HINDUSTAN SHIPYARD LTD. AND ORS. A

v.

DR. P. SAMASIVA RAO ETC.

JANUARY 30, 1996

[S.C. AGARWAL AND G.T. NANAVATI, JJ.] B

Service Law—Ad hoc appointments—Regularisation—Recruitment rules—Procedure prescribed—Regular appointment on post of medical officer—Method of selection by Selection Committee—Direction for regularisation given by High Court held impermissible. C

The respondents were appointed as medical officers in the appellant corporation on ad hoc basis. They claimed regularisation of their services from the initial date of appointment and also sought a direction to the appellant- corporation to pay salary and allowances on par with the regular medical officers working in the corporation. The Division Bench D **while allowing the writ petitions observed that these persons were eligible for appointment and they were also qualified according to the rules and there was no complaint about the satisfactory nature of the service and therefore, it was directed that their services be regularised w.e.f. 1.4.1986 in a regular scale of pay with two advance increments in view of the long** E **spell of temporary service. It was further held that these medical officers were not entitled to any other benefits like seniority, promotions etc. These appeals had been filed against the judgment of the High Court.**

The appellant - corporation submitted that regular appointment on the post of Medical Officer could only be made through a process of F **selection by the Selection Committee in accordance with the Recruitment Rules framed by the appellant - corporation for appointment and the High Court was in error in directing regularisation of all the three medical officers w.e.f. 1.4.1986 without their being required to undergo selection by the Selection Committee.** G

The respondent urged that having regard to the fact that they had been working as medical officers for a number of years and there being no complaint about their performance during this period and that after 1984 no regular selection had been made and the respondent-medical officers had no opportunity of being considered for regular selection by the Selec- H

A tion Committee, the High Court had not committed any error in giving the direction regarding regularisation and for payment of regular salary.

Allowed the appeals, this Court

HELD : The process of regularisation involves regular appointment
B which can be done only in accordance with the prescribed procedure. Having regard to the Recruitment Rules which have been made by the appellant - corporation, regular appointment on the post of medical officer could only be made after the duly constituted Selection Committee had found the person suitable for such appointment. The fact that no regular
C selection had been made after their appointment on ad hoc basis did not mean that they were entitled to be regularised w.e.f., 1.4.1986. As a result of the direction for regularisation given by the High Court, the requirement in the Rules regarding selection by a Selection Committee for the purpose of regular appointment on the post of medical officer had been dispensed with. This was impermissible. The only direction that could be
D given in the matter of regularisation was that the respondent-medical officers should be considered by a duly constituted Selection Committee as per the Rules for the purpose of regular appointment on the post of medical officer and the appellant- Corporation should constitute a Selection Committee for that purpose. [1044-C-G, 1045-C]

E

Dr. A.K. Jain & Ors. v. *Union of India & Ors.*, [1987] Supp. SCC 497, distinguished.

Dr. M.A. Haque & Ors. v. *Union of India & Ors.*, [1993] 2 SCC 213, relied on.

F

1.2. The direction given by the High Court for payment of regular pay scales to the respondent-medical officers w.e.f. 1.4.1986 is sustained. [1045-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4216-19
G of 1993 ETC.

From the Judgment and Order dated 2.2.93 of the Andhra Pradesh High Court in W.A. Nos. 281/86, 944/91 and W.P. Nos. 4337 and 585 of 1989.

H K. Ram Kumar for the Appellants.

C. K. Sucharita, L. Nateshwara Rao, R. Santhanakrishnan, K.R. Nagaraja, Narasimha, P.S. and V.G. Pragasam for the Respondents. A

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. These appeals raise common questions relating to regularisation of three medical officers (respondents herein) working with the Hindustan Shipyard Limited (hereinafter referred to as 'the appellant-corporation'). B

Dr. P. Sambasiva Rao obtained the M.B.B.S. degree in 1975 and he was appointed as a medical officer in the appellant-corporation on October 29, 1976 on an honorarium of Rs. 600 per month to work in the dispensary in the colony/first aid centre in the yard. The said appointment was continued till February 27, 1985 with artificial breaks of one day after each appointment for 89 days. During this period a selection was made for regular appointment on two posts of medical officer in 1980-81. Dr. P. Sambasiva Rao was not considered eligible for such selection on the view that for the purpose of eligibility the applicant should have obtained the degree in medicine by 1974 and Dr. P. Sambasiva Rao had obtained his medical degree in the year 1975. He filed a writ petition (W.P. No. 2058 of 1981) in the Andhra Pradesh High Court wherein he sought a writ or direction declaring that he was entitled for absorption into the post of medical officer in the appellant-corporation. In the said writ petition, the learned counsel appearing for the appellant-corporation gave an undertaking before the Court that Dr. P. Sambasiva Rao would be treated as eligible for selection and he was called for interview on March 12, 1981 but he was not selected and he continued to work on *ad hoc* basis. The last appointment given to Dr. P. Sambasiva Rao was on December 4, 1984 for the period December 5, 1984 to February 27, 1985. Dr. P. Sambasiva Rao fell ill and applied for leave from March 1, 1985 but he was informed on June 6, 1985 that his appointment was an *ad hoc* appointment which expired on February 27, 1985 and, therefore, the question of sanctioning leave after February 27, 1985 did not arise. Feeling aggrieved by the termination of his services with effect from February 27, 1985, Dr. P. Sambasiva Rao filed a writ petition (W.P. No. 9844 of 1985) in the Andhra Pradesh High Court wherein he sought a declaration that the order dated June 6, 1985 terminating his services with effect from February 27, 1985 was arbitrary and illegal, and also sought a declaration that he should be deemed to be continuing C D E F G H

A in service of the appellant-corporation continuously. Both the Writ Petitions (W.P. No. 2058 of 1981 and W.P. No. 9844 of 1985) were disposed of by a learned single Judge of the High Court (Anjaneyulu J.) by Judgment dated February 28, 1986. Allowing W.P. No. 9844 of 1985 and quashing the order dated June 6, 1985, the learned single Judge held that the said order effectively dispensing with the services of Dr. P. Sambasiva Rao with effect B from March 1, 1985 was extremely arbitrary and unreasonable and was violative of Article 14 of the Constitution. The appellant-corporation was directed to reinstate Dr. P. Sambasiva Rao forthwith and consider him for appointment on regular basis at the earliest. The appellant-corporation was also directed to put Dr. P. Sambasiva Rao on a reasonable scale of pay. In C view of the orders passed in W.P. No. 9844 of 1985, the learned single Judge did not consider necessary to pass further orders in W.P. No. 2058 of 1981. The appellant- corporation filed W.A. No. 281 of 1986 and W.A. No. 282 of 1986 against the said decision of the learned single Judge in these two writ petitions.

D

While the said appeals were pending, Dr. P. Sambasiva Rao filed two writ petitions (W.P. Nos. 4337 of 1989 and 585 of 1989). In writ petition No. 4337 of 1989, Dr. P. Sambasiva Rao claimed seniority in the category of medical officers, time scale of pay on par with regular medical officers and other attendant benefits like employer's share of contributory fund, E ex-gratia amounts etc. In writ petition No. 585 of 1989, Dr. P. Sambasiva Rao Claimed allotment of residential quarter and also allowance at the rate of Rs. 400 per month since April 1, 1986 and to finalise his leave account.

Dr. J. Sanjeeva Kumar passed the M.B.B.S. degree examination in F 1981 and he joined the appellant corporation as medical officer on July 16, 1985 on an initial pay of Rs. 35 per day. The said appointment was for 89 days each time with a break of one day, i.e., 90th day and on the 91st day he was reappointed. The said remuneration was raised from Rs. 35 per day to Rs. 50 per day with effect from April 27, 1987. He filed a writ petition (W.P. No. 9987 of 1990) in the Andhra Pradesh High Court where in he G sought regularisation of his services with effect from the initial date of appointment, i.e., July 16 1985 and also sought a direction to the appellant-corporation to pay salary and allowances on par with the regular medical officers working in the appellant-corporation with effect from July 16, 1985. In the said writ petition the case of Dr. J. Sanjeeva Kumar was that he had H been working for six hours every day throughout the period of five years

and though the remuneration which was being paid to him was described as honorarium, he was discharging his duties as medical officer like other medical officers working with the appellant-corporation and that regular medical officers in the service of the appellant-corporation who were also discharging the same duties were receiving salary in the time scale of Rs. 960-50-1860 plus other allowance. The said writ petition (W.P. No. 9987 of 1990) of Dr. J. Sanjeeva Kumar was allowed by learned single Judge of the High Court (Panduranga Rao J.) by judgment dated April 11, 1990 and the appellant-corporation was directed to regularise the services of Dr. J. Sanjeeva Kumar in the category of medical officers with effect from July 16, 1985 and to pay to him the salary and other allowances on par with regular medical officers working with the appellant-corporation from July 13, 1990, the date on which the writ petition was presented before the High Court. The regularisation of the services of Dr. Sanjeeva Kumar from July 16, 1985 to the date of filing of the writ petition was limited for the purpose of the pensionary benefits only and for claiming any seniority and that the pay was directed to be fixed in the initial stage of medical officers on and from July 13, 1990. W.A. No. 944 of 1991 was filed by the appellant-corporation against the said judgment of the learned Single Judge in W.P. No. 9987 of 1990.

W.A. Nos. 281 & 282 of 1986 and 944 of 1991 filed by the appellant-corporation against the judgments of the learned single judges in the writ petitions of Dr. P. Sambasiva Rao and Dr. J. Sanjeeva Kumar as well as writ petitions Nos. 4337 of 1989 and 585 of 1985 filed by Dr. P. Sambasiva Rao, were heard by the Division Bench of the Andhra Pradesh High Court and decided by a common judgment dated February 2, 1993. The learned Judges observed that the fact that Dr. P. Sambasiva Rao was working with effect from October 29, 1976 and Dr. J. Sanjeeva Kumar with effect from July 16, 1985 on honorarium was not disputed and that the appellant-corporation had not stated that the services of these two medical officers were not satisfactory and it was also not brought to the notice of the court that there was any complaint against the said medical officers. The learned Judges also observed that both these persons were eligible for appointment and they were also qualified according to rules and there was no complaint about the satisfactory nature of the service and it was also not disputed that their appointment on regular basis does not run counter to the reservation policy and, therefore, it was held that the direction given by the learned single Judges in both the cases directing the regularisation of the

A services of these two medical officers fell within the four corners of the law laid down by this Court in *State of Haryana* v. *Piara Singh*, [1992] 4 SCC 118. It was directed that the services of Dr. P. Sambasiva Rao be regularised with effect from April 1, 1986 in a regular scale of pay and he would be entitled for two advance increments in view of the long spell of
B temporary service he had put in and he would also be provided with official accommodation within six months otherwise he would be given allowance as per rules. Similarly, with regard to Dr. J. Sanjeeva Kumar, it was held that he was entitled to be regularised with effect from April 1, 1986 and be given two advance increments and official accommodation within six months or in the alternative allowance as per rules. It was further held that
C both these medical officers were not entitled to any other benefits like seniority, promotion etc. as sought for.

Dr. S. Prasada Rao was originally appointed as medical officer with the appellant-corporation on September 1, 1984 on daily wage basis a Rs.35
D per day and the said remuneration was increased to Rs. 50 per day from April 20, 1987. He filed a writ petition (W.P. No. 12648 of 1990) in the Andhra Pradesh High Court claiming regularisation of his services in the category of medical officers with effect from the date of his initial appointment, i.e., September 1, 1984 and also sought a direction regarding payment of salary and other allowances on par with regular medical officers
E working in the appellant-corporation with effect from September 1, 1984. The said writ petition of Dr. S. Prasada Rao was allowed by the learned single Judge of the High Court (Jagannadha Raju J.) by judgment dated September 18, 1991 and it was directed that the services of Dr. S. Prasada Rao shall be regularised with effect from his original date of appointment,
F i.e., September 1, 1984, as regular medical officer and that he would also be entitled to the consequent benefits. W.A. No. 1318 of 1991 was filed in by the appellant-corporation against the said judgment of the learned single Judge. The said appeal was disposed of by another Division Bench of the Andhra Pradesh High Court by judgment dated September 8, 1993.
G Following the earlier judgment of the Division Bench in W.A. No. 944 of 1991 filed by the appellant-corporation in the case of Dr. J. Sanjeeva Kumar, the Division Bench treating Dr. S. Prasada Rao on par with Dr. J. Sanjeeva Kumar disposed of the said appeal with the direction that services of Dr. S. Prasada Rao would be regularised with effect from April 1, 1986 and he should also be given two advance increments and official accom-
H modation within six months.

Feeling aggrieved by the aforesaid decisions of the Andhra Pradesh High Court, the appellant-corporation has filed these appeals. A

Shri Ram Kumar, the learned counsel appearing for the appellant-corporation, has placed before us the Recruitment Rules framed by the appellant-corporation for appointment against regular/temporary posts in connection with the affairs of the company including the post of Medical Officer. Under the said Rules, direct recruitment is to be resorted to when the post is not to be filled in by promotion as per the promotion procedure. For the purpose of direct recruitment, the Rules provide that normally an advertisement is issued in leading daily newspapers on all India basis to tap the potential available from the employment market, but simultaneously other sources of recruitment are also tapped and where the job required exceptional skills, knowledge and experience, which are not normally available in the employment market, the competent authority may decide to fill up the post on deputation of officers from the Central/State Governments and other public sector undertakings. The Rules make provision for screening of applications received in response to advertisements and preparation of a list of candidates who may be called for interview before the Selection Committee. The Rules provide through one or all the following selection methods : B C D

(i) Competitive, Aptitude/Technical Test; E

(ii) Group Task; and

(iii) Personal Interview.

The recommendations of the Selection Committee are submitted to the competent authority for approval and after obtaining the approval of the competent authority appointment orders are issued. F

The submission of Shri Ram Kumar is that regular appointment on the post of Medical Officer can only be made through a process of selection by the Selection Committee in accordance with the aforementioned Rules and the High Court was in error in directing regularisation of all the three medical officers with effect from April 1, 1986 without their being required to undergo selection by the selection Committee. On behalf of the respondents-medical officers, it has been urged that having regard to the fact that they had been working as medical officers for a number of G H

A years and there was no complaint about there performance during this period, the High Court was justified in giving the direction for their regularisation with effect from April 1, 1986 and for payment of regular salary at par with other medical officers with effect from that date. It has also been submitted on behalf of the respondents-medical officers that after 1984 no regular selection has been made and the respondents-medical officers had no opportunity of being considered for regular selection by the Selection Committee and that in these circumstances the High Court has not committed any error in giving the direction regarding regularisation. The learned counsel for the respondents have placed reliance on the decisions of this Court in *Dr. A.K. Jain & Ors.* v *Union of India & Ors.*, [1987] Supp. SCC 497.

We are unable to endorse the direction given by the High Court regarding Regularisation of the respondents medical officers with effect from April 1, 1986. The process of regularisation involves regular appointment which can be done only in accordance with the prescribed procedure. Having regard to the rules which have been made by the appellant-corporation, regular appointment on the post of medical officer can only be made after the duly constituted Selection Committee has found the person suitable for such appointment. Dr. P. Sambasiva Rao, though he had been working since 1976, was considered by the Selection Committee for regular appointment in the year 1981 and was not found suitable for such regular appointment. Dr. J. Sanjeeva Kumar and Dr. S. Prasada Rao were never considered by the Selection Committee for regular appointment. The fact that no regular selection has been made after their appointment on *ad hoc* basis does not mean that they are entitled to be regularised with effect from April 1, 1986. In view of the Rules prescribed by the appellant-corporation, regularisation of the respondent-medical officers on the post of medical officer can be made only after they are considered and found suitable for such appointment by a duly constituted Selection Committee. As a result of the direction for regularisation given by the High Court, the requirement in the Rules regarding selection by a Selection Committee for the purpose of regular appointment on the post of medical officer has been dispensed with. This, in our opinion, was impermissible.

The decision in *Dr. A.K. Jain & Ors.* v. *Union of India & Ors.*, (supra), on which reliance has been placed on behalf of the respondent-medical officers, does not lend any assistance to them. In that case it was

directed that the regularisation of the Assistant Medical Officers/Assistant Divisional Medical Officers who were appointed on ad hoc basis upto October 1, 1984 shall be made in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports in respect of a period subsequent to October 1, 1982. In *Dr. M.A. Haque & Ors.* v. *Union of India & Ors.*, [1993] 2 SCC 213, this Court has deprecated the practice of bypassing of the Public Service Commission which would open a back door for illegal recruitment without limit. The direction given by the High Court that the respondent-medical officers should be regularised with effect from April 1, 1986 cannot, therefore, be upheld. The only direction that can be given in the matter of regularisation is that the respondent-medical officers should be considered by a duly constituted Selection Committee as per the Rules for the purpose of regular appointment on the post of medical officer and the appellant-corporation should constitute a Selection Committee for that purpose.

We are, however, not inclined to interfere with the direction given by the High Court for payment of regular pay scales to the respondent-medical officers with effect from April 1, 1986.

The appeals are accordingly allowed to the extent that the direction given by the High Court for regularisation of the respondent-medical officers with effect from April 1, 1986 is set aside. The appellant-corporation is directed to constitute a Selection Committee in accordance with the relevant Rules for considering the matter of regularisation of the respondent- medical officers on the post of medical officer. The said Selection Committee shall consider the claim of the respondent- medical officers for such regularisation by applying the criteria laid down for appointment of medical officers on regular basis and it shall also take into account the record of performance of the respondent-medical officer while they were working on *ad hoc* basis with the appellant-corporation. In case, the respondent-medical officers are found to have crossed the age bar for regular appointment a relaxation should be made in that regard to enable them to be considered for regularisation. This process of selection by the Selection Committee for the purpose of regularisation of the respondent-medical officers shall be undertaken and completed within a period of three months. No orders as to costs.

R.A. Appeals allowed.