

(2005) 01 MP CK 0005
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7187 of 2003

Pushpa Chouhan (Dr.) and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Citation : (2005) 2 MPLJ 221

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Jitendra Tiwari, for the Appellant; S.K. Yadav, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

The petitioners, assistant surgeons in the Department of Health were regularised under the provisions of M.P. Regularisation of ad hoc Appointment Rules, 1986 (in short "the Rules") on various dates in the June, 1997. The order of regularisation stipulated that on initially period they would be on probation for two years and their services were liable to be terminated during the probation period on satisfaction of certain conditions. Under the terms of the aforesaid order their past services were not counted towards the seniority. It is urged in the petition that by virtue of such regularisation their past services cannot be totally wiped out. It is also put forth that they continued in the Department without any break of service, earned increments and were allowed to cross the efficiency bar and hence, they could not have been appointed on probation. A reference has been made to Rules 19 and 21 of the Recruitment Rules which deal with the probation. It is the stand in the petition that when the petitioners were regularised under the Regularisation Rules it is to be deemed that other conditions would be deemed to have been relaxed. In essence, the grievance of the petitioner is that the seniority has to be computed from the date of appointment. In this backdrop prayer has been made for quashing of the

conditions 2, 4 and 5 of the order of regularisation and command to the respondents to treat the petitioners as duly appointed persons under the Recruitment Rules and to confer them all the benefits of seniority.

A return has been filed by the answering respondents contending, inter alia, that the petitioners were appointed temporarily on ad hoc basis on stop gap arrangement. They were obliged under the Public Service Conditions under the Recruitment Rules, 1967. The petitioners could not be successful in clearing the selection process by getting themselves recruited directly through Public Service Commission. By benevolent gesture on the part of the State Government they were appointed under the ad hoc appointment Rules. It is put forth that the petitioners were initially appointed de hors the Recruitment Rules and, therefore, they cannot claim seniority from the date of initial appointment.

A rejoinder affidavit has been filed by the petitioner highlighting how they were appointed in accordance with Rules and how they were suitable to be regularised.

I have heard Mr. Jitendra Tiwari, Learned Counsel for the petitioners and Mr. S. K. Yadav, learned Government Advocate for the State.

At this juncture, it is apposite to state here that initially the Rules 11 and 19 of the Rules were sought to be declared ultra vires. The matter was directed to be listed before the Division Bench. The Division Bench on 9-11-2004 passed the following order:

This matter has been referred to a Division Bench having regard to the fact that there is a challenge to Rules 11 and 19 of the Regularisation Rules. When the matter came up today, Learned Counsel for the petitioners submitted that he has already filed an application on 5-11-2004 in the Registry for deleting the prayer No. (iii) relating to striking down the Rules 11 and 19 of the Regularisation Rules. As the Registry has not put up the application, the petitioners' counsel gave a copy of the application. In view of the said request, the application is allowed and the petitioners are permitted to delete prayer No. (iii). Accordingly, prayer No. (iii) is deleted.

The matter may now be placed before the Single Bench as it does not involve any challenge to any provisions of Law.

5A. The core question that falls for consideration whether the petitioners would be entitled to their seniority for ad hoc period. The Learned Counsel for the petitioners has placed reliance on a three Judge Bench decision of the Apex Court rendered in the case of Dr. Chandra Prakash and Others Vs. State of U.P. and Another, to highlight for the purpose of computation of seniority of ad hoc period. Resisting the aforesaid, Mr. S. K. Yadav, learned Government Advocate has put forth that the controversy would be covered by the decision rendered in the case of Dr. J.S. Chhabra Vs. State of M.P. and Others, . At this juncture, it is worth while to note that Mr. ... has contended that decision in the case of Chandra Prakash (supra) would squarely cover the case of the petitioners and it

is binding precedent being a larger Bench decision. On the contrary Mr. S. K. Yadav has submitted that the case of Dr. J. S. Chhabra (supra) is on the relevant Rules and, therefore, this Court cannot take a different path.

In the case of Dr. J.S. Chhabra (supra) while dealing with the Rule 12 of the M.P. Regularisation of Ad hoc Appointment Rules, 1986. In paragraph 8 the Apex Court expressed the view as under :

8. What is required to be considered next is from which date seniority of Dr. Tiwari whose services were regularised on 4-4-1987 and was declared/ redesignated as lecturer on 21-7-1989 should be considered as a lecturer. Accepting his contention the Tribunal has granted him seniority as a lecturer right from the date he started working as CMO (Lecturer Grade) in 1971. As against that the contention raised on behalf of Dr. Chhabra is that in any case Dr. Tiwari could not have been granted seniority from the date earlier than 21-7-1989. The contention raised on behalf of the State is that it has rightly given him seniority from 4-4-1987. The services of Dr. Tiwari were regularised under the M.P. Regularisation of Ad hoc Appointment Rules, 1986. Rule 12 of the said Rules provides that a person appointed under those Rules shall be entitled to seniority only from the date of the order of regular appointment and shall be placed below the persons already appointed in accordance with the relevant recruitment rules. Dr. Tiwari accepted his regularisation under those Rules. Neither at the time did he challenge the validity of the said Rules. Therefore, he could not have been given seniority as CMO (Lecturer Grade from a date earlier than the order of his regular appointment. The Tribunal was, therefore, wrong in directing that his seniority as a lecturer should be counted from the date he has started working as CMO (Lecturer Grade). The Tribunal failed to appreciate that the said direction was contrary to the statutory rules and for that reason no benefit on the basis of principle of continuous officiation could have been given to him. As the service of Dr. Tiwari were regularised on 4-4-1987 and Government has rightly determined his seniority as a lecturer from that date. Merely because the Government declared him as a lecturer on 21-7-1987, it would not have been fair and just to grant him seniority as a lecturer only from that date. The contention to that effect raised on behalf of the appellant Dr. Chhabra has thus no substance and has to be rejected.

On the basis of the aforesaid pronouncement it is plain as noon day that the Regularisation Rules would have full play. Rule 12 lays down a postulate as regard to the regularisation. There is no assail to the validity of the Rules. Once the Rule is being allowed to go unchallenged it has to have the full play. In view of the aforesaid, I am inclined to think the ratio laid down by the decision rendered in the case of Dr. J. S. Chhabra (supra) would be applicable to the case at hand being a pronouncement of the Rules under consideration.

Consequently, I do not find any error in determination of seniority and accordingly the writ petition, being sans merit, stands dismissed without any order as to costs.