
(1999) 05 AHC CK 0208
In the Allahabad High Court
Case No : C.M.W.P. No. 14322 of 1992, etc.

Dr. Jagdish Singh Katiyar and others	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 15-05-1999

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 — Rule 2, 4, 4(2), 4(6), 5

Citation : (1999) 3 AWC 2219

Hon'ble Judges : S.K. Jain, J; Palok Basu, J

Bench : Division Bench

Advocate : P.R. Pal, Murli Dhar and P.C. Srivastava, for the Appellant; S.C., Umesh Narain Sharma, R.K. Saxena and Pushpendra Kumar Singh, for the Respondent

Final Decision : Disposed Of

Judgement

Palok Basu and S.K. Jain, JJ.—Bereft of the details of all the relevant writ petitions, the principal question involved in this bunch of the writ petition is whether petitioners Dr. Jagdish Singh Katiyar. Dr. Israr Ahmad, Dr. Mithilesh Srivastava, Dr. Ashok Kumar Jaiswal and Dr. R. K. Bajpai petitioners in Writ Petition No. 14322 of 1992 allegedly ad hoc employees working on certain posts have to be regularised as claimed by them in that writ petition or petitioners Dr. Vimal Kumar Tyagi and other selected candidates who have been examined and declared selected for the posts advertised and have been recommended for appointment by U. P. Public Service Commission to the State Government or those very posts, have to be appointed straightway.

2. The proceedings in this Court have not only a chequered history but the records of the various petitions that have been instituted paint dismal picture of how repetitive petitions have been filed by candidates seeking same relief. It is to be pointed out that no useful purpose is likely to be served at all by trying to

find out fault with one or the other candidate who went on filing repetitive petitions and for what purpose. Suffice it to say, that by ultimate orders Writ Petition No. 17263 of 1986 filed by Dr. Jagdish Singh Katiyar, Dr. Israr Ahmad, Dr. Brahma Nand Mishra and Dr. Mithlesh Srivastava as also Writ Petition No. 6618 of 1990 filed by Dr. Ashok Kumar and with another Writ Petition No. 10091 of 1990 filed by Dr. Jagdish Singh Katiyar. Dr. Israr Ahmad and Dr. Mithlesh Srivastava have already been decided, the last one having been dismissed in default by a Division Bench on 28.2.1996 whereas earlier two being disposed of by a judgment of the Division Bench on 1.12.1993. Writ Petition No, 17263 of 1986 was connected with Writ Petition No. 6618 of 1990 as is apparent from the combined reading of the two order-sheets and the operative portion of the order of the Division Bench dated 1.12.1993 which reads as under :

"We accordingly direct the respondents to permit the petitioner to continue as an ad hoc Homoeopathy Medical Officer till duly selected candidate become available for the appointment on the post held by the petitioner or his services are terminated, whichever is earlier. The respondents are further directed to consider the payment of salary to the petitioner which is payable to such doctors in accordance with law."

3. Three petitioners in Writ Petition No. 10091 of 1990 Dr. Jagdish Sfngh Katiyar. Dr. Israr Ahmad and Dr. Mithesh Srivastava had obtained an interim order on 23.4.1990, the relevant portion of which reads as under :

"From the letter of appointment, it appears that the petitioners were appointed on ad hoc basis for a year or till the availability of the selected candidates on the post held by them. The case of the petitioners is that the selected candidate by the Commission are still not available. In view of this we suspend the operation of the order dated 12.4.1990 terminating the services of the petitioners."

4. As stated above, this Writ Petition No. 10091/90 has been dismissed in default under the following order dated 28.2.1996 :

"Case has been taken up in the revised list. None present for the petitioner. Learned standing counsel is present. Writ petition is dismissed in default of the petitioners. Stay order dated 23.4.1990 is vacated."

5. As mentioned at the outset, the surviving writ petition No. 14322 of 1992 which contains 5 petitioners as mentioned was filed on 22.4.1992 and the relevant portion of the interim order of that date reads as under ;

"Meanwhile selection proceedings before the U. P. Public Service Commission may go on, but no substantive appointment shall be made on the post on which the petitioners are working."

6. The other surviving petition is C.M. Writ Petition No. 38833 of 1996 which is filed by three petitioners Dr. Jagdish Singh Katiyar, Dr. Israr Ahmad and Dr. Mithlesh Srivastava was filed on 3.12.1996 when it was directed to be connected with Writ Petition No. 14322 of 1992, but no interim order was passed though

counter-affidavits were called. The prayer made in Writ Petition No. 14322 of 1992 by the 5 petitioners is that-

(a) Issue a writ of certiorari to quash the advertisement made by Public Service Commission U. P. No. 4/91-92 Hem No. 15 (Annexure-8) as well as the selection process in pursuance thereof to the extent of 5 posts on which the petitioners are working as Homoeopath Medical Officers under the scheme.

(b) Issue a mandamus directing the respondents to regularise the services of the petitioners on the post of Homoeopath Medical Officers."

7. The prayer in the Writ Petition No. 38833 of 1996 filed by three out of the aforesaid 5 petitioners contains the following prayer :

"Writ of mandamus requiring the respondents to regularise the petitioners" services as Homoeopath Medical Officer in Employees State Insurance Scheme (in short E.S.I.) Labour Medical Services, U.P., Kanpur."

8. The Writ Petition No. 39319 of 1996 is by Dr. Ashok Kumar alone which was filed before the Division Bench on 6.12.1996 when it was requested that it should be put up along with Writ Petition Nos. 38678 of 1996 and Writ Petition No. 38833 of 1996. The last petition in the series is Writ Petition No. 37188 of 1997 filed by Dr. Bagish Chandra Mishra alone in which the following orders have been passed by a Division Bench on 7.11.1997 :

"Connect this with Writ Petition No. 17263 of 1986. Learned standing counsel prays for and is granted 6 weeks time to file his response. Meanwhile it is provided that in pursuance of the advertisement made in the year 1996, the selected candidates may join the posts but their selection dated 5.9.1996 shall be subject to the final decision in this writ petition. The petitioner may approach to the State Government regarding his grievance as is set out in the writ petition and for regularisation on the post upon which he is working and if such representation is made that would be considered by the State Government and appropriate orders would be passed within 6 months from the date of the submission of the representation."

9. Before proceeding further, it may be at once mentioned that as has already been noticed above Writ Petition No. 17263 of 1986 stands already disposed of long also and may be that since the correct number may not have been intimated to the Court, the aforesaid No. 17263 of 1986 has come to be noted therein which in all likelihood should have been either 14322 of 1992 or Writ Petition No. 38833 of 1996.

10. Shri Murlidhar learned Senior Advocate assisted by Shri Ram Pratap Singh has been heard at considerable length on behalf of the petitioners. Shri Umesh Narain Sharma and Shri P. C. Srivastava assisted by Shri Anil Kumar Bajpai on behalf of the petitioners in Writ Petition No. 24990 of 1998, Shri R. K. Saxena standing counsel for the State of U. P. and Shri Pushpendra Kumar Singh standing counsel for the U. P, Public Service Commission have also been heard at

considerable length.

11. The controversy giving rise to the appointment of 6 petitioners in Writ Petition No. 14322 of 1992 may be dealt with now.

12. It is alleged that with effect from 10.6.1985, the E.S.I. department was transferred to Labour Department from medical department of the State Government and a separate Directorate was constituted at Kanpur for E.S.I, doctors. The Labour Commissioner advertised three posts for ad hoc appointment. It is said that 6 new posts were also created apart from the aforesaid three. It is said that on 16.11.1985, a selection committee selected 6 persons, namely, Dr. Om Prakash. Dr. Ashok Kumar, Dr. Mithlesh Srivastava. Dr. Israr Ahmad, Dr. J. P. Kannaujia and Dr. Jagdish Singh Katiyar, but appointment letters were issued only to the three, namely, Dr. Om Prakash, Dr. Ashok Kumar and Dr. Mithlesh Srivastava on 13.12.1985. It is said that ultimately gazetted posts of Homoeopath Medical Officers under E.S.I, were created on 26.2.1986 when petitioners Dr. Jagdish Singh Katiyar, Dr. Israr Ahmad, Dr. Mithlesh Srivastava and Dr. Ashok Kumar Jaiswal were called for interview on 16.11.1985.

13. The petitioners have asserted that even though they were selected for ad hoc appointment, no appointment letter was being issued nor result of the interview was being declared. Consequently, three first petitioners filed Writ Petition No. 17263 of 1986 for commanding the respondents to declare the result of the examination. The interim mandamus dated 5.2.1987 was confirmed on 10.12.1987 and it is alleged that some result was declared on 9.3.1988 and petitioner Nos. 1 to 4 namely Dr. Jagdish Singh Katiyar, Dr. Israr Ahmad, Dr. Mithlesh and Dr. Ashok Kumar Jaiswal alone were shown successful, but they were not being given appointment. Some applications were allegedly made in the said Writ Petition No. 17263 of 1987 upon which a learned single Judge directed that :

"In the circumstances, I direct respondent No. 2 Director Employees State Insurance Scheme Labour Medical Services U. P., Sarvodaya Nagar, Kanpur to issue appointment letter to petitioner Nos. 1, 2 and 4 within a period of one week from the date of presentation of a certified copy of this order before him.

Sd/- Ansuman Singh

8.4.1988."

14. It is said that appointment letter to petitioner Nos. 1, 2 and 3 were issued on 17.4.1989. It is said that petitioner No. 4 got his result declared on 9.3.1988, but got his appointment letter only after such a direction was issued in Writ Petition No. 6618 of 1990. It is alleged that his appointment letter is dated 31.3.1990.

15. It is alleged further that petitioner No. 5 Dr. R. K. Bajpai filed some writ petition in Lucknow Bench of this Court which passed an order on 9.11.1987 for giving similar appointment to petitioner Dr. R. K. Bajpai also for a period of 6

months.

16. Before adverting to further developments relating to the advertisement, etc., it may be pointed out that the averments in this writ petition relating to holding of interview, holding of examination, issuing letters of appointment are all very confusing. The averments may be intentionally obscure, if not deliberately left vague. Be that as it may, the petitioners are shown to "have obtained interim order from this Court firstly for getting the examination held, then for declaration of result in the examination, then getting the appointment letters and then continuing through interim orders.

17. It is then said that in the aforesaid bunch of writ petitions this Court went on extending the interim order noted above with the result that those petitioners continued in the aforesaid posts. Then came the Writ Petition No. 38833 of 1996 seeking regularisation followed by Writ Petition No. 37188 of 1997 by Dr. Bagish Chandra Mishra praying quashing of the G.O. dated 20.10.1997 where a selected candidate was sought to be appointed by the Government in E.S.I. Dispensary, Govind Nagar, Kanpur and further prayer therein was that respondents should not interfere with the working of the petitioner. The interim order dated 7.11.1997 has already been quoted above. Likewise came the Writ Petition No. 39319/1996 by Dr. Ashok Kumar which also had similar prayers as in Writ Petition No. 37188 of 1997 seeking regularisation of the petitioners in the Homoeopath Medical Officer in E.S.I. Scheme.

18. Since it is not denied and admitted by every petitioner that all of them were issued ad hoc appointments against temporary posts, the exact contents of the appointment letters issued to, the petitioners is not being quoted, the gist of which is that the appointment of all the petitioners would be terminated at any time without any notice on the selection of the regular candidates or at the completion of the period of the said ad hoc appointment.

19. It is also not in dispute that Government duly notified to the Public Service Commission for selecting candidates for the appointment to the said posts. It may be pointed out that Shri Pushpendra Singh has referred to the original letter of the State Government which was available to him through relevant record which intimated that initially the Public Service Commission was to hold selection for 10 posts which was subsequently made for 11 posts, as is mentioned in the letter dated 24.9.1991 of the State Government requisitioning selected candidates from the Public Service Commissioner. It was pointed out by Shri Pushpendra Singh that selection could not take place at the level of Public Service Commission for some controversy arose as to the applicability of rule of reservation for certain types of candidates. In this connection, it may be pointed out that by the letter dated 7.2.1995, the State Government intimated the Public Service Commission that out of 11 posts, one post has been made permanent while 10 posts remained temporary.

20. It is admitted case between the parties that Public Service Commission held

the selection on 22.11.1996 when it recommended the names of 11 candidates at this very stage, it should be mentioned that vide letter dated 20.10.1997, the State Government has intimated the Public Service Commission that only 6 candidates were appointed by the Government from out of the selected candidates and 5 have not yet been appointed. Some discussion of this aspect shall follow soon hereinafter.

21. Reliance has been placed by Shri Murlidhar on the rules known as U. P. Regulation of ad hoc appointment (on posts within the purview of the Public Service Commission) Rules. 1979 as amended upto date. Rules 2, 4 and 5 of the aforesaid Rules provides as under :

"2. Overriding effect.--These rules shall have effect notwithstanding anything to the contrary contained in any other rules or orders.

4. Regulation of ad hoc appointments.--(1) Any person who-

(i) was directly appointed on ad hoc basis before January 1, 1977 and is continuing in service, as such, on the date of commencement of these rules;

(ii) possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment ; and

(iii) has completed or, as the case may be, after he has completed three years continuous service : and

shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2)

(3) For the purpose of sub-rule (1), the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary.

(4)

(5)

(6) The Selection Committee shall prepare a list of selected candidates, the names in the list being arranged in order of seniority, and forward it to the appointing authority.

5. Appointments.--The appointing authority shall, subject to the provisions of sub-rule (2) of Rule 4 made appointments from the list prepared under sub-rule (6) of the said rule in the order in which their names stand in the list."

22. It may be mentioned here that by virtue of Rule 6 it is provided that appointments made under these rules shall be deemed to be under the relevant

service rules or orders. If any.

23. Shri Murlidhar placed reliance on some decisions which will be referred soon hereafter.

24. Shri Umesh Narain Sharma, however, placed reliance on the provisions of the aforesaid rules and vehemently argued that the clauses in the said rules are not applicable to the petitioners in Writ Petition No. 14322 of 1992 or Writ Petition No. 38833 of 1996 and, therefore, no relief can be claimed by them much less granted by the State Government.

25. Shri R. K. Saxena standing counsel has said that the selection of the candidate was properly done and the respondents have brought on record all the materials through which it is indicative that those petitioners were having time bound appointment which was ad hoc in nature and had no basis for confirmation or regularised having been advertised by the Public Service Commission as provided under the law.

26. Shri Pushpendra Singh has argued that once the regular select list has been forwarded by the Commission to the State Government, the only course which should normally be followed is to appoint the selected candidates against the posts advertised. It may be pointed out here that all the selected candidates applied for impleadment as opposite parties in the Writ Petition Nos. 14322 of 1992 and Writ Petition No. 38833 of 1996 which has been allowed. It was rightly pointed out by Shri Singh as well as Shri Sharma that none of the ad hoc employees had applied for selection by Public Service Commission after the posts were advertised nor have they filed any petition for being called for interview for the advertised posts by the U.P.P.S.C.

27. Coming now to the authorities cited by Shri Murlidhar, the first one is that of *Jai Kisan and others v. U. P. Co-operative Bank Ltd.*, Lucknow. 1989 (2) UPLBEC 144. In the cited case, the cut off date 1.5.1983 was declared arbitrary and discriminatory and, therefore, it was held to be hit by Article 14 of the Constitution of India. It has been held in this case that there was no rational principle of the object which was sought to be followed by classifying the ad hoc appointees by fixing a particular date namely 1.5.1983 and making the benefit of regularisation rules available to those who were appointed prior to 1.5.1983 and not extending the benefit to the employees appointed thereafter is, therefore, ultra vires to Constitution of India.

28. The other ruling cited is that of a learned single Judge in *Arvind Kumar Yadav v. State of U. P. and others*. 1994 (2) UPLBEC 1019. So far as this ruling is concerned, it was rightly pointed out that it has been overruled by a Division Bench of this Court reported in *Subedar Singh and others v. District Judge, Mirzapur* 1997 (1) ESC 655.

29. The argument of Shri Murlidhar proceeded on the strength of the decision in *Jai Kisan* (supra) on the basis that Rule 4 of the Regularisation Rules applicable

on the type of employees as the petitioners do not demarcate any reason for conferring regularisation on employees who have been appointed till 1.10.1986. By reading the said Rule 4, he developed the argument to mean that since the amended rules were notified on 7.8.1989 and the cut off date was 1.10.1986, the period of 3 years would have ended hypothetically on 1.10.1989. Therefore, the petitioner should be directed to be regularised because their appointments were made on 17.4.1989. Shri Murlidhar proceeded to argue that since the date of notification is 7.8.1989 and the petitioner's date of appointment is 17.4.1989, they should be permitted to come within Rule 4 noted above.

30. It was rightly pointed out by the respondents that the cut off date is 1.10.1986 as mentioned in Rule 4 which is the deadline for claiming regularisation and thus there is an inherent fallacy in the argument advanced by Shri Murlidhar. In order to accept his arguments, one will have to add three years period to the cut off date and then go to hold that the rule may apply to such a case. This cannot be so. The completion of three years w.e.f. 1.10.1986 could alone go upto 1.10.1989. Clause III of sub-rule 1 of Rule 4 has to be read with dated 1.10.1986, i.e., any one who has completed three years on 1.10.1986 or after he has completed three years continuous service w.e.f. 1.10.1986 may get the benefit of regularisation. To cut short the argument of Shri Murlidhar, it may be pointed out that cut off date as may be applied by the State either for age or for qualification has been upheld by Hon"ble Supreme Court in two decisions. In *Union of India and Another Vs. Sudhir Kumar Jaiswal*, , the cut off date concerning age of a candidate has been held to be applicable strictly and likewise cut off date in qualifications for a post is strictly applicable has been held in the case of AIR 1998 91 (SC)

31. It may be pointed out that in the case of *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, In *B. L. Gupta and others v. Municipal Corporation and another* 1998 (3) ESC 218 in *Dr. Surendra Singh Jaiswal v. State of J & K*. 1996 (6) SC 141 the consistent view expressed by the Hon"ble Supreme Court is that regularisation cannot be claimed only by some number of years in employment, but it may be permissible only strictly in accordance with rules if any.

32. It has been said above that in none of the rules referred to above nor is there any provision of law under which the petitioner can claim regularisation.

33. It was rightly pointed out by Shri Umesh Narain Sharma as well as Shri P. C. Srivastava on behalf of the duly selected candidates that they have been denied appointment for no rhyme or reason. It is really astonishing that inspite of regular selection, these candidates are not getting appointment because the State Government has taken the view that due to interim orders passed by this Court in the writ petitions being decided today. The State Government issued appointment letters to only six candidates and 5 are yet waiting for the same, like 5 birds looking to the black clouds with silver lining to bestow few drops of rain on their parched throats!

34. In view of the aforesaid discussion, the ultimate conclusion is that none of the petitioners in Writ Petition No. 14322 of 1992 and Writ Petition No. 38833/96 or any other individual petitioners in the connected writ petitions who was appointed against the vacancy as ad hoc candidate for time bound period can claim regularisation in the aforesaid rules, therefore, their writ petitions have to fail. Simultaneously it is to be held that Writ Petition No. 24990 of 1998 has to succeed inasmuch as a direction/mandamus has to go to the State Government to make forthwith appointment of remaining 5 candidates in the select list forwarded by the Public Service Commission.

35. Notwithstanding what has been stated above, it will be open to the State Government to think about what steps it can take lawfully so that the petitioners in Writ Petition No. 14322 of 1992 and Writ Petition No. 38833 of 1996 or any other individual in the connected petition who was appointed in pursuance of the appointment orders on ad hoc basis on those posts, get an opportunity to selection for some equivalent posts or get an opportunity of appearing in test or selections for such equivalent posts which they have been enjoying so far.

36. All the writ petitions stand finally disposed of with the aforesaid directions and all interim orders are vacated.

37. Parties will bear their costs.