
(2008) 11 SC CK 0034

In the Supreme Court Of India

Case No : Contempt Petition (C) No. 169 of 2005 in Contempt Petition (C) No. 615 of 2004 in Civil Miscellaneous Petition No. 8076 of 1988 in Civil Appeal No. 3519 of 1984 and Contempt Petition No. 160 of 2005 in CA No. 3519 of 1984 I.A. No's. 1, 3-5 in Civil Appea

Dr. P.P.C. Rawani and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-11-2008

Acts Referred:

Citation : (2009) 1 AWC 609 Supp : (2009) 1 JT 34 : (2008) 15 SCALE 393 : (2008) 15 SCC 332 : (2009) 2 SCC(L&S) 482 : (2009) 2 SLJ 236

Hon'ble Judges : S. B. Sinha, J;R. V. Raveendran, J;Markandey Katju, J

Bench : Full Bench

Advocate : R. Mohan, R. Moha, ASGs, K.V. Viswanathan, K.V. Venkataraman, Atul Kumar Sinha, for Devendra Singh, Naresh Kaushik, Satish Dayanandan, Parag Goyal, Amita Kalkal, for Lalita Kaushik, Sandhya Goswami, for Sushma Suri, Prerna Kumari, Naveen R. Nath, Nikhil Nayyar, for the Appellant;

Final Decision : Disposed Of

Judgement

R.V. Raveendran, J.—Contempt Petition No. 160/2005 is filed by the doctors regularly recruited through Union Public Service Commission (UPSC, for short). Contempt Petition No. 169/2005 is filed by the doctors who were appointed on ad hoc basis between 1968 and 1977 and whose services were regularized with effect from 1.1.1973 or from the date of their initial appointment.

2. Civil Appeal No. 3519/1984 and Writ Petition No. 1228/1986, filed by some Doctors appointed on ad hoc basis, were disposed of by this Court by order dated 9.4.1987 recording the submission on behalf of the Union of India that the services of several of the ad hoc appointees had been regularized and the services of the rest will also be regularised. Referring to the issue of seniority inter-se among them, this Court observed that if the orders of regularization of appointment are made to take effect from the respective dates of their initial

appointment, and seniority was consequently determined, the problem will be solved. As there was no objection to such a course by the ad-hoc doctors (appellants/petitioners therein), the said appeal and writ petition were disposed of accordingly.

3. The Union of India experienced some difficulties in giving effect to the directions of this Court as it found that if regularization was granted with effect from the date of their initial appointment to all the ad-hoc appointees, several regularly appointed doctors may be relegated to secondary position, in view of the earlier appointment of ad hoc doctors. The regularized doctors therefore filed applications before this Court for giving effect to the orders dated 9.4.1987. The regularly appointed doctors also filed applications to ensure that their interests were not jeopardized/prejudiced. They pointed out that they were not parties to the cases decided on 9.4.1987. These applications were considered and disposed of by this Court with the following directions by order dated 29.10.1991 reported in Dr P.P.C. Rawani and Others Vs. Union of India (UOI) and Others, :

(1) Each of the appellants will be treated as regularized in Group A of the Central Health Service from January 1, 1973 or the date of his first initial appointment in the service (though as ad hoc Group B doctor), whichever is later.

(2) In order to ensure that there is no disturbance of the seniority and the promotional prospects of the regularly recruited doctors there will be a separate seniority list in respect of the appellants and their promotions (about which directions are given below) shall be regulated by such separate seniority list and such promotions will only be in supernumerary posts to be created as mentioned below.

(3) (a) Each of the appellants will be eligible for promotion to the post of Senior Medical Officer or Chief Medical Officer or further promotional posts therefrom taking into account his seniority in the separate seniority list which is to be drawn up as indicated above.

(b) The promotion of any of the appellants to the post of Senior Medical Officer, Chief Medical Officer and further promotional post therefrom will be on par with the promotion of the regularly recruited doctor who is immediately junior to the concerned appellant on the basis of their respective dates of appointment. In other words, if a regularly recruited doctor, on the basis of the seniority list maintained by the department, gets a promotion as Senior Medical Officer or Chief Medical Officer or further promotion thereafter, then the appellant who was appointed immediately earlier to him will also be promoted as a Senior Medical Officer or Chief Medical Officer or further promotion therefrom (as the case may be) with effect from same date.

(4) In order that there may be no conflict or any possibilities of reversion, the post to which an appellant will be promoted (whether as Senior Medical Officer or Chief Medical Officer or on further promotion therefrom) should only be to a supernumerary post. Such number of supernumerary posts should be created by

the government as may be necessary to give effect to the above directions. No promotion will be given to any of the appellants in the existing vacancies which will go only to the regularly appointed doctors.

(5) The appellants hereby agree to give up all monetary claims on account of revision of scales, regularization or promotion to which they would be entitled till October 31, 1991.

(6) Apart from the appellants there are certain doctors who fall in the same category but who had not filed writ petitions before the High Court. They have filed directly writ petitions before this Court bearing Nos. 2620- 2659 of 1985 and intervention applications. The intervention applications are allowed and rule nisi is issued in the writ petitions of which the other parties take notice. These interveners and writ petitioner have to be granted the same relief as the appellants. It is made clear that all these applicants and petitioners will be entitled to the same reliefs as the appellants for all purposes of seniority and promotion. All monetary claims on account of revision of scales, regularization or promotion till October 31, 1991 are given up by these applicants and petitioners as well.

(emphasis supplied)

4. The regularized doctors filed Contempt Petition No. 615/2004 alleging non-compliance with the order dated 29.10.1991. That petition was disposed of on 13.5.2005 recording the submission that the order dated 29.10.1991 will be implemented in six weeks. The regularized doctors have again filed a contempt petition (Contempt Petition No. 169/2005). The regularized doctors contend that whenever any regularly appointed doctor is promoted to Senior Administrative Grade from the post of Chief Medical Officer - Non Functional Selection Grade (for short 'CMO (NFSG)'], all regularized doctors whose dates of appointment were earlier to that of such promoted regularly appointed doctor, should also be promoted to the post of Senior Administrative Grade, having regard to directions contained in the order dated 29.10.1991. The regularised doctors contend that respondents have failed to comply with the said directions and therefore committed contempt.

5. On the other hand the regularly appointed doctors have filed a Contempt Petition No. 160/2005 contending that having regard to the directions in the judgment dated 29.10.1991, the regularized doctors can only be promoted to supernumerary posts and in the same ratio which is available to regularly appointed doctors. They contend that if the directions issued on 29.10.1991 are construed in the manner put forth by the regularized doctors, it will adversely affect their seniority and promotional prospects which were specifically protected by directions No. (2) and (4) issued on 29.10.1991. They contend that any attempt by respondents (Union of India and its authorities) to promote regularized doctors to substantive posts would violate the directions of this Court contained in the order dated 29.10.1991. They also seek a direction to restrain

the respondents from creating more than 12 supernumerary posts at SAG level. The regularly appointed doctors have also filed an application for clarification (IA No. 3/2005) seeking following clarifications/ modifications of the order dated 29.10.1991:

(a) Insofar as promotion to the SAG level is concerned, ratio of the said posts to total strength shall be maintained at 3.8% in the case of regularized (ad hoc) doctors group, as is done in the case of regular doctors group.

(b) In determining the promotion of ad hoc doctors, the date of actual appointment of the juniormost person in a batch of regular doctors (where the UPSC has recommended their appointments on a single date) shall be the point of reference for parity with ad hoc doctors.

(c) While promoting ad hoc doctors of supernumerary SAG level posts, Union of India should ensure that no such promotee ad hoc doctor officiates against a senior post to the detriment of any doctor whose actual date of appointment is prior to the date of appointment or deemed appointment of such ad hoc doctor.

6. Therefore what falls for consideration is the true import of directions contained in Paras 3(a) and (b) of the order dated 29.10.1991.

7. The genesis of the problem relates back to the order dated 9.4.1987. Two things are evident from the said order. First is that this Court, in passing the said order, did not adjudicate upon the rights or claims of the ad hoc appointees on merits. The matters were disposed merely recording the submission of the respondents that all ad hoc appointees were regularized or will be regularized. The second is that the direction relating to the seniority of regularized doctors in that order is not with reference to regularized doctors vis-à-vis regularly appointed doctors, but only inter-se among the ad hoc doctors who were regularized. This is clear from the following observations in the said order:

Pursuant to the interim directions and suggestions made by us, the services of several of the petitioners have already been regularized and we are assured that the services of the rest will also be regularized. It is however stated by the learned Counsel for the Union of India that there can be some problem regarding their seniority since some have been regularized earlier and some later. The difficulty anticipated is capable of easy solution. All orders of regularization made pendente lite are naturally subject to our final orders. Those in respect of whom orders of regularization have already been issued and the others are all parties before us.

If the orders of regularization of appointment are made to take effect from their respective dates of original appointment and seniority so determined there will be no other problem. Sri Venugopal, learned Counsel assured us that none of the doctors has any objection to this course. It may be so done. This order disposes of the appeal and the writ petition.

[Emphasis supplied]

8. The orders dated 9.4.1987 and 29.10.1991 make it clear that this Court did not intend any regularized doctor to steal a march over the regularly appointed doctors, either individually or as a group. To ensure that the seniority and promotional prospects of regularly recruited doctors were not affected, this Court directed a separate seniority list in respect of the regularized doctors and clarified that their promotions will only be in supernumerary posts to be created. Supernumerary posts are non-cadre permanent posts. They are created to accommodate the lien of officers who are entitled to hold a lien against regular permanent posts. Being ex-cadre posts, no specific duties are attached to them and the officers concerned usually perform duties in some vacant temporary or permanent posts. vide D.K. Reddy and Another Vs. Union of India (UOI) and Others, .

9. If all the ad hoc doctors were to be regularized with effect from the date of their initial appointment, with seniority also from the date of initial appointment, there will be no difference between regular recruitment and regularization of ad hoc appointments, thereby defeating the very purpose of systematic regular recruitment through UPSC. Ad hoc or stop gap appointees were not normally regularized and given seniority from the date of initial appointment. They were usually given regularization and seniority only after a certain period of service, which used to vary from one year to ten years or even more. When this Court directed on 9.4.1987, that regularized doctors shall have seniority from the date of their initial appointment, it was only a direction intended to regulate the seniority inter-se the regularized doctors as this Court found that among the ad hoc appointees, regularization was not being effected in accordance with seniority and some who were subsequently appointed were being regularized earlier and some who earlier appointed were being regularized later. It was not intended to affect the seniority of regularly appointed doctors. The regularized doctors cannot occupy the posts meant for regular doctors, either at entry level or at higher promotional levels.

10. When the clarificatory order dated 29.10.1991 was passed, this Court took care to direct that promotions of regularized doctors will only be in supernumerary posts. This Court also directed that promotion of any regularized doctor will be on par with the promotion of the regularly recruited doctor who is immediately junior to the regularized doctor. This meant that if one regularly appointed doctor was promoted, one regularized doctor (that is, the senior most from those regularized doctors whose date of initial appointment was earlier to that of said promoted regularly appointed doctor) was to be promoted by creating a supernumerary post. The above is also clear from the wording of Para 3(b) of the directions dated 29.10.1991 which uses the term 'on par' and uses singular and not plural, when referring to the regularized doctor to be promoted. The clarificatory order dated 29.10.1991 did not mean that if one regularly appointed doctor was promoted, all regularized doctors appointed earlier to his appointment, should be promoted to a higher post by creating that many number of supernumerary posts. Such an interpretation will lead to absurd results and

give undue advantage in promotions to regularized doctors who are outside the cadre. To clarify the interpretation, we give below an illustration.

Illustration : On 1.1.2008, there are 50 regularly appointed Chief Medical Officers and 25 regularized Chief Medical Officers. One regularly appointed CMO whose date of appointment is 1.1.1990 is promoted to Senior Administrative Grade. Out of the 25 regularised CMOs, 10 were appointed prior to 1.1.1990. The clarificatory directions dated 29.10.1991 does not require all 10 regularised CMOs appointed prior to 1.1.1990 to be promoted to Senior Administrative Grade by creating ten supernumerary posts. All that it requires is that when one regularly appointed doctor holding the post of CMO (appointed on 1.1.1990) is promoted, one regularized doctor holding the supernumerary post of CMO (who is senior-most from among the regularized doctors who were appointed prior to 1.1.1990) will have to be promoted to a supernumerary post of Senior Administrative Grade.

11. Having regard to the different interpretations put forth by the regular doctors and regularized doctors, it cannot be said that the respondents (Union Government and its officials) disobeyed the orders of this Court by their action or inaction. The rival claims led to a state of confusion. We have therefore given the clarification as above to put an end to the long pending controversy.

12. It is made clear that what is stated above is only an interpretation of the orders dated 9.4.1987 and 29.10.1991. Neither the order dated 9.4.1987 nor the clarificatory order dated 29.10.1991 lays down any principle of law in regard to either regularization or inter se seniority between regular appointees and regularized appointees. The order dated 29.10.1991 merely attempted to give finality to an issue which had arisen in the context of the order dated 9.4.1987 which was in the nature of a consent order. In fact, referring to the order dated 29.10.1991, this Court stated thus in *Dr M.A. Haque and Others Vs. Union of India (UOI) and Others*, :

In fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commission. It appears that since this Court has in some cases permitted regularization of the irregularly recruited employees, some Governments and authorities have been increasingly resorting to irregular recruitments. The result has been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidates dictated by various considerations are being recruited as a matter of course. What is further, in the present case, some of those like the petitioner-applicants who were initially recruited on ad hoc basis, have exerted themselves and taken pains to appear for the tests before the UPSC and have enrolled themselves through regular channel unlike in *Dr. Rawani* case. We have thus on hand three classes of employees as pointed out earlier, viz., the outside direct recruits, the in-service direct recruits and the ad hoc employees like the petitioner-applicants who were regularized through the Court's order. Further, Dr.

Rawani case as has been pointed out on behalf of the respondents, pertains to the Central Government Health Services which has a target component both at the initial and promotional stages. The course adopted by this Court to direct creation of supernumerary promotional posts at every higher promotional stage there, may not be feasible in the medical service in the Railways. The creation of supernumerary posts has its own limitations, both physical and financial. The burden of additional posts even when they are not necessary and cannot be accommodated, is not easy to carry. We are, therefore, of the view that the directions given in Dr. Rawani case has to be confined to the special facts of that case and cannot be extended to other cases. In any case, this Court should not give any such direction to the Railways. If, however, the Railways decide to follow that course, they can do so and nothing prevents them from doing it. We would rather refrain from creating a precedent by giving such directions.

[emphasis supplied]

Whatever we have stated above will apply only to the controversy that has arisen in regard to the interpretation of the order dated 29.10.1991. It is made clear that neither the directions in the order dated 29.10.1991 (reported in Dr P.P.C. Rawani and Others Vs. Union of India (UOI) and Others, nor the clarification of those directions by this order, shall be construed as an enunciation of any general principle nor be applied as a precedent in any other case relating to any dispute between regularly appointed employees and regularized employees.

13. With the above observations and clarifications, and a direction that the respondents shall give effect to the order dated 29.10.1991, as clarified above, the contempt petitions and applications for clarification/modification are disposed of.