

(2021) 04 DEL CK 0252

In the Delhi High Court

Case No : Civil Writ Petition No. 4755 Of 2021

All India Institute Of Medical Sciences

APPELLANT

Vs

ELSY Jacob & Ors.

RESPONDENT

Date of Decision : 30-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 04 DEL CK 0252

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal, J

Bench : Division Bench

Advocate : Atul Kumar, Archana Kumari, Dr. M.P. Raju

Judgement

Rajiv Sahai Endlaw, J

CM No. 14640/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) No.4755/2021 & CM No.14639/2021 (for stay)

3. This petition, under Article 226 of the Constitution of India, impugns the order dated 31st October, 2019 of the Central Administrative Tribunal

(CAT), Principal Bench, New Delhi, allowing O.A. No.4342/2014 preferred by the respondents no.1 to 52, being Nurses Grade-II in the petitioner All

India Institute of Medical Sciences (AIIMS).

4. The respondents no.1 to 52 filed the O.A. aforesaid, pleading that (i) the respondents no.1 to 52, from time to time, on different dates, from the year

1996 onwards, were interviewed by the Competent Authority and appointed on AD HOC basis, to the temporary post of Sister Grade-II, in the

petitioner AIIMS, initially for a period of 3 months, against leave vacancies etc.; (ii) the letters of appointment issued to the respondents no.1 to 52 on

such appointment, besides providing that the appointment was AD HOC and initially for a period of 3 months, further specified the monthly pay (which

was different in different appointment letters issued at different times) and which monthly pay was "with usual allowances" of the subject pay

scale; it was also a stipulation in the appointment letter, that the appointment was subject to the respondents no.1 to 52 having the prescribed

qualification and furnishing documents in proof thereof; (iii) however the services of the respondents no.1 to 52 were continued, even after expiry of 3

months, without interruption; (iv) though after the date of such AD HOC appointment of respondents no.1 to 52, process of regular appointments to

the post of Sister Grade-II in the petitioner AIIMS took place and though the respondents no.1 to 52 and/or some of them participated in the selection

process for regular appointment, but none of them was selected or appointed; and, (v) however in the year 2004, each of the respondents no.1 to 52

was appointed on a regular basis, on the terms and conditions mentioned in the letters of appointment then issued to each of them.

5. Though the respondents no.1 to 52 claimed several reliefs in the O.A., from which this petition arises, but at the time of hearing, confined the reliefs

to that of, (a) counting of the service rendered by the respondents no.1 to 52 on AD HOC basis, for fixation of seniority; and, (b) consideration of the

respondents no.1 to 52 for promotion to the post of Sister Grade- I, as per Recruitment Rules, on the basis of such seniority.

6. Since the reliefs with respect to seniority and promotion were also claimed in the O.A., the respondents no.1 to 52, who were applicants before

CAT, in their O.A., besides impleading the petitioner AIIMS, also impleaded respondents no.53 to 62 herein, who were/are also holding the post of

Sister Grade-II in petitioner AIIMS but who were appointed on regular basis, though after the date of AD HOC appointment of the respondents no.1

to 52, but before the date of regular appointment in the year 2004 of respondents no.1 to 52, since the said reliefs sought were likely to affect their seniority and promotion.

7. A perusal of the impugned order of CAT does not show the respondents no.53 to 62 herein to have contested the claim of the respondents no.1 to

52 qua seniority and promotion and which relief was likely to affect the respondents no.53 to 62 herein.

8. The counsel for the respondents no.1 to 52, appearing on advance notice/caveat, also on enquiry confirms that the respondents no.53 to 62, inspite of notice, did not file any reply to the O.A. or otherwise contest the O.A. of the respondents no.1 to 52.

9. The counsel for the petitioner as well as the counsel for the respondents no.1 to 52 are also AD IDEM that the respondents no.53 to 62 have also not impugned the order of CAT, though affecting their seniority and promotion.

10. It can thus safely be assumed that the respondents no.53 to 62 whose seniority and time of promotion, even if affected by the relief granted by CAT to respondents no.1 to 52, are not aggrieved therefrom.

11. CAT has allowed the aforesaid two reliefs claimed by the respondents no.1 to 52 and directed the petitioner AIIMS to count the services rendered

by the respondents no.1 to 52 on AD HOC basis, before their regular appointment in the year 2004, in fixing their seniority and for the purposes of

promotion to higher grade etc., reasoning (i) that from the letter of appointment of each of the respondents no.1 to 52 on AD HOC basis, it was

crystal clear that they were appointed in a pay scale and were given increments every year and that on regular appointment, their pay was protected

and fixed at a higher level than the entry level pay; (ii) that in a meeting held on 18th January, 2014 of the Nursing Union with the Director of

petitioner AIIMS, it was informed that the period of service rendered by the respondents no.1 to 52 on AD HOC basis, followed by regular

appointment, would be counted for pensionary benefits, allotment of accommodation etc. but not as qualifying service for voluntary retirement and not

for the purposes of seniority and promotion; (iii) that though usually seniority of an employee would be counted only from the date of his appointment

as per Recruitment Rules, but in view of the peculiar facts of the case i.e., of the respondents no.1 to 52 having been (a) appointed after an interview,

by a Competent Authority; (b) appointed in a pay scale; (c) given increments every year, though their initial appointment was for 3 months only; (d)

continued uninterruptedly till 2004; (e) given a pay scale higher than the entry level pay scale, on regular appointment in the year 2004, taking into

account all the increments they had earned from the date of initial appointment

on AD HOC basis; (f) given protection of pay earned on AD HOC

basis, at the time of regular appointment; (g) given the benefit of period of AD HOC service for pensionary benefits and for allotment of

accommodation, and both of which also affected the respondents no.53 to 62 herein, they were also entitled to the relief of seniority including for

promotion; and, (iv) that the respondents no.53 to 62 herein, inspite of service, had not entered appearance or contested the claim of the respondents

no.1 to 52 herein.

12. The counsel for the petitioner AIIMS has contended, (i) that though the respondents no.1 to 52 were interviewed prior to their AD HOC

appointment, but not by the Selection Committee in accordance with the Recruitment Rules; (ii) that the AD HOC appointment of the respondents

no.1 to 52 was not in pursuance to any public advertisement or through Employment Exchange but through word of mouth; and, (iii) that the

respondents no.1 to 52 were not subjected to any probation and thus the period of their AD HOC service cannot be counted for the purposes of

seniority and promotion and the same would be contrary to the Recruitment Rules.

13. We have however enquired from the counsel for petitioner AIIMS, why the respondents no.1 to 52, at the time of regular appointment in the year

2004, were not subjected to probation.

14. No answer is forthcoming.

15. The counsel for the petitioner AIIMS then contends, that if the impugned order of CAT is sustained, it would open a Pandora's box qua

seniority.

16. The respondents no.1 to 52, in their O.A. before CAT, impleaded respondents no.53 to 62 herein, for the reason of the relief claimed qua seniority

and promotion being prejudicial to respondents no.53 to 62. The respondents no.53 to 62, as aforesaid, did not contest the claim of the respondents

no.1 to 52 and have also not challenged the relief granted by CAT to respondents no.1 to 52. The petitioner AIIMS also, though in this petition has

pleaded, that grant of seniority and promotion as aforesaid to the respondents no.1 to 52 will open a Pandora's box, before CAT did not plead that

there were any others besides the respondents no.53 to 62, whose seniority or promotion was likely to be affected by the relief claimed by the

respondents no.1 to 52. Even in this petition, a vague plea of pandora's box being opened is taken, without any particulars. The bogey of

pandora's box being opened unless the Court intervenes, cannot be raised without laying down any foundation therefor. We are thus not inclined

to agree with the said submission.

17. Be that as it may, even if there were to be some legal merit in the contentions aforesaid of the counsel for the petitioner AIIMS, this petition,

against the order dated 31st October, 2019 of CAT, has come up before this Bench during the prevalent pandemic which has been raging across the

country now for the last more than one year and during which time the medical/healthcare professionals, particularly Nurses, to which profession the

respondents no.1 to 52 belong, have, sacrificing their own personal comforts and life, rendered immense services to the fellow citizens of Delhi and

elsewhere. Till now, the citizens of Delhi, including us, have been expressing appreciation for the efforts of the medical/healthcare

workers/professionals and our gratitude to the Nursing fraternity, only in words. Today, if on technicalities of law, we set aside the relief granted by

CAT to respondents no.1 to 52 Nurses, and to grant of which relief the other Nurses i.e. respondents no.53 to 62 who alone would have been affected

therefrom have not objected, the words of appreciation and gratitude expressed till now, would sound hollow and empty to the respondents no.1 to 52

and in these times, when they are rendering services beyond their call of duty and much beyond the hours they are required to work, affect their

morale. It cannot also be lost sight of, that the respondents no.1 to 52 have worked as Nurses and performed the same duties as regular appointees,

for the period of which they are claiming seniority. The technicality of law, at this hour, should not be allowed to come in their way.

18. Fortunately, we are adjudicating this lis in exercise of our powers under Article 226 of the Constitution of India and in which jurisdiction, as per

dicta of the Supreme Court in Taherakhaton Vs. Salambin Mohammad (1999) 2 SCC 635 consistently followed in Chandra Singh Vs. State of

Rajasthan (2003) 6 SCC 545, Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. (2005) 6 SCC 138, Filmistan Exhibitors Ltd.

Vs. N.C.T. 131 (2006) DLT 648, Babu Ram Sagar Vs. Presiding Officer, Labour Court 2006 SCC OnLine Del 1648, Pradeep Oil Corporation Vs.

Union of India MANU/DE/0281/2012 and Management of Municipal Corporation of Delhi Vs. Delhi Administration MANU/DE/0835/2010, the Court

is empowered not to strike down an illegal order, although it would be lawful to do so. We, as a Court and as citizens of Delhi, are reluctant, during this

time when the entire citizenry is literally in the hands of the nursing profession to which the respondents no.1 to 52 belong, to take away from the

respondents no.1 to 52 what has been granted to them by CAT.

19. We must also express our appreciation for the spirit of brotherhood / sisterhood / comradery demonstrated by the respondents no.53 to 62 herein,

who though possibly prejudiced from the relief granted by CAT in favour of respondents no.1 to 52, chose not to object thereto. Much can be learnt by

members of other professions, therefrom.

20. We thus, in our discretion, refuse to entertain the challenge by way of this writ petition to the order of CAT granting relief to respondent no.1 to 52

Nurses.

21. We however clarify that the aforesaid order having been made in the circumstances aforesaid, shall not constitute a precedent on the proposition

that period of AD HOC service is to be counted in computation of seniority/for the purposes of promotion.