
(2011) 07 DEL CK 0033

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2357 of 2011

Vireshwar Singh and Others

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 144, 16, 32
Delhi Municipal Corporation Act, 1957 — Section 502, 78, 98

Citation : (2011) 5 AD 741

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Vikash Singh, Sunil Narula and Deepti, for the Appellant; Maninder Acharya, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The Petitioners, thirty three in number, have impugned the order dated 9th December, 2010 passed by the Central Administrative Tribunal, Principal Bench, Delhi (Tribunal, for short) dismissing their Transfer Application No. 398/2009 and allowing OA No. 1601/2010 filed by the private Respondent No. 3 herein.

2. The Petitioners were appointed as General Duty Medical Officers (GDMO) Grade II on ad-hoc basis from 1986 to 1989 by the Municipal Corporation of Delhi (MCD). They claim regularization and seniority from the date of their initial appointment and not from the date when they were regularized. Accordingly, they had prayed for quashing of order dated 15th June, 2007 passed by the MCD, by which it was held that sixty three GDM Os of the first batch, who were appointed during the period 1982 to 1986 on ad-hoc basis, were/are treated as regularized with effect from 27th June, 1991 i.e. the date of communication of the recommendation of the Union Public Service Commission (UPSC) and fifty three GDM Os, who were appointed on ad-hoc basis during the period 1986 to 1989 were/are treated as regularized with effect from 24th July, 1998 i.e. the

date of communication of the recommendation of the UPSC.

3. In OA No. 1601/2010, the Respondent Nos. 3 herein challenged the resolution dated 17th January, 2000 passed by the MCD by which the Petitioners herein and other similarly situated doctors appointed on ad-hoc basis between 1986 to 1989 were deemed to be regularly appointed on the date of their original appointment on ad-hoc basis.

4. The factual matrix is chequered and rather long but is succinctly and clearly brought about in the impugned order. To effectively deal and examine the core issue, the relevant facts are noticed below.

5. MCD on ad-hoc basis appointed two batches of GDMO-II between the periods 1982 to 1986 and from 1986 to 1989. On 27th June, 1991 MCD sent cases of eighty two GDM Os from the first batch to UPSC for regularization of their service. On the basis of the recommendation issued by the UPSC, MCD regularized services of sixty three GDM Os with effect from 27th June, 1991 i.e. the date of recommendation. Ten GDM Os had been declared unfit for regularization. Some others were also declared fit but subject to vigilance clearance.

6. Some of these GDM Os-II filed a writ petition under Article 32 of the Constitution of India claiming that they should be regularized from the date of their initial appointment on ad-hoc basis. The writ petition was dismissed by a detailed judgment dated 8th May, 1998, reported as Dr. Anuradha Bodi and Others Etc. Etc. Vs. Minicipal Corporation of Delhi and Others, The relevant ratio and the aspects of this judgment have been referred to below while dealing with the merits of the present writ petition.

7. Some other GDM Os-II, who were appointed in the second batch during the period 1986 to 1989, filed W.P.(C) No. 1550/1996 before Delhi High Court. This writ petition was disposed of vide order dated 14th May, 1998 i.e. about six days after the decision of the Supreme Court in the case of Dr. Anuradha Bodi (supra). It may be noticed here that UPSC had refused to consider the request of MCD for regularization of GDM Os-II, who were appointed during the period 1986 to 1989 on the ground that ten doctors from the first batch, who were declared unfit, had not been dismissed from service by the MCD. In the order dated 14th May, 1998, the learned single Judge had directed as under:

4. The Union Public Service Commission in law cannot take the attitude that unless MCD deal with the cases of 10 Doctors who have declared unfit in the manner suggested by the Union Public Service Commission there shall be no consideration of any case sent by the MCD. It is against all the basic principles of law. As a public and constitutional authority, the Union Public Service Commission has to act in accordance with the parameters laid down and it is bound to consider the case of the Doctors appointed in MCD from June 1986 to February 1989 and whose cases have been recommended by the MCD for regularization.

5. In view of the fact that Union Public Service Commission is a high constitutional functionary, I do not want to say anything more except directing the Union Public Service Commission to consider the case of the Petitioners appointed between June 1986 to February 1989 for regularization on the basis of the A.C. Rs as per the recommendation sent by the M.C.D.

6. The Petitioners and other similarly situated Doctors shall be regularized from the date of their initial appointment. The Union Public Service Commission should pass appropriate orders on or before 31.07.1998.

8. It is, therefore, apparent that there were two conflicting orders on the question of date of regularization of service of GDM Os-II, who were appointed on ad-hoc basis in two batches during the period 1982 to 1986 and from 1986 to 1989. A single Judge of Delhi High Court in his order dated 14th May, 1998 had directed that ad-hoc GDM Os-II should be regularized from the date of their initial appointment, whereas by an earlier order dated 8th May, 1998, the Supreme Court had directed that ad-hoc GDM Os-II shall be regularized from the date of recommendation of the UPSC. It is obvious that the order passed by the Supreme Court has to prevail and is the binding precedent. Subsequent facts will show that the order dated 14th May, 1998 passed in W.P.(C) No. 1550/1996 was set aside in LPA Nos. 708/2001 and 138/2003 decided on 5th February, 2008.

9. The aforesaid LPA Nos. 708/2001 and 138/2003 were filed by the regularly appointed GDM Os-II, who had adversely affected in case the ad-hoc GDM Os-II were granted regularization from the date of their initial appointment and not from the date of the recommendation of the UPSC for regularization. These regularly appointed doctors had filed a writ petition against the resolution dated 17th January, 2000 passed by the MCD to the effect that services of ad-hoc GDM Os-II appointed during the periods 1982 to 1986 and from 1986 to 1989 should be regularized from the date of their initial appointment, but restricting the financial benefits under Fundamental Rule 17. Subsequently, an executive order dated 16th August, 2000 was also issued. This writ petition was subsequently dismissed as withdrawn with liberty to the regularly appointed doctors to file an LPA impugning the order dated 14th May, 1998. Thus LPA Nos. 708/2001 and 138/2003 were filed.

10. During the pendency of the said LPAs, the objection raised by the regularly appointed GDM Os-II made MCD re-think and re-examine, the whole issue. Upon reconsideration, MCD had passed the order dated 15th June, 2007 by which regularization of both batches was directed from the date of communication of the recommendation of the UPSC. It was further stated that the financial implications be modified accordingly for recovery etc. Corrigendum dated 18th June, 2007 was issued prescribing that the date of regularization of ad-hoc GDM Os-II in the second batch should be read as 24th July, 1998.

11. The Petitioners herein along with others challenged the office order dated 15th June, 2007 as modified on 18th June, 2007 in W.P.(C) No. 4619/2007. This

writ petition was transferred to the Tribunal and numbered as T.A. No. 398/2008. W.P(C) No. 4619/2007 was pending before a single Judge, when LPA Nos. 708/2001 and 138/2003 were disposed of by a Division Bench of this Court vide order dated 5th February, 2008. As stated above, these two appeals were filed against the order dated 14th May, 1998 passed in W.P.(C) No. 1550/1996. In view of the office order dated 15th June, 2007, the Division Bench allowed the appeals and set aside the order dated 14th May, 1998 passed by the single Judge. The relevant portion of the said order dated 5th February, 2008 reads as under:

3. The said writ petition was considered by the learned Single Judge and the same was disposed of by the learned Single Judge accepting the contentions of the writ Petitioners and a direction was issued that the said doctors and all other similarly situated doctors be regularised from the date of their initial ad hoc appointment.

4. The aforesaid order is challenged in this Court on the ground that the said order was passed by the learned Single Judge without considering the ratio of the decision of the Supreme Court in *Dr. Anuradha Bodi and Others Etc. Etc. Vs. Minicipal Corporation of Delhi and Others*, which lays down law to the contrary.

5. It appears that during the pendency of the appeals in this Court, the Municipal Corporation of Delhi being aware of the aforesaid judgment passed a fresh order on 15th June, 2007 whereby they have virtually denied the relief of regularisation to those persons from the date of their initial ad hoc appointment on the ground that the aforesaid decision of the Supreme Court permits such benefit to be given only from the date of their names being approved by the Union Public Service Commission. It is also pointed out by the counsel for the MCD that the decision was rendered by the learned Single Judge about a week after the aforesaid decision was rendered by the Supreme Court on 8th May, 1998. It appears that the ratio of the aforesaid decision was not brought to the notice of the learned Single Judge.

6. Be that as it may, by passing the aforesaid order dated 15th June, 2007, the Municipal Corporation of Delhi has practically nullified the reliefs which were granted by the MCD to the private Respondents herein, who were the writ Petitioners before the learned Single Judge. The said order dated 15th June, 2007 is again a matter of challenge before the learned Single Judge through a writ petition, which is pending for consideration.

7. The decision of the learned Single Judge is shown to be against the ratio of the decision of the Supreme Court in *Dr. Anuradha Bodi and Ors. v. Municipal Corporation of Delhi and Ors.* (supra) and accordingly an order was passed by the Municipal Corporation of Delhi giving effect to the orders of the Supreme Court in the aforesaid decision.

8. In that view of the matter, practically nothing survives for consideration in these appeals, which stand disposed of accordingly. All the pending applications

also stand disposed of.

9. It is made clear that whatever opinions and views are expressed by the learned Single Judge would have no bearing or relevance on the court deciding the writ petition(s), which is/are pending before the learned Single Judge as against the order dated 15th June, 2007, which shall be considered in the light of the records of that case and also in the light of the various decisions, which have been rendered by the Supreme Court on the aforesaid issue.

12. The Petitioners herein there after filed two review applications bearing No. 116/2008 and 151/2008. These applications were disposed of on 12th September, 2008 with the following observations:

To this extent there is no quarrel between the parties. However, these review petitions are filed seeking deletion of the observations contained in the last para of the order, which reads as under:

9. It is made clear that whatever opinions and views are expressed by the learned Single Judge would have no bearing or relevance on the court deciding the writ petition(s), which is/are pending before the learned Single Judge as against the order dated 15th June, 2007, which shall be considered in the light of the records of that case and also in the light of the various decisions, which have been rendered by the Supreme Court on the aforesaid issue.

It is submitted by the review Petitioners that in making the aforesaid observations, the Division Bench virtually precluded the Petitioners from arguing that they are entitled to regularization from initial date of appointment. We do not think that these observations would come in the way of the Petitioners. The intention behind those observations is to authorize the learned single Judge to take independent view in the matter keeping in view the submissions that would be made by the Petitioners and also taking into consideration the judgment of the Supreme Court in Dr. Anuradha Bodi (supra) on the basis of which order dated 15.6.2007 are passed by the MCD.

13. It is clear from the aforesaid that the order dated 14th May, 1998 passed in W.P.(C) 1550/1996 has been set aside and quashed. The said order cannot be relied upon. What was clarified in paragraph 9 of the order dated 5th February, 2008 in LPA Nos. 708/2001 and 138/2003 and in the review order dated 12th September, 2008 as quoted above, was the factum that the Division Bench had not examined the merits of the office order dated 15th June, 2007 passed by the MCD. The Division Bench further clarified that while examining the merits of the order dated 15th June, 2007, the Court/forum would take into consideration the judgment of the Supreme Court in the case of Dr. Anuradha Bodi (supra). Of course, the Petitioners herein cannot set forth their claim for regularization from the date of their initial appointment as this would be contrary to the judgment of the Supreme Court in the case of Dr. Anuradha Bodi (supra).

14. After W.P.(C) 4619/2007 was transferred to the Tribunal, the same was

numbered as T.A. No. 398/2009. The Petitioners herein filed an amendment application raising an additional ground that the MCD had passed the resolution dated 17th January, 2000 regularizing the services of ad-hoc GDM Os-II, who were appointed during the periods 1982 to 1986 and from 1986 to 1989. While passing the resolution, the Corporation was advised by the Commissioner. It was also stated that the UPSC vide its communication dated 21st July, 2000 opined that the matter deserves to be dealt with by the MCD at its own level and thus UPSC had not raised any objection. The regularly appointed GDM Os-II filed O.A. No. 1601/2010 challenging the resolution dated 17th January, 2000 passed by the MCD. Both the matters were taken up together and have been disposed of by the impugned order dated 9th December, 2010. The relevant portion of the order and the reasons given by the Tribunal read as under:

13. The resolution dated 17.1.2000, which came to be passed primarily because of the directions issued by the learned single Judge of the High Court in CWP No. 1550/1996 vide judgment dated 14.5.1998 and which would be in teeth of the judgment recorded by the Hon"ble Supreme Court, would be per se illegal, and if that be so, if the applicant in the OA is allowed to challenge the same and is successful in making out sufficient cause for condonation of delay, perhaps no contentions, and in particular, the one raised by Shri Venkataramani, that a validly passed resolution by the Corporation could not be annulled by Director (Personnel)/Commissioner, need be even gone into. Before we may deal with the application seeking condonation of delay, we may mention that in a given case it may be permissible for the Respondents with a view to protect the impugned orders to call in question such orders that may not have been challenged and may appear to be going in favour of the applicants, and, therefore, it may be permissible for regularly appointed doctors who are arrayed as party Respondents in the TA to challenge the validity of the resolution dated 17.1.2000 even as Respondents. The Respondents in the TA have indeed styled the resolution to be illegal being against the decision of the Hon"ble Supreme Court. There would have been perhaps no need for the Respondents in the TA to separately challenge the resolution dated 17.1.2000 by way of a separate OA. However, once they have challenged the said resolution by way of separate OA and prayed for condonation of delay in maintaining the same, we may deal with that aspect of the case.

14. The facts and, in particular the legal proceedings resorted to by the respective parties adverted to above are not in dispute. What thus transpires is that the moment the regular doctors came to know of the resolution dated 17.1.2000 they called it in question by resorting to writ proceedings before the High Court, where it was found not to be maintainable, as the right course of action for them was to file LPA, which they indeed filed with the result already indicated above. It is during the pendency of the LPA that the writ petition, now TA, came to be filed in the High Court wherein regular doctors made an application for being impleaded as party Respondents, which has since already been allowed by this Tribunal. In the original writ petition, the impugned order

dated 15.6.2007 has not been challenged on the ground that the same could not be passed by an authority subordinate, i.e., Director (Personnel)/Commissioner, which would amount to annulling the resolution passed by the Corporation. Even though, there is a mention of the resolution aforesaid, but as mentioned above, no specific ground based on that has been incorporated in the original writ petition. Such a ground came to be taken for the first time when the applicants in the TA amended the same. Once, orders were passed by MCD during the pendency of the LPA fixing dates of regular appointment of ad hoc doctors as incorporated in the impugned order, the regular doctors could well be given to understand that the matter had reached a quietus, and, therefore, nothing more was required to be done at their end. Ad hoc doctors indeed had filed a writ petition in the High Court, but, as mentioned above, the same did not incorporate any ground as has now been taken in the amended TA. The applicant in the OA may not be right to say that he would not know that the resolution dated 17.1.2000 has not been rescinded and that he came to know about the same for the first time through information obtained under RTI Act, but the plea raised by him that necessity arose to challenge the said resolution only when the TA was amended cannot be rejected. It would have been very easy for him to defend the writ petition/TA as the impugned orders were passed in consonance with the orders passed by the Supreme Court. There was no occasion for him to challenge the resolution dated 17.1.2000 earlier to when the TA was amended. In the peculiar facts and circumstances of this case, even though the resolution dated 17.1.2000 has been challenged now in 2010, we find sufficient cause forthcoming to condone the delay. The matter can be looked from another angle. It may be recalled that the applicant in the OA had specifically challenged the resolution of 2000 in the writ petition, which stood withdrawn, as also the LPA. During the pendency of the LPA, the orders impugned in the TA came to be passed. It is on the strength of the orders impugned in the TA that the Hon'ble Division Bench observed that the ad hoc doctors had been virtually denied the relief of regularisation from the dates of their initial appointment. Their LPA became practically infructuous. If the applicants in the TA can be permitted to challenge the resolution dated 17.1.2000 even though, when the LPA of the applicant in OA may have become infructuous, why cannot the applicant in the OA be allowed to challenge the very resolution when for the first time he has been confronted with the same. Even though, the resolution aforesaid was passed in 2000, but in our considered view, the cause of action to challenge the same has accrued to the regularly appointed doctors now. There would be yet another angle to look at the issue. Regularly appointed doctors had indeed challenged the resolution of 2000 in a writ petition as also in LPA. They were given to understand by the LPA Bench, when during the pendency of the appeal the order impugned in the TA came to be passed, that the benefit given to ad hoc doctors, be it by virtue of an order or resolution, had been annulled. It was so specifically observed by the Hon'ble Bench which recorded the order in the LPA. Once, regularly appointed doctors got the necessary relief, there was no occasion for them to call in question the resolution of 2000. The applicants in the

TA, despite the decision recorded by the LPA Bench, would seek the same relief which stood withdrawn in view of the order that came to be passed during the pendency of the appeal, and now challenged in the TA, on the technical plea that even though the orders granting relief to them may have been withdrawn, but insofar as the resolution of 2000 is concerned, the same was not withdrawn. The relief is thus being asked for now on a ground which was not pressed at any stage, even though the LPA Bench may not have stated that they would be entitled for regularisation of their services from the date of initial appointment on ad hoc basis on the strength of the resolution of 2000. Once, despite the array of facts as mentioned above, the applicants in the TA have chosen to ask for the same relief on the dint of the resolution of 2000, and that too when the writ/TA has been pending for a long time, by way of amendment, the applicant in the OA would be well within his rights to challenge the said resolution at this stage, and in these circumstances, no plea of bar of limitation can be raised.

15. We have already mentioned that the resolution dated 17.1.2000 is per se illegal. We may elaborate. As already mentioned, the resolution aforesaid came to be passed primarily on the dint of the orders passed by the learned single Judge dated 14.5.1998 in CWP No. 1550/1996. The judgment recorded by the learned single Judge came after the decision of the Hon"ble Supreme Court in Dr. Anuradha Bodi (supra). We are of the considered view that when directions issued by the learned single Judge were not in conformity but were rather in contradiction to the judgment of the Hon"ble Supreme Court, the MCD was bound to seek clarification of the same. It could, as mentioned above, also challenge the order in higher judicial forum. It is absolutely baffling to note that despite the fact that the Hon"ble Supreme Court had concluded the issue beyond the pale of any controversy with regard to doctors appointed on ad hoc basis of one batch, why the MCD would prefer to comply with the directions issued by the learned single Judge of the High Court. It is rather strange to note that it would not even make a mention of the orders passed by the Hon"ble Supreme Court. Be that as it may, when a decision of the higher forum was available on the subject, it is the said decision which had to be obeyed. The MCD remained totally remiss in bringing to the notice of the High Court that only a few days ago the Hon"ble Supreme Court had rendered its decision, which would completely knock out the case of the ad hoc doctors for their regularization from the date of their initial appointment on ad hoc basis. The MCD was a party before the Supreme Court as also before the High Court. Not only that, even thereafter no effort was made at all by MCD to seek review of the order of the learned single Judge, or to challenge the same in a higher judicial forum. We are not commenting and giving any final opinion on the issue, but may still mention that there may have been an occasion not to give effect to the judgment of the learned single Judge when the Hon"ble Supreme Court had authoritatively laid down the law, but there was no occasion whatsoever to completely ignore the judgment of the Hon"ble Supreme Court. We are saying so also because as already adverted to, the issue as regards the entitlement of ad hoc doctors for their regularisation from the dates

they were initially appointed on ad hoc basis or from the date when UPSC approved their regularisation, was not subject matter of debate, nor any decision, and on the issue as such no opinion was expressed by the learned single Judge, whereas the pertinent issue, as mentioned above, was focused, debated and adjudicated by the Hon"ble Supreme Court. As mentioned above, by virtue of provision contained in Article 141 of the Constitution, the law declared by the Supreme Court shall be binding on all courts within the territory of India, whereas by virtue of Article 144, all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court, and inasmuch as, the resolution dated 17.1.2000 would in terms be against the judgment of the Supreme Court, the same has to be treated as illegal and void. Further, be it the Corporation or any officer of the Corporation, it cannot disregard the law for the time being in force. We may make a reference to Section 502 of the DMC Act, which reads as follows:

502. Save as provided in this act, nothing contained in this act shall be construed as authorizing the disregard by the corporation or any municipal authority or any municipal officer or other municipal employee of any law for time being in force.

The resolution dated 17.1.2000 is certainly in disregard to the law laid down by the Supreme Court, and that too in a case in which the MCD was a party Respondent. For the reason as mentioned above as well, the resolution would be illegal and void.

16. We are conscious that the Hon"ble LPA Bench while dealing with the review petition filed by ad hoc doctors observed that the learned single Judge would not be swayed by the observations contained in the impugned judgment dated 14.5.1998 one way or the other and would decide the matter independently after hearing both the parties, but as mentioned above, there is no argument whatsoever with regard to entitlement of ad hoc doctors for their regularisation from the date of initial appointment on ad hoc basis, and the only plea pressed into service was that the impugned order could not be passed as the resolution of the Corporation dated 17.1.2000 had not been specifically rescinded. We may also mention that in the para immediately preceding where it has been mentioned that the learned single Judge would not be swayed by the observations contained in the judgment dated 14.5.1998, it has been mentioned that the learned single Judge would take an independent view in the matter keeping in view the submissions that would be made by the Petitioners and also taking into consideration the judgment of the Supreme Court in Dr. Anuradha Bodi's case. Once, the judgment of the Supreme Court in Dr. Anuradha Bodi's case has to be taken into consideration, no argument would arise that a view different than the one expressed in the judgment aforesaid can be taken. An inter parties judgment is binding upon the parties. However, despite that this Tribunal has no choice but to follow the judgment of the Supreme Court in Dr. Anuradha Bodi's case, no other precedent has been even remotely referred to that may take a contrary view than the one taken in the judgment aforesaid.

17. In all fairness to Shri Venkataramani, learned Sr. Advocate, we may mention that it is urged by him that vide the impugned order, earlier order dated 16.8.2000 issued by the MCD has been withdrawn, and that the aforesaid order was issued in pursuance of the resolution passed by MCD on 17.1.2000, which was never recalled or rescinded by any subsequent resolution, and further that the impugned order has been issued by the Director (Personnel)/Commissioner, even while the corporation as a legislative body has not withdrawn the resolution. It is urged that the Corporation conducts its affairs as a corporate body and deals with the functions of the Corporation by transacting its business by way of holding meetings, and that Section 78 of the DMC Act provides for the manner of taking decisions at such meetings, and the Corporation in exercise of its legislative power transact any business and take decisions, and that the decisions taken in exercise of such legislative power are understood as resolutions of the Corporation. It is also urged that the judgment of the Supreme Court would not create an estoppel against the Corporation. We need not go into the contentions of the learned Counsel as noted above, as if the resolution in itself is illegal and void, no arguments as referred to above can be pressed into service. The contentions as raised by Shri Venkataramani would be applicable only if the resolution would have been valid. There would be no need thus to go into the contentions raised by him, in the context of facts and circumstances of the present case."

15. We are entirely in agreement with the reasoning given by the Tribunal as the earlier resolution dated 17th January, 2000 was passed by the MCD on the basis of the decision of the learned single Judge of this Court dated 14th May, 1998 in W.P.(C) 1550/1996. The said decision has been set aside in LPA Nos. 708/2001 and 138/2003 decided on 5th February, 2008. That apart, the said decision is contrary to the decision of the Supreme Court rendered in the case of ad-hoc GDM Os-II, who were appointed in the first batch during the period 1982 to 1986, who had filed a writ petition before the Supreme Court with similar prayers. The said writ petition was dismissed in the case of Dr. Anuradha Bodi (supra). The said decision was not brought to the notice of the single Judge when the order dated 14th May, 1998 was passed. As noticed above, the order of the single Judge dated 14th May, 1998 as quoted above does not in fact discuss or deal with the question of regularization of ad-hoc appointees and their right to claim regularization from the date of their initial appointment. This aspect was examined and dealt with in the case of Dr. Anuradha Bodi (supra). In the said case, the Supreme Court had noticed the terms and conditions of appointment. The relevant portion of the judgment in Dr. Anuradha Bodi (supra) enumerates:

.... In the appointment orders, Clause 1 stated that the appointment would be purely on an ad hoc basis as a stop gap arrangement for a period of six months or till such time the post were filled up on regular basis through Union Public Service Commission (for short "UPSC") or till further orders, whichever was earlier. Clause 2 provided that the ad hoc appointments could be terminated at any time by the competent authority without assigning any reason whatsoever

and without giving any prior notice. Accordingly to Clause 3, the appointment will not confer any right whatever on the appointee for regular/permanent appointment. Under Clause 9 the appointees were advised for regular appointment to pass the UPSC examination in the normal course in the direction competition.

16. The Supreme Court then referred to the recruitment rules called Delhi Municipal Corporation Health Service Recruitment Regulations, 1982, which were framed by the MCD u/s 98 of the Delhi Municipal Corporation Act, 1957. As per the aforesaid rules, the posts in question were to be filled through UPSC. The Petitioners herein were not selected through UPSC. In the said decision reference was made to an earlier writ petition filed by similarly situated doctors, who were called upon and asked to appear in the Combined Medical Service Examination, 1991. The Petitioners therein had prayed and stated that the MCD should be restrained from terminating their services pending disposal of the petition. This writ petition bearing No. 47/1991 was disposed of on 29th September, 1991 stating that the Petitioners therein cannot claim that they are entitled to regularization even though they are not selected. However, the Petitioners therein had been called for interview by the UPSC and, therefore, the petition was dismissed as infructuous. The Petitioners therein, if they were not selected, were given liberty to raise grievance in that connection.

17. The Supreme Court in Dr. Anuradha Bodi's case has referred to the decision of the Constitution Bench in The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, , and the two categories carved out in paragraph 47 of the said judgment. The said categories read as under:

(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 a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment, is not made by 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 countered.

18. The aforesaid categorization was subsequently explained in the case of State of W.B. and Others Vs. Aghore Nath Dey and Others, wherein it was observed that ad-hoc appointments made as a stopgap arrangement are covered by conclusion A and not by conclusion B. Conclusion B is applicable only when the initial appointment is made against an existing vacancies, not limited to a fixed period of time or purpose by the appointment order itself, but is made subject to deficiency in the procedural requirements prescribed by the rules for adjudging

suitability of the appointee for the post being cured at the time of regularization. Thus, the decision whether appointee falls in conclusion A or B depends upon the terms of initial appointment itself and the provisions in the rules.

19. With reference to the terms and conditions of appointment and the relevant Delhi Municipal Corporation Health Service Recruitment Regulations, 1982, the Supreme Court in the case of Dr. Anuradha Bodi (supra) has held as follows:

12. If the facts of these two cases are analysed in the light of the aforesaid decisions, there can be no doubt whatever that the Petitioners fall within the corollary in Conclusion (A). The orders of appointment issued to the Petitioners are very specific in their terms. Though the recruitment rules came into force on 6-8-1982, the appointments were not made in accordance therewith. They were ad hoc and made as a stopgap arrangement. The orders themselves indicated that for the purpose of regular appointment the Petitioners were bound to pass the UPSC examination in the normal course in the direction competition. Hence the Petitioner will not fall under the main part of Conclusion (A) or Conclusion (B) as contended by the learned Counsel for the Petitioners.

20. Ratio laid down in the case of Dr. Anuradha Bodi (supra) squarely applies to the case of the Petitioners. There is no distinguishing factor. In fact not applying the ratio of Dr. Anuradha Bodi's case to the case of the Petitioners will result in discrimination and inequality. The resolution of the Corporation dated 17th January, 2000 cannot be sustained and was rightly recalled by them vide office order dated 15th June, 2007.

21. We will now briefly deal with the decisions relied upon by the Petitioners. In State of Orissa and Others Vs. Gopinath Dash and Others, it was held that if a policy decision taken by the Government does not appear to be agreeable, it cannot be interfered as the Court is not the appellate authority. However, in the present case we are concerned with the statutory rules and regulations and the nature of appointment of the Petitioners. The office order dated 15th June, 2007 has been passed by the MCD itself. Decision in the case of Bank of India and Others Vs. O.P. Swarnakar etc., , does not deal with regularization and the date of regularization. It deals with the terms and conditions of contract. Similarly, decision in the case of Satya Narain Shukla Vs. Union of India (UOI) and Others, does not support the case of the Petitioners. In the said decision it has been held that the executive may resort to executive instructions and can deal with the aspects which are not covered by the statutory rules or provisions. The recruitment of GDM Os-II is covered by the statutory rules. The question of regularization of service and date of regularization in respect of ad-hoc appointees has been a subject matter of several decisions of the Supreme Court and, therefore, they constitute a binding precedent. They have laid down the law of the land. Decision in the case of Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, does not assist the Petitioners. In the said case it has been held that the policy decision must be left to the government as it alone can decide what policy should be adopted. In the present case we are not concerned with policy decision

as such. In the present case we are concerned with the date of regularization and have to examine whether there is violation of Articles 14 and 16 of the Constitution. Decision in the case of Suman Gupta and Others Vs. State of Jammu & Kashmir and Others, states that the selection of an appropriate procedure lies ordinarily within the domain of executive policy. However, once recruitment rules are framed these have to be adhered to. Reliance placed on Ashok Kumar Uppal and Others Vs. State of Jammu & Kashmir and Others, is also misplaced. Power of the government to relax rules in case of hardship cannot be exercised in an arbitrary manner to give advantage or favour to an individual employee. In the present case we already have a decision in the case Dr. Anuradha Bodi (supra). It may be noticed that the Supreme Court has laid emphasis that the authorities should follow and abide by recruitment rules. In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, the Constitution Bench of the Supreme Court has examined the question of ad-hoc or irregular appointment made contrary to the recruitment rules. It has been held that such appointments are contrary to the Articles 14 and 16 of the Constitution and such employee cannot claim regularization or absorption.

22. In view of the aforesaid, the writ petition is dismissed. However, in the facts and circumstances, there will be no order as to costs.