

(2003) 04 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Petition No. 3717 of 2001

Sudheer Srivastava

APPELLANT

Vs

Director, AIIMS and Another

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Citation : (2003) 4 AD 393 : (2003) 105 DLT 74 : (2003) 71 DRJ 691 : (2004) 1 SLJ 56

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

Bench : Single Bench

Advocate : Surat Singh and Mamta Rani, for the Appellant; Mukul Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.

1. In the present writ petition, the petitioner seeks for a direction to the respondents to pay to the petitioner the difference of pay to the petitioner for the period from 13.11.1990 to 31.3.1992 as LDC and 1.4.1992 to 30.11.1998 as UDC and also to regularise the service of the petitioner from 13.11.1990. The petitioner was engaged as a Lower Division Clerk on ad hoc basis on a project funded by outside funding agency. The aforesaid engagement of the petitioner continued up to 31.3.1992. The petitioner was thereafter engaged as Upper Division Clerk on the same project from 1.4.1992, which continued up to 30.11.1998. Thereafter the aforesaid project was taken over by the respondent institute whereupon the petitioner underwent a process of selection/recruitment for the post in question and he was recruited on regular basis in the cadre of Lower Division Clerk. The aforesaid project was taken over by the institute under memo dated 24.8.1992 with effect from 29.1.1983. Since the petitioner was paid only a consolidated salary for the period from November 1990 to 31.3.1992 and thereafter as UDC also on a consolidated salary from 1.4.1992 to 30.11.1998, the petitioner has filed this petition claiming regularisation in the said post from

13.11.1990 along with the benefit of the difference of salary between the consolidated salary and regular salary on scale.

2.The petitioner was initially engaged on a consolidated salary on ad hoc basis on the project funded by the Department of Science and Technology. The said project was, however, taken over by the Institute under memo dated 24.8.1992 with effect from 29.1.1983

3.It is the specific case of the respondents that when the petitioner was initially engaged on ad hoc basis, he was so engaged only for a short period without following the process of proper selection/ recruitment for the post in question. It is only after the said project was taken over by the Institute, the petitioner was recruited on regular basis as LDC after he had undergone the process of selection/recruitment for the post in question. It is, however, admitted by the respondents in the counter affidavit that after the project was taken over by the AIIMS under the memo dated 24.8.1992 with effect from 29.1.1983, the staff who were engaged in accordance with the rules/regulations of the AIIMS were taken over on the strength of AIIMS from the date of taking over of the project or regular appointment, whichever is later. In support of the said contention, the original records were placed before me for my perusal.

4.Counsel appearing for the petitioner in support of his contention that he is entitled to be regularised in the post of LDC from the date of his initial appointment in that post and as UDC from the date of his appointment i.e. 1.4.1992, relied upon the contents of annexure P-6, which is dated 30.7.1998. In the said letter, the Head of the Department recommended the case of the petitioner for giving salary on scale on the ground that few other staff have been given salary on the scale. It is also mentioned therein that the predecessor of the petitioner Shri Biswajit Saha was also given salary on scale. Counsel appearing for the petitioner also relied upon the decision of the Supreme Court in "The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, .

5.The aforesaid submission of the counsel appearing for the petitioner was considered in the light of the records placed before me and also in the light of the decisions of the Supreme Court to which reference shall be made. Counsel appearing for the respondent placed before me a Division Bench decision of this Court in National Institute of Health & Family Welfare, New Delhi vs. Ramji Lal & Ors. LPA No. 462/2002 disposed of on 31.5.2002. Incidentally, the set of counsel who were appearing in the said case are also the counsel who are appearing in the present case. The learned Single Judge in the said case decided the case in favor of the AIIMS relying upon a decision of the Supreme Court in Registrar General of India and Another Vs. V. Thippa Setty and Others, directing that such regularisation should be from their initial date of appointment. The aforesaid decision rendered by the learned Single Judge was upset and set aside by the Division Bench in the said LPA on the ground that the Single Judge did not address the issue as to whether the initial appointment of the employee was in

compliance of the mandatory provisions of Recruitment Rules and Articles 14 and 16 of the Constitution of India.

6.It is a settled law that if the initial appointment was in terms of the Recruitment Rules, an employee would be entitled to grant of seniority from the initial date of his appointment. The same is a settled law in view of the decision of the Supreme Court in B.N. Nagarajan and Others Vs. State of Karnataka and Others, and also in R.N. Nanjundappa Vs. T. Thimmiah and Another, . The aforesaid principle is also reiterated in the decision in Direct Recruit Class II Engineering Officers" Association & Ors.v. State of Maharashtra & Ors.(supra). The said issue was also considered by the Supreme Court in V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others, wherein it was categorically held that that the period during which the employees were on ad hoc service, their seniority cannot be counted and such seniority should be counted from the date of regularisation only. In Registrar General of India (supra), the Supreme Court has clearly held that normal regularisation of service should not be from the date of initial appointment. The said position is also reiterated in a recent decision of the Supreme Court in Md. Israil & Ors. v. State of West Bengal & Ors. reported in AIR 2002 SCW 68.

7.The specific stand that is taken by the respondent in the present writ petition is that the initial appointment of the petitioner against the project was de-hors the rules and that after the said project was taken over by the Institute, the engagement of the petitioner was regularised after he appeared in the selection / recruitment process held in accordance with the rules. The recruitment rules are also placed on record, which indicate that a person has to go through the process of selection / recruitment process. I have also looked into the connected original records maintained by the respondent which indicates that the initial appointment of the petitioner was on ad hoc basis and he was not appointed as per the usual procedure. It is disclosed from the records that after the project was taken over by the respondent the cases of the petitioner and three other similarly placed persons were considered by the Institute. While discussing their cases it was indicated that the services of the staff who were appointed through prescribed procedure were absorbed in the regular cadre of Institute with effect from 29.1.1983 or from the date of their appointment on regular basis, whichever is later. It is also indicated that the petitioner and three other persons could not be absorbed/regularized as they were working on ad hoc basis and were not appointed as per usual procedure. It was suggested that as they have been representing for their regularisation, the petitioner be appointed in the entry level post of LDC as a special case subject to the condition of qualifying the typing test. The said suggestion was approved by the competent authority and the appointment letter, which is annexure P4 came to be issued to him. Clause 12 of the appointment letter makes a reference to the aforesaid condition. The petitioner accepted the aforesaid appointment with the condition attached without any demur or protest. Thereafter, for the first time he makes a representation on 17.8.1999 after about nine months of the aforesaid acceptance.

8.It is, Therefore, established that the initial appointment of the petitioner was de-hors the rules and the said appointment was not as per the usual procedure. In view of the aforesaid position it cannot be ordered that the service of the petitioner should be regularised from the initial date of his appointment. Cases of some other persons have been cited by the petitioner. The records disclose that so far the petitioner is concerned, due procedure of selection had not taken place in his case. The others were engaged on regular basis through the process of selection and were working as such at the time of taking over the project by the Institute and, Therefore, the cases of the other persons stand on a different footing than that of the petitioner and the plea of discrimination is without any merit.

9.In view of the aforesaid position and particularly in view of the ratio of the decisions of the Supreme referred to above, no relief could be granted to the petitioner as sought for by him in the present writ petition. The petition has no merit and is dismissed accordingly leaving the parties to bear their own costs.