
(2001) 05 DEL CK 0039

In the Delhi High Court

Case No : C.W. No. 541 of 1994 and C.M. No's. 2924 and 847 of 1994

Smt. Pushpa Arya

APPELLANT

Vs

The Director, A.I.I.M.S. and others

RESPONDENT

Date of Decision : 07-05-2001

Acts Referred:

All India Institute of Medical Sciences Rules, 1958 — Regulation 26
Constitution of India, 1950 — Article 14, 16

Citation : (2001) 94 DLT 60

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. D.K. Aggarwal and Mr. N.A. Sebastian, for the Appellant; Mr. Mukul Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukundakam sharam, J.—The question that falls for consideration in the present writ petition is for determination of the actual seniority position of the petitioner, who is working as a Nursing Sister in All India Institute of Medical Sciences (AIIMS).

2. The petitioner was appointed as staff nurse at Dr. Rajendra Prasad Centre for Ophthalmic Sciences on ad hoc basis on 9th July, 1975. The petitioner was given a regular appointment as Staff Nurse in the same Centre on 10th May, 1976. The next promotion which the petitioner could earn being a Staff Nurse is the post of Nursing Sister as is laid down under the Recruitment Rules governing the recruitment and appointment of the Nursing Staff in the respondent/Institute. According to the service Rules/Regulations, a Staff Nurse could be promoted to the post of Nursing Sister upon her completion of three years of service when she becomes eligible to be so promoted. However, there was shortage of vacancies in the cadre of Nursing Sister and , Therefore, there was stagnation in the cadre of Staff Nurses and consequently no promotion could be effected to the post of Nursing Sister in terms of the Recruitment Rules. In order to avoid

stagnation, the respondent/Institute provided for an assessment promotion scheme in 1984 in terms of which Cadre Review took place and was given effect to from 1st April, 1984. Clause (iii) of the said Cadre Review provides that personnel from their existing grades to their next higher grade would be considered for their promotion after eight years of service in the existing grades. In terms of the aforesaid Cadre Review, the respondent/Institute took up for consideration the matter relating to promotion of some of the Staff Nurses to the post of Nursing Sister and the case of the petitioner was also considered. Upon giving benefit of ad hoc services rendered by the petitioner as a Staff Nurse from 9th July, 1995 to 10th May, 1976 and also as a regular Staff Nurse from the period thereafter, the petitioner was promoted to the post of Nursing Sister by an order dated 26th December, 1984. In the said order, the petitioner was shown senior to Smt. Baby Kutty Thomas, Smt. Krishan Raina, Smt. Santosh Seth and Smt. Taramani Kumar.

3. The seniority of the employees of the Institute in each category is fixed in accordance with Regulation 26th of the A.I.I.M.S. Regulation 1958 (as amended) which reads as under:-

Regulation-26-Seniority

"The seniority of employees of the Institute in each category shall be determined by the order of merit in which they were selected for appointment to the grade in question; those selected on an earlier occasion being ranked senior to those selected later."

4. A seniority list was prepared by the respondent/Institute on 17th August, 1993 and 23rd August, 1993 which were circulated showing the seniority positions of the Nursing Sisters. In the aforesaid seniority lists the petitioner was shown senior to the respondents Nursing Sisters. However, after a gap of five days, the respondent/Institute issued yet another seniority list on 28th August, 1993 where the petitioner was shown junior to the said respondents Nursing Sisters appointed after 9th July, 1995 to 10th May, 1996 on the ground that the service period of the petitioner was ad hoc. Being aggrieved by the circulation of the aforesaid seniority list, the petitioner moved a representation on 16th August, 1993 in which she requested for quashing the said seniority list and for publication of a fresh seniority list changing the seniority positions and ascribing proper seniority position to the petitioner in accordance with the seniority positions circulated vide seniority lists dated 17th August, 1993 and 23rd August, 1993. The respondent/Institute in response to the aforesaid representation vide letter dated 14th September, 1993 informed the petitioner that the period of her ad hoc service from 9th July, 1975 to 10th May, 1976 could not be counted towards her seniority, though the same was counted towards fixation of pay and promotion according to Cadre review policy. Even thereafter, the petitioner submitted two other representations which were considered and rejected by the respondent/Institute under its letter dated 28th October, 1993 intimating the petitioner that her seniority position cannot be re-fixed. Being aggrieved by the

aforesaid actions on the part of the respondent/Institute, the present petition is preferred in this Court seeking for the relief of quashing the seniority list published by the respondent/Institute on 28th August, 1993 declaring the respondents No.3 to 23 as senior to the petitioner and also for a direction to the respondent/Institute to re-fix the seniority of the petitioner counting her seniority from 9th July, 1975 as the date of her original appointment.

5. The respondent/Institute contested the writ petition by filing a counter affidavit contending, inter alia, that the initial appointment of the petitioner was purely ad hoc and the said appointment on ad hoc basis was not in accordance with the Recruitment Rules. It is stated that there was one vacancy of Staff Nurse which was a reserved vacancy and since no reserved candidate was available, the petitioner was appointed to the said post on ad hoc basis on 19th July, 1975 without going through the process of interview as prescribed under the Recruitment Rules. It is also stated that the name of the petitioner for appointment to the said post was not sponsored by the Employment Exchange nor was she interviewed by the regular Selection Committee constituted for the purpose but she was appointed to the said post only on ad hoc basis against a reserved vacancy as no reserved candidate was then available. It is further stated that immediately thereafter three posts of Staff Nurses in the general category became available which were notified to the Employment Exchange along with one reserved post of Staff Nurse against which the petitioner was working on ad hoc basis as stop gap arrangement and that several names for the aforesaid posts namely, three posts against general category and one post against reserved category were sponsored by the Employment Exchange but the name of the petitioner was not sponsored by the Employment Exchange.

6. It is contended that pursuant to the aforesaid sponsorship of the names of the candidates, all the candidates were interviewed by the Selection Committee on 17th July, 1995 except the petitioner as her name was not sponsored by the Employment Exchange for he said interview along with other candidates. It is also stated that three candidates were selected for the three posts in the general category and they were offered the post accordingly on regular basis. The petitioner was, however, allowed to continue on ad hoc basis against the reserved post, since no suitable candidate was again available for the post earmarked of the said category. The respondent/Institute further stated that thereafter some more vacancies of Staff Nurses were notified to the Employment Exchange in the year 1976 as against which name of the petitioner was sponsored by the Employment Exchange along with other candidates. Pursuant to the aforesaid sponsorship the petitioner along with other sponsored candidates were called for the interview and the petitioner was interviewed by the Selection Committee on 12th April, 1976 and she was recommended for regular appointment along with other candidates pursuant to which an offer for regular appointment was made to the petitioner as against the post of Staff Nurse consequent to which the petitioner jointed the post of regular Staff Nurse on 12th May, 1976. it is, Therefore, stated that the petitioner was evidently

junior to the candidates who were appointed on regular basis on the basis of interview/selection held on 17th July, 1975 in which the petitioner was not a candidates as she was not sponsored by the Employment Exchange at that time.

7. The respondent/Institute justified the seniority position ascribed to the petitioner on the ground that in accordance with the Regulation 26 of the A.I.I.M.S. Regulation the seniority of the petitioner was properly fixed and that she was rightly ascribed the position and rank junior to those who were selected earlier for regular promotion. It is also stated that the petitioner was considered eligible for being considered for promotion under the assessment promotion scheme although she had not completed a period of eight years of service on regular basis at that stage. The period of ad hoc services from 9th July, 1975 to 12th May, 1976 was, however, included for the purpose of giving her entitlement to be considered under the said scheme for promotion to the post of Nursing Sister along with although in fact under the Rules, the period of ad hoc service which the petitioner had rendered in the Institute from 9th July, 1975 to 12th May, 1976 against a reserved vacancy could not be taken into account for the purpose of seniority and, thereafter, the petitioner was ranked junior to those selected earlier under Regulation 26 of the Regulations framed by the respondent/Institute.

8. In the light of the aforesaid pleadings of the parties, the decision in the present case is dependent on the fact as to whether the petitioner is entitled to claim the benefit, of ad hoc service rendered by her as a Staff Nurse in the respondent/Institute from 9th July, 1975 to 12th May, 1976 against a reserved vacancy and whether the said period could or could not be taken into account for the purpose of determining seniority.

9. It is an admitted position that except for not counting the said period for the purpose of seniority, the said period has been counted by the respondent Institute for all other purposes, namely, for the purpose of promotion, pay fixation, etc. Counsel appearing for the petitioner relied upon the ratio of the decision of the Supreme Court in "The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, and also the decision of the Supreme Court 1607 and also the decision of the Supreme Court in Rudra Kumar Sain and Others Vs. Union of India and Others, . In support of his contention that the petitioner is entitled to get the benefit of ad hoc period of service as a Staff Nurse for the period from 9th July, 1975 to 12th May, 1976 which she had rendered as a Staff Nurse against a reserved vacancy, counsel for the petitioner submitted that the petitioner was appointed as a Staff Nurse by the respondent/Institute on ad hoc basis on 9th July, 1975 and she joined her post immediately and continued to work as such till 12th May, 1976 when she was regularised in the said post of Staff Nurse. Since the appointment was continuous and she continued to hold the said post without any break till date of her regularisation, the petitioner is entitled to get the said period of ad hoc service rendered in the Institute as Staff nurse counted towards her seniority

and in the event of the said benefit available to her, it was submitted that she would rank senior to all other Nursing Sisters who have been arrayed as respondents in the present writ petition. Counsel for the petitioner drew my attention to the initial order of appointment of the petitioner on ad hoc basis which is placed on record by the respondents No.1 and 2 in their additional affidavit.

10. The said letter is dated 9th July, 1975 which states that with reference to her interview for the post of Staff Nurse, she has been selected for ad hoc appointment to the temporary post of Staff Nurse. It is also stated in the said letter that the appointment is purely temporary on ad hoc basis for a period of three months only or till the date regular incumbent of the post joins duty, whichever is earlier and that the said appointment would not entitle her to regular appointment unless meanwhile she is selected for appointment on regular basis and her appointment is approved by the competent authority. Reference was also made to the order of regular appointment dated 10th May, 1976 which is annexed as "Annexure P-1" to the writ petition. The said order also states that with regard to the interview of the petitioner for the post of Staff Nurse, she is informed that the Director of the Institute has approved of her appointment to the temporary post of Staff Nurse.

11. Counsel for the petitioner also drew my attention to the seniority list prepared and published by the respondent/Institute on 17th August, 1993 and 23rd August, 1993 wherein, the name of the petitioner was shown senior to Smt. Baby Kutty Thomas, Smt. Krishan Raina, Smt. Santosh Seth and Smt. Taramani Kumar. He submitted that for all the purposes the respondent/Institute has given the benefit of ad hoc services to the petitioner and the benefit of the said period was also made available by the respondent/Institute consciously for the purpose of giving promotion to the petitioner to the post of Nursing Sister and, Therefore, the said respondent cannot deny the benefit of the ad hoc services rendered by the petitioner from 9th July, 1975 to 12th May, 1976 for the purpose of seniority giving the benefit of the same for all other purposes.

12. Mr. Mukul Gupta, counsel appearing for the respondent No.1 and 2 on the other hand submitted that the initial appointment of the petitioner was on the basis of her direct application to the Institute on the basis of which she was given appointment on ad hoc basis as a Staff nurse against a reserved vacancy which was lying vacant. He submitted that the aforesaid appointment was not in accordance with the provisions of the Recruitment Rules for appointment and her name was not sponsored by the Employment Exchange which is required to be done for consideration as against a regular appointment and, Therefore, the petitioner not having been interviewed and selected by a duly constituted Selection Committee at the time of her initial appointment, the petitioner is not entitled to claim the benefit of the ad hoc services rendered by her in the respondent/Institute for the purpose of determining her seniority. In support of his contention, learned counsel for the respondents No.1 and 2 relied upon the

provisions of the Recruitment Rules as also the nothings and orders in the personal file of the petitioner. He also submitted that a comparative readings of the order of appointment dated 9th July, 1975 and the order dated 10th May, 1976 would clearly indicate that the initial appointment of the petitioner was purely on ad hoc basis and without going through the process of interview which is mandatory under the Recruitment Rules and, Therefore, the initial appointment of the petitioner could not be said to be a regular appointment. Counsel also relied upon the terms and conditions of the aforesaid appointment to the effect that the said appointment would not entitle her to regular appointment unless meanwhile she is selected for appointment unless meanwhile she is selected for appointment on regular basis and her appointment is approved by the competent authority. He submitted that the petitioner being aware of the aforesaid position got her name registered with the Employment Exchange subsequent thereto and got a sponsorship from the Employment Exchange pursuant to which she was called for the interview therein she appeared without any protest or demur and faced the interview conducted by the duly constituted Selection Committee. The Selection Committee heaving found her fit, she was offered the appointment which she accepted. Counsel also submitted that the letter dated 10th May, 1976 (Annexure P-1) is a document which is tapered with by the petitioner for the same doe snot tally with the actual order of regular appointment of the petitioner. He also submitted that the aforesaid ratio of the decisions relied upon by the petitioner do not in any manner help the petitioner, rather the same support the stand of the respondent/ Institute that the petitioner is not entitled to get the period of ad hoc services rendered by her counted towards her seniority.

13. In the light of the aforesaid pleadings of the parties and the submission, I have considered the entire records placed before me and proceed to decide this petition on consideration of the same.

14. The letter placed on record as "Annexure P-1" to which reference has already been made would indicate that no interview was held by the Selection Committee which is required to be done under the Recruitment Rules. The said appointment of the petitioner was also on ad hoc basis and was with the clear stipulation that the said appointment would not entitle her to regular appointment unless meanwhile she is selected for appointment on a regular basis and unless her appointment is approved by the competent authority. Being aware of the aforesaid position and stipulation and her status, the petitioner thereafter got her name registered with the Employment Exchange upon which she could get a sponsorship from the said Employment Exchange recommending her name for consideration for appointment as a Staff Nurse in the Institute on regular basis. The petitioner was called for the selection wherein she appeared before the Selection Committee duly constituted for the purpose and having been found fit by the said Selection Committee, she was offered a regular appointment of Staff Nurse which the petitioner accepted.

15. I have also considered the contents of the letter dated 10th May, 1976 stated to be the appointment letter of the petitioner on regular basis. The original of the same is available in the personal file of the petitioner. The same clearly indicates that the petitioner was appointed pursuant to her interview held on 7th May, 1976. Mention of the same is made in the letter available on her personal record but the said date is struck off from "Annexure P-1" annexed with the writ petition and to that extent the said letter has been definitely tampered with. The letter dated 10th May, 1976 also indicates that the competent authority namely the Director of the Institute has approved the regular appointment of the petitioner to the post of Staff Nurse, whereas the earlier letter of ad hoc appointment does not indicate that her appointment to the post of Staff Nurses was approved by the competent authority. It is also confirmed from the records that at the time of her initial appointment on ad hoc basis, the name of the petitioner was not sponsored by the Employment Exchange but she was appointed on the basis of her application sent directly to the Institute. It is also established from the same that at that stage and while appointing the petitioner on ad hoc basis, she was not interviewed by the Selection Committee but the said appointment was given to her on the basis of her direct application with the approval of the then Chief Organiser of the Centre. Thus the aforesaid initial appointment of the petitioner to the post of Staff Nurse was not in accordance with the established procedure and norms in terms of the Recruitment Rules/Recruitment Regulations.

16. It is disclosed from the records that when the name of the petitioner was sponsored by the Employment Exchange and she was interviewed by a Selection Committee and found eligible she was given a regular appointment to the post of Staff Nurse with effect from 13th May, 1976. The period of ad hoc service from 9th July, 1975 to 12th May, 1976 has been taken into consideration by the Eye Centre for the purpose of computing the period of eight years of service required for promotion under the First Cadre Review Scheme of the Institute introduced on 1st April, 1984. The order of promotion of the petitioner to the next higher post of Nursing Sister was issued on 1st August, 1984 after taking into account the ad hoc period of service. The benefit to the aforesaid extent of ad hoc service was sought to be given by the respondent/Institute at one stage for the purpose of seniority when she was placed senior to some of the private respondents herein in the seniority lists of the respondent/Institute published and circulated on 17th August, 1993 and 23rd August, 1993. However, on the ground that an error has been committed, the aforesaid two seniority list was published and circulated on 28th August, 1993 wherein the petitioner is given the seniority position from the date of her regular appointment and thereby excluding her ad hoc service period for the purpose of computing and determining her seniority.

17. According to the counsel appearing for the petitioner, the aforesaid stand of the respondent/Institute in denying the benefit of the period of ad hoc service rendered by the petitioner in the Institute is illegal and unjustified in view of the ratio of the decision in *The Direct Recruit Class-II Engineering Officers' Association and others (supra)*. Counsel specifically relied upon the summing up

conclusions of the Supreme Court as stated in paragraph 44 of the said judgment. In support of his contention he specifically relied upon the following two sub-paragraph of paragraph 44:-

"44 To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by the following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

18. Since reliance is placed by the counsel appearing for the petitioner on the two decisions of the Supreme Court, it would be necessary to understand the implications of the observation of the Supreme Court in the aforesaid two decisions.

19. It is conclusively held by the Supreme Court in paragraph 44(A) of the decision in *The Direct Recruit Class-II Engineering Officers' Association and others (supra)*, that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Consequence and corollary of the said Rule is also that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

Therefore, in terms of the rule propounded by the Supreme Court, the initial appointment of the petitioner being only ad hoc and not according to the Rules meaning thereby not being made pursuant to the recommendation of the Employment Exchange and not having gone through the selection process of being interviewed by the Selection Committee and selected by it and made as a stop-gap arrangement, the said ad hoc appointment in the post cannot be taken into consideration for the purpose of computing seniority of the petitioner.

20. Counsel appearing for the petitioner, however, stated that what would be applicable in the present case is paragraph 44(B) of the said judgment. According to him although the initial appointment of the petitioner is not made by following the procedure laid down under the relevant rules but since she continued in the post of Staff Nurse uninterruptedly till the regularisation of her service in accordance with the rules, the said period of ad hoc appointment has to be counted for determining the seniority of the petitioner. The said contention of the counsel appearing for the petitioner appears to be mis-placed. The

aforesaid conclusion arrived at by me is based on the observations of the Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others (supra)*. In this connection, reference is to be made to paragraph 13 of the said judgment. It is disclosed there from that what was propounded in paragraph 44(B) was in the context of the fact that the concerned employees being appointed on ad hoc/officiating basis continued for long periods of nearly 15-20 years on the posts without being reverted and the said period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16.

21. In order to appreciate the said conclusion of the Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others (supra)*, I have also perused the ratio of the decision of the Supreme Court in *Narender Chadha and others (supra)* which is the basis of the conclusions at paragraph 44(B). The said decision was rendered in the context of the fact that when an officer had worked for a long period for nearly 15-20 years in a post and had never been reverted, it cannot be held that the officer's continuous officiation was a mere temporary or local or a stop-gap arrangement even though the order of appointment may state so and that in such circumstances the entire period of officiation has to be counted for seniority. The rule propounded by the Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others (supra)* is the rule which was also propounded by the Supreme Court in *S.B. Patwardhan and Another Vs. State of Maharashtra and Others*, . It is held in paragraph 13 of the judgment in *The Direct Recruit Class-II Engineering Officers' Association and others (supra)* that the aforesaid principle has been followed in innumerable cases and has been further elaborated by the Supreme Court in several judgments including those in *Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others*, and *Delhi Water Supply and Sewage Disposal Committee and Others Vs. R.K. Kashyap and Others*, with which the judges delivering the judgment of *The Direct Recruit Class-II Engineering Officers' Association and others (supra)* agreed to. In the said paragraph 13 the Supreme Court also referred to its earlier decision in *Narender Chadha and Others Vs. Union of India and Others*, wherein, it was held that the officers although were promoted without following the procedure prescribed under the rules, but they continuously worked in the said posts for long 15 to 20 years period and as such, it would be unjust to hold that they have no sort of claim to such posts and that any other view would be arbitrary and violative of Articles 14 and 16 of the Constitution because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances. In the context of the said facts, the said decision was rendered by the Supreme Court which is also upheld by the Supreme Court in the subsequent decision in *The Direct Recruit Class-II Engineering Officers' Association and others (supra)*.

22. Here is, however, a case where the period of ad hoc appointment was only for a period of few months and, Therefore, it cannot be said to be an appointment for a long period of 15 to 20 years in a post. When the period of ad

hoc appointment is short and the appointment is not made in accordance with the rules prescribed for the purpose, the said period of ad hoc appointment cannot be taken into account for considering the seniority. This conclusion also gets support from the decision in Rudra Kumar Sain and others (supra) particularly when reference is made to paragraphs 16 to 20 of the said decision. It is held in paragraph 20 of the said decision, that in the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc". In the light of the aforesaid, the Supreme Court held that the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service was held by the High Court to be "fortuitous/ad hoc/stop-gap" was wholly erroneous.

23. Same is not the case in the present writ petition. Here the ad hoc appointment was only for a short period of few months and the petitioner was given a regular appointment on 10th May, 1976 when the petitioner was sponsored by the Employment Exchange, appeared in the interview and was selected by the regular Selection Board in accordance with the selection procedure prescribed under the Rules and, Therefore, the said period between 9th July, 1975 to 10th May, 1976 cannot be counted for the purpose of computing and determining the seniority position of the petitioner, vis-a-vis other Staff Nurses/Nursing sisters appointed on regular basis earlier to the petitioner. In that view of the matter, the seniority position ascribed by the respondent/Institute vide seniority list published on 28th August, 1993 is found to be legal and valid. There is no merit in this petition and the petition stands dismissed. Pending applications stand disposed of accordingly.