

(1995) 03 SC CK 0086

In the Supreme Court Of India

Case No : Civil Appeal No's. 4438-42 of 1995 (Arising out of S.L.P. No's. 9660-64/93) , 4443, 4444-51, 4452, 4453, 4454 and 4455 of 1995 with SLP No's. 20020 of 1993, 9414-22, 9425, 9427, 9429 and 9430 of 1995 with CC No's. 22831 of 1993 and 28064-71, 28072, 28

State of U.P. and Others

APPELLANT

Vs

Dr. R.K. Tandon and Others

RESPONDENT

Date of Decision : 23-03-1995

Acts Referred:

Citation : (1995) 71 FLR 961 : (1997) 10 JT 455 : (1995) 2 SCALE 736 : (1995) 3 SCC 616 : (1995) 2 UJ 272 : (1996) 3 UPLBEC 1521

Hon'ble Judges : K. Ramaswamy, J;B. L. Hansaria, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Delay condoned. Leave granted.

2. The State is caught by inaction between deep sea and the devil and it seeks the help of this Court for Jits retrieval to salvage from the predicament. From the record, it is seen that 2056 posts of Provincial Medical Service(PMS) cadre doctors were filled up from 1961-62 onwards by ad hoc appointments for a period of one year or till the regularly selected candidates from Uttar Pradesh Public Service Commission (PSC) are appointed, whichever is earlier. In 1971, the PSC, though made the selection and recommended the names of certain candidates for regular appointment, no appointments were made of those candidates. Similarly, the Government had sent requisition in their letter dated 23.12.77 requesting further selection and the PSC recommended 1703 candidates for appointment. In the meanwhile, some of the ad hoc appointees approached the High Court and sought for, and the Court directed the regularisation of their services with effect from the dates of their initial appointment, against which orders the State filed appeals in this Court. This court in SLP (C) 13480/92 and batch held that since they had put in more than

20 years of service, denying them 20 years seniority in service was unjust. Consequently, when the State attempted to regularise the service of all ad hoc employees from their respective dates of appointments, the direct recruits filed writ petitions and the High Court directed the Government to give effect to the recommendations made by the PSC confining to the candidates who were then serving the State. The State has filed these appeals and seeks to have its predicaments salvaged.

3. Now the question is that what would be the just principle to be adopted in determination of inter se seniority of the unselected and selected ad hoc employees? After hearing the learned Counsel for all parties, we are of the considered view that a just and fair solution can be reached.

4. It is settled law that all ad hoc appointments made de hors the rules do not confer any right to primacy or seniority. They acquire the rights only from the date of their regular appointment according to rules. If, however, the initial appointments are according to rules, though on ad hoc or temporary basis, then the seniority would be counted from the dates of initial appointment. The ad hoc appointments here were de hors the rules. It would thus be clear that though the doctors have put in more than 33 years, they are ad hoc hands. All would not get seniority from the respective dates of appointments. It is seen that some of the doctors have retired and some had the benefit of direction given by the court to regularise their services with effect from the dates on which they were appointed and the orders have become final. So, they are entitled to count their seniority from the respective dates of initial appointments.

5. From among the rest of the doctors, since the PSC had notified, selected and recommended the names of candidates in the year 1972, State Government is directed to make their appointment in the order of merit determined by the PSC. The State Government is directed to appoint them with effect from the date on which the State Government had received the merit list from the PSC and they be placed below the candidates whose appointments were upheld by the Courts or Service Tribunal and became final.

6. As to the candidates whose names were recommended by the PSC in three installments -first on 23.12.77 second on 16.6.73 and the final list on 10.5.79, the State Government is directed to appoint them in the order of merit in the respective lists. The seniority of the officers so appointed would be as per the determination of the PSC in the respective list. They would be appointed with effect from the dates on which the State Government had received the respective lists and they must be deemed to have been regularly appointed from those dates. They would be placed below 1972 selectees. Rest of the candidates who were not selected but are still continuing in service, would be placed below the last of the 3rd list and their seniority is directed to be determined with effect from the date of the receipt of the list dated 10.5.79. Among the non-selectees, the date on which the list dated May 10, 1979 was received by the State Government would be the cutoff date and taking into consideration of the

respective dates of appointments as on that date and if made thereafter, seniority will be counted from those respective dates. Rule of reservation, if applied, and the candidates were selected accordingly their seniority vis-a-vis the general candidates would be according to the roster maintained by the State Government.

7. It is on record that some of these ad hoc doctors have retired on attaining the age of superannuation. In respect of them, there shall be a direction to nationally treat them to be regularly appointed from respective dates of initial appointment only for the purpose of giving them pensionary and retrial benefits admissible according to relevant rules. This should not be reckoned for inter se seniority among the temporary or ad hoc doctors appointed in the service.

8. The State Government is directed to fix the inter se seniority within a period of six months from the date of the receipt of the order and on fixation of seniority, they are directed to release the pension and other terminal benefits to the retired doctors within a period of two months thereafter.

9. The appeals are accordingly allowed. In the circumstances, parties are directed to bear their own costs.

S.L.P. 9430/1995 (CC 22881)

10. Permission to file SLP is granted. Delay condoned. Leave granted. The appeal is disposed of in the light of the above judgment.