. The only issue in controversy is whether the petitioners' original appointment could be treated as on substantive, officiating or temporary capacity.

8. The view expressed by the Tribunal in the impugned judgment is that the petitioners' original appointment was *ad hoc* and not temporary, and there is a jurisprudential difference between *ad hoc* and temporary appointment.

⁵ 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.

⁶ the CCS (Pension) Rules



9. We need not enter into that aspect of the matter as the opening paragraphs of the order dated 8 July 1997, whereby the petitioners were appointed, clearly stated that while the appointment was *ad hoc*, it was on a temporary basis. The expression “on a purely temporary basis” is employed twice in the opening two paragraphs of the appointment orders.

10. Though Dr. Harsh Pathak, who appears for the AIIMS, seeks to contend that the temporary nature of these appointments were not “temporary appointments” as envisaged by Rule 13 of the CCS (Pension) Rules, we find no reason to read down Rule 13 in such a fashion. To buttress his contention, Dr. Pathak further submits that the petitioners would also be not entitled to the benefit of the Central Civil Services (Temporary Service) Rules 1965.

11. In our view, the entitlement, or otherwise, of the petitioners to the benefit of the CCS (Temporary Service) Rules cannot be a delimiting factor in the present case as the entitlement to the benefit of Rule 13 of the CCS (Pension) Rules is not made dependent on the entitlement to the benefit of the CCS (Temporary Service) Rules.

12. The opening paragraphs of the appointment orders of the petitioners clearly state that their appointments was on a purely temporary basis. We may note that this is not one of those cases where an appointment was made temporary basis in order to carry out some particular project or duty, which was for a limited period of time, or to occupy the post during the period it remaining unfilled, where there



was a chance of the post being filled in the near future. The petitioners have continued on the said post for seven years, till they were substantively appointed by regularizing of their service in December 2004. The contention of Dr. Pathak that the “temporary” nature of the appointments of the petitioners was not the “temporary” nature envisaged by Rule 13 of the CCS (Pension) Rules, too, therefore, fails to impress.

13. In such matters, the interpretation adopted by the Court has to be expansive, rather than restrictive. It goes without saying that the Court cannot deny, to the employee, the benefit of the Rule by reading it down in a fashion which the Rule itself does not either suggest or warrant.

14. In our opinion, the Tribunal, while passing the impugned judgment, has overlooked the fact that the appointment orders of the petitioners clearly stated that the appointments were on purely temporary basis.

15. In view thereof, the impugned judgment of the Tribunal cannot sustain. The petitioners would be entitled to the benefit of Rule 13 of the CCS (Pension) Rules and, accordingly to the benefit of the OPS.

16. Let any monetary benefits to which the petitioners would be entitled as a consequence of the order passed today be released to the petitioners within a period of six weeks from today.



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17. The impugned judgment of the Tribunal stands set aside to the aforesaid extent.

18. The writ petition stands allowed accordingly.

C. HARI SHANKAR, J.

AMIT SHARMA, J.

NOVEMBER 20, 2024/yg

Click here to check corrigendum, if any