

(1989) 04 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 16969 of 1988

Dr. (Smt.) Rashmi Kumar and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-04-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 32
Employees State Insurance Act, 1948 — Section 17(3)

Citation : (1989) 2 AWC 888

Hon'ble Judges : Om Prakash, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : Sudhir Chandra and Tarun Agarwala, for the Appellant;

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—This petition filed by Dr. (Smt.) Rashmi Kumar and seven others seeks quashing of the advertisement made by the U.P. Public Service Commission for recruitment of lecturers in various specialities enumerated in the advertisement issued by it in K.G. Medical College, Lucknow.

2. The Petitioners alleged that in pursuance of the advertisement made on 25th February, 1984 by the Director of Medical Education and Training, Lucknow, Respondent No. 2, the relevant portion of which was as follows:

for making ad hoc appointment on the post of lecturers in the under noted specialities in the State Medical Colleges and K.G. Medical College, Lucknow.

the Petitioners 1 to 6 and 8 had applied as against the said advertisement of the year 1984 whereas Petitioner No. 7 applied against the advertisement issued in 1985 by the Director of Medical Education and Training, Lucknow. The Selection Committee, the Petitioners have alleged, interviewed them, recommended their names for appointment as lecturers and doctors in their respective posts in K.G. Medical College, Lucknow. After being selected, the Petitioners were issued appointment letters. The relevant portion of the appointment letter of Petitioner

No. 1, Dr. (Smt.) Rashmi Kumar, is extracted below:

Adhohastakshar ko yeh kahne ka nirdesh hua hai ki Rajyapal Mahodaya Dr. (Smt.) Rashmi Kumar ki K.G. Medical College, Lucknow me Lecturer in Paediatrics ke pad par tadarth niyukti unke dwara sambandhit pad ka karya bhar grahan karne ki tithi se ek varsh ya ukt pad par Ayog dwara bidhivat chunao ke adhar par uplabdh abhyarthi ki niyukti hone ya unke us pad par sewaon ko avashyakta na rahne, unme se jo bhi pahle ghatit ho, tak ke liya niche para 2 me ullikhit sharton avam paratibandhon par anumadit karte hain.

Similar appointment letters were issued to other Petitioners.

3. On 23rd April, 1985, Sri S.S. Misra, who was the Director wrote a letter to the Principal, K.G. Medical College, Lucknow intimating that the services of the Petitioners and others would not be terminated in May 1985 although their terms of appointment made for one year would be over by that time. The letter said:

Shashan ke agrim adeshon tak uproakta kathit adhyapakon/adhikariyon ki sewa samapt na ki jaye.

4. The Petitioners were continued on the posts appointed on ad hoc basis in 1984 although they were liable to be terminated. The State Government has been issuing letters or instructions deprecating the tendency of making ad hoc appointments in its various departments as it was thought that the State Government should not encourage a tendency which passes over the requirement of the consultation of the Public Service Commission. These Government Orders were (i) No. 19/5/81-Karmik-I; dated 28th August, 1981; (ii) No. 6631-Section 14/-99/83 dated 1st October, 1985 and (iii) No. 15/18/86--Karmik-1-1986 dated 18th March, 1986. In paragraphs 1, 2 and 3, which are a virtual repetition of paragraphs of other G. Os. mentioned above, the State Government issued strict instructions to the authorities for not making ad hoc appointments.

5. An ad hoc employee, who has been appointed for a particular period or purpose or to meet an exigency, has no right to continue on the post by claiming himself to be permanent. Such an appointment terminates with the happening of the contingency or the expiration of the period or purpose. He has no right to hold it. Such an employee or a government servant is not entitled to a Writ of Mandamus restraining the employer from making a regular appointment or for a Mandamus to the employer to regularise his service. Power to regularise a post held by an ad hoc employee flows from the power of appointment.

6. In S.P. Vasudeva Vs. State of Haryana and Others, , the Supreme Court held that an ad hoc or temporary employee has no right to the post. In a Full Bench judgment, in S.K. Verma and Others Vs. State of Punjab and Others, Sandhawalia, J., who spoke for the bench, discussed the problem. The relevant extract from the Full Bench are quoted below:

The term "ad hoc employee" is conveniently used for a wholly temporary

employee, engaged either for a particular period or for a particular purpose and one whose services can be terminated with the maximum of ease.

As against the permanent, quasi-permanent, and temporary employee, the ad hoc one appears at the lowest level implying that he had been engaged carnally, or for a stop-gap arrangement for a short duration or fleeting purposes.

7. Incidentally, situation in that case was the same as in the present writ petition. The State Government terminated the services of the Petitioners. It sent a requisition to the Employment Exchange to appoint fresh candidates. It had also regularised services of certain categories of employees. It was in the aforesaid contest that a plea of infraction of Article 14 of the Constitution was raised, as has been done in the present case before us. Repelling the argument, the Full Bench observed:

The ad hoc employees cannot claim any hostile discrimination qua some unspecified persons, who are not even parties to this petition and who in some eventuality may later come to hold the posts, which they are being asked to vacate. The equality clause can interpose only in the context of specific persons or a specific class. An ad hoc employee with an existing service record cannot be deemed in the eye of law as identically equivalent to an aspirant for the post which he is likely to vacate.

8. Approaching it from another point, it is clear that regularisation is only a matter of concession. They cannot be claimed as of right. Beset with the nearly same situation, the Supreme Court in *K.V. Rajalakshmi v. State of Mysore* AIR 1967 SC 993, held:

No doubt some concession has been shown to the first batch of 41 persons and the batches of persons who had come in after the batch of 68 persons also received some concession, but after all these were concessions and not something which could they claim as a right. The State...might have shown some indulgence...but we cannot issue a writ of mandamus commanding it to do so.

9. In *Delhi Water Supply and Sewage Disposal Committee and Others Vs. R.K. Kashyap and Others*, , the Supreme Court was called upon to consider the question of seniority of an ad hoc employee as well as that of regularly appointed corporation servants. It held: "the length of service in ad hoc appointment or stop gap arrangement made in the exigencies of service ought not be reckoned for the purpose of determining seniority for the promotional cadre. "

10. Main sheet anchor of the Petitioners' counsel was the letter dated 23rd April, 1985 issued by the Director to the Principal K.G. Medical College, Lucknow. Counsel urged that the nature of his employment was changed by this letter and that they became permanent. We are unable to uphold the submission of the Petitioners' counsel. The Petitioners' appointment was ad hoc and that their status could not be permanent unless appointed by the authority entitled to do so. Their appointment fell within the purview of the U.P. Public Service

Commission. They could not be made permanent by the Director of Medical Education and Training, Lucknow. Their appointments had not been made by the Public Service Commission. The Petitioners' counsel relied on paragraph 7 of the 2nd supplementary affidavit which says:

are in fact continuing with the consultation by the U.P. Public Service Commission and, as such, in no manner can such appoints be said to be without the approval of the U.P. Public Service Commission.

Since this second supplementary affidavit has not been sworn, the same cannot be read in evidence in support of the Petitioners' argument. Further more, the Petitioners could have no knowledge as to whether their appointments were made after consulting the Public Service commission or not This was a matter within the knowledge of the Public Service Commission. In the interview, its members participate to judge the merit and after selection made that a list is sent to the State Government for appointment. The Petitioners had not been interviewed by the U.P. Public Service Commission. At the most what is established from the papers relied upon by this Petitioners' counsel only is that an intimation was sent to the Commission about the selection of the Petitioners by the Director of Medical Education and Training. Such an intimation is not equivalent to making of appointments by the Commission.

11. The two rulings relied upon by the Petitioners' counsel are distinguishable on facts and also the law laid down therein does not support the Petitioners.

12. In Dr A.K. Jain and Others Vs. Union of India (UOI) and Others, , appointments as ad hoc doctors were made by the General Manager of the concerned Zonal Railways under the power, purely as a temporary measure for a specified period. Such appointments became unavoidable in the Railways to tide over temporary appointments and their tenures were extended for various periods from time to time. The Petitioners were given opportunities by the Public Service Commission by holding two special selections in 1982 and 1984, but they also failed to appear in the Combined Medical Examination or after appearing had failed. Having failed to get regularised, the Petitioners' service had to be terminated. Such termination was challenged by the petitions filed under Article 32 of the Constitution. The Supreme Court negatived the challenge by repelling the arguments of Articles 14 and 16 of the Constitution. The observations were:

the Petitioner's service had to be terminated and, as such, there had been neither any arbitrary nor illegal action on the part of the Respondents nor any violation of the fundamental rights guaranteed under Articles 14 and 16.

The Supreme Court in that case held the order of termination not violative of Articles 14 and 16. Counsel's submission that those observations extracted were made in favour of the Petitioner of that case is not correct. Reliance was then heavily placed on its operative portion. That operative portion is not the law declared.

13. In *Municipal Committee, Amritsar Vs. Hazara Singh*, , the Supreme Court has held that statement on matters other than "law", e.g., facts, have no binding force, for the facts of the two cases should be similar. What is binding is the ratio of decisions and not any finding of fact (see *Prakash Chandra Pathak Vs. State of Uttar Pradesh*, . The aforesaid decision does not advance the submission of the Petitioners" counsel.

14. The next judgment relied upon was of the Delhi High Court reported in *Dr. G.P. Sarabai v. Union of India* 1983 Lab. IC 910. The learned Counsel for the Petitioners made two submissions--one--if an ad hoc: appointment is permitted to continue beyond a period of one year, the employees would have a kind of pre-emptive right on those posts by reasons of holding them for a considerable period. The second submission was that once a category class of doctors had entered into a service it was too much to expect that they could compete with doctors who passed the examination after them and, as such, it is necessary that the U.P. Public Service Commission is directed to treat the Petitioners as a special and quite distinct category, different from other aspirant posts in question.

15. The facts of *Dr. Sarabai's* case were peculiar and the law laid down in that case has to be understood in their light.

16. With due deference to the learned Judges we are unable to subscribe to the view taken in it. An appointment much more permanent is a positive act of the authority entitled to make the same. The deeming principle cannot be applied to such a matter. It is not a right which can be acquired by adverse possession. Admittedly, the appointments were made without consulting the Union Public Service Commission. It lasted for more than a year, but still how can such an appointment be protective umbrella of Section 17(3) of the Employees State Insurance Act. The direction given in *Dr. A.K. Jain's* case (supra) was not omnibus. Regularisation was subject to consultation with the Union Public Service Commission and evaluation of work and conduct of service of those doctors who were not found suitable by the Commission.

17. Here the Petitioners seek regularisation of the service without at all appearing before the Public Service Commission. We are afraid, we cannot issue such a direction. Apart from it, it would not be a prudent exercise of discretion to issue any direction in favour of the Petitioners and thus halting the process of selection, which is already underway. For the delay, if not wholly partly, the Petitioners have also to be blamed.

18. Further more, the directions issued by the Supreme Court do not lay down any ratio decidendi. They are more compensatory in nature.

19. In *Rattan Lal and Others Vs. State of Haryana and Others*, , the Supreme Court has deprecated the policy of adhocism in the following terms:

This is not a sound personal policy. It is bound to have a serious repercussion on the educational institutions and the children studying therein.

20. In Writ Petition No. 4642 of 1986, Dr. Viney Krishna v. State of U.P. decided on 4-8-88, a writ was filed seeking quashing of an ad hoc appointment as a lecturer in Thoracic Surgery in K.G. Medical College, Lucknow which had been made without making a requisition to the U.P. Public Service Commission. The High Court quashed the appointment by saying:

It is clear from the material on record that ad hoc appointment of opposite party No. 4 had been made without submitting a requisition with the Public Service Commission for making a regular selection to the post in question. The appointment, therefore, was invalid and deserves to be quashed.

21. For what we have said above, we dismiss the writ petition. No Costs.