

DR. P.P.C. RAWANI AND ORS. ETC.

A

v.

UNION OF INDIA AND ORS.

OCTOBER 29, 1991

[S. RANGANATHAN, V. RAMASWAMI AND N.D. OJHA, JJ.]

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Service Law:

Central Health Service—Doctors—Ad hoc appointees—Regularisation of—Courts' directions for preparation of separate seniority list and creation of supernumerary posts opening promotional avenues to ad hoc appointees on par with regularly recruited doctors.

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In Civil Appeal No.3519 of 1984, filed by the appellants, who were appointed as doctors on *ad hoc* basis in the Central Health Service on various dates between 1968 and 1977, praying for regularisation of their services with reference to their original dates of appointments, this Court, by its judgment dated 9.4.1987 and subsequent orders, gave certain directions. Since the Union of India could not implement the directions, the appellants filed the civil miscellaneous petition for clarification of the earlier orders passed by this Court in the Civil Appeal. Certain other doctors who fall in the category of the appellants (*ad hoc* appointees) and who had not earlier filed writ petition before the High Court, filed writ petitions and intervention applications before this Court praying for the benefits as granted to the appellants.

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It was contended by the Union of India that if regularisation was granted to all the appellants and the like categories of doctors, the doctors regularly appointed in Group A may get relegated to secondary position in view of the fact that the appellants were appointed much earlier on *ad hoc* basis.

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The regularly recruited doctors, not heard earlier, also filed intervention applications praying that any order of regularisation of the appellants and the similarly situated doctors should ensure that their interests were not prejudiced.

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The appellants and the other similarly situated doctors expressed their willingness to be considered for regular appointments

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A only from 1.1.1973, this being the date on which the Group B and Group A services were merged together by the Government of India. They also agreed to give up monetary claims on account of revision of scales, regularisation or promotion to which they would be entitled till 31.10.1991.

B Disposing of the matters, this court,

HELD: 1. Each of the appellants will be treated as regularised in Group A of the Central Health Service from 1.1.1973 or the date of his first initial appointment in the service (though as an *ad hoc* Group B doctor) whichever is later. [p. 113 B]

C 2. In order to ensure that there is no disturbance in the seniority and the promotional prospects of the regularly recruited doctors there will be a separate seniority list in respect of the appellants and their promotions shall be regulated by such separate seniority list and such promotions will only be in supernumerary posts to be created by the Government. [p. 113 B-C]

D 3(a). Each of the appellants will be eligible for promotion to the post of Senior Medical Officer or Chief Medical Officer or further promotional posts therefrom taking into account his seniority in the separate seniority list. [p. 113 D]

E (b). The promotion of any of the appellants to the post of Senior Medical officer, Chief Medical Officer and further promotional post therefrom will be on par with the promotion of the regularly recruited doctor who is immediately junior to the concerned appellant on the basis of their respective dates of appointment, e.g. if a regularly recruited doctor, on the basis of the seniority list maintained by the Department, gets a promotion as Senior Medical Officer or Chief Medical Officer or further promotion thereafter, then the appellant who was appointed immediately earlier to him will also be promoted as a Senior Medical officer or Chief Medical Officer or further promotion therefrom (as the case may be) with effect from the same date. [p. 113 D-F]

H 4. In order to avoid any conflict or any possibilities of reversion, the post to which an applicant will be promoted (whether as Senior Medical Officer or Chief Medical Officer or on further promotion therefrom) should only be to a supernumerary post. Such number of supernumerary posts should be created by the Govern-

ment as may be necessary to give effect to the above directions. No promotion will be given to any of the appellants in the existing vacancies which will go only to the regularly appointed doctors. [pp. 113 F-H, 114 A]

5. All the writ petitioners and interveners, falling in the category of the appellants, would also be entitled to the same reliefs as the appellants for all purposes of seniority and promotion. [p. 114 A-C]

CIVIL APPELLATE/ORIGINAL JURISDICTION: C.M.P. No.8076 of 1988 and I.A. Nos. 3,5,6 and 7 of 1990 In Civil Appeal No. 3519 of 1984.

From the Judgment and Order dated 3.4.1984 of the Delhi High Court in W.P. No. 1144 of 1983.

WITH

Writ Petition (C) Nos. 2620-59 of 1985.

(Under Article 32 of the Constitution of India).

C.S. Vaidyanathan, Ms. Smitha Singh, K.A. Raja, A.K. Srivastava, Ms. Sushma Suri, C.V.S. Rao, Ms. C.K. Sucharita and Vimal Dave for the appearing parties.

The following Order of the court was delivered:

CMP No. 8076/1988: This is an application by certain doctors of the Central Health Service for clarification of the earlier orders passed by this Court in C.A. 3519/1984. Actually, the appellants' grievance is that even though the appeal was disposed of by the order of this court dated 9.4.1987 and the directions given therein have been reiterated in the subsequent orders of this Court, the Union of India has not given proper effect to the directions given by this Court.

Briefly, the appellants were originally appointed after interview by selection committees but only as *ad hoc* appointees in the above service. They were appointed on various dates between 1968 and 1977. Their grievance is that despite their long service in the Department they were not regularised with reference to their original dates of appointment. The Union of India pointed out certain difficulties in giving effect to the order of this Court of April, 1987 by filing a review petition and then a clarification application but these have been dismissed. The resultant position is that all the appellants have to be regularised in Group A of the Central

- A Health Service w.e.f. 1.1.1973 or the date of their respective original appointments whichever is later. We may mention here that this date 1.1.1973 is mentioned here because the appellants have now expressed their willingness to be considered for regular appointment only from this date and not from any earlier date, this being the date on which the group B and Group A services were merged together by the Government of India on the recommendations of the Third Pay Commission. The only difficulty experienced by the Union of India in giving effect to the directions of this Court which now subsists is that if regularisation is granted to all the appellants, doctors who have been regularly appointed in Group A after an interview by the Union Public Service Commission may get relegated to secondary positions in view of the fact that the appellants were appointed much earlier though on an *ad hoc* basis. These regularly recruited doctors had not been heard earlier and they have now come up with intervention applications praying that any order of regularisation of the appellants should ensure that their interests are not prejudiced. This was also the anxiety of the Union of India as expressed in the counter affidavit filed in this Court.

- D After hearing all the counsel, we were inclined to think that while the appellants should get their rights which were declared by this Court in its earlier orders, there should at the same time be no prejudice to the doctors appointed through regular recruitment by the Union Public Service Commission. After some discussion, counsel for the appellants agreed to put forward certain proposals which would safeguard their interests and also at the same time not prejudice the regular appointees through the Union Public Service Commission. The essence of the proposal made by them is that they may be treated to be a separate category with their own seniority list and entitled to promotion in accordance with that seniority list, the problem of conflict with the direct regular recruits being avoided by creation of an appropriate number of supernumerary posts. The Union of India is not agreeable to accept these proposals which were set down by the appellants at our instance, in the form of an affidavit. The proposals of the appellants have been set down in an annexure to an affidavit filed by Dr.PPC Rawani and dated 16th July, 1991. However, after considering the matter we are of the opinion that there is no way of rendering justice to all the parties before us except by accepting these proposals in the manner to be set down below particularly because we find that while making the proposals, the appellants have also to some extent expressed the willingness to forgo certain rights that might have accrued to them in consequence of the earlier orders passed by this Court. We are of the opinion that the proposals made are reasonable in the circumstances of the case and that they do not also in any way prejudice the rights of the regularly recruited doctors.

In view of this, we direct that the following proposal be implemented by the Department by way of giving effect to the order of this Court in C.A. 3519/84 dated April, 1987 and the subsequent clarificatory orders passed by this Court : A

The directions given are as follows:

1. Each of the appellants will be treated as regularised in Group A of the Central Health Service from 1.1.1973 or the date of his first initial appointment in the service (though as *ad hoc* Group B doctor), whichever is later. B
2. In order to ensure that there is no disturbance of the seniority and the promotional prospects of the regularly recruited doctors there will be a separate seniority list in respect of the appellants and their promotions (about which directions are given below) shall be regulated by such separate seniority list and such promotions will only be in supernumerary posts to be created as mentioned below. C
3. (a) Each of the appellants will be eligible for promotion to the post of Senior Medical Officer or Chief Medical Officer or further promotional posts therefrom taking into account his seniority in the separate seniority list which is to be drawn up as indicated above. D
(b) The promotion of any of the appellants to the post of Senior Medical Officer, Chief Medical Officer and further promotional post therefrom will be on par with the promotion of the regularly recruited doctor who is immediately junior to the concerned appellant on the basis of their respective dates of appointment. In other words, if a regularly recruited doctor, on the basis of the seniority list maintained by the Department, gets a promotion as Senior Medical Officer or Chief Medical Officer or further promotion thereafter, then the appellant who was appointed immediately earlier to him will also be promoted as a Senior Medical Officer or Chief Medical Officer or further promotion therefrom (as the case may be) with effect from the same date. E F
4. In order that there may be no conflict or any possibilities of reversion, the post to which an appellant will be promoted (whether as Senior Medical Officer or Chief Medical Officer or on further promotion therefrom) should only be to a supernumerary post. Such number of supernumerary posts should be created by the Government as may be necessary to give effect to the above directions. No promotion will be given to any of the appellants in the existing vacancies which will go only to the regularly G H

- A appointed doctors.
5. The appellants hereby agree to give up all monetary claims on account of revision of scales, regularisation or promotion to which they would be entitled till 31.10.1991.
- B 6. Apart from the appellants there are certain doctors who fall in the same category but who had not filed writ petitions before the High Court. They have filed directly writ petitions before this Court bearing Nos. 2620-2659/1985 and intervention applications. The intervention applications are allowed and *rule nisi* is issued in the writ petitions of which the other parties take notice. These interveners and writ petitioner have to be granted the same relief as the appellants. It is made clear that all these applicants and petitioners will be entitled to the same reliefs as the appellants for all purposes of seniority and promotion. All monetary claims on account of revision of scales, regularisation or promotion till 31.10.1991 are given up by these applicants and petitioners as well.
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- D We direct that, in view of the long pendency of litigation before this Court, the Union of India should take immediate steps to implement the above directions. The directions should be given effect to latest by 31st March, 1992.

E All the interim applications in the matter stand disposed of in view of the fact that the main CMP itself has been disposed of.

R.P.

Matters disposed of.