

STATE OF U.P. AND ORS.
v.
DR. R.K. TANDON AND ORS.

MARCH 23, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law

U.P. Provincial Medical Service—Doctors—Ad hoc appointments—Regular selection by Public Service Commission—Recommendation—But no appointment made—Petition by ad hoc appointees—Directions for regularisation—Petition by directly recruited doctors—Directions for giving effect to recommendations of Public Service Commission—State's appeal—Fixation of inter se seniority—Directions by Court.

The appellant-State made ad hoc appointment of 2056 doctors from 1961-62 onwards. Thereafter, the State Public Service Commission recruited regular candidates and recommended their appointments but no appointments were made. In the meanwhile on the basis of litigation initiated by ad hoc appointees this Court held that since ad hoc doctors have put in more than 20 years service, denying them seniority would be unjust. Consequently, when State attempted to regularise their services from their respective dates of appointment, direct recruits filed petitions before the High Court which directed the appellant-State to give effect to the recommendations of the Public Service Commission confining to candidates who were then serving the State. State preferred appeals before this Court.

Allowing the appeals, this Court

HELD : 1. All ad hoc appointments made *de hors* the rules do not confer any right to permanency 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 adhoc appointments here were *de hors* the rules. Though the doctors have put in more than 33 years of service, they are ad hoc hands. All would not get seniority from the respective dates of appoint-

ments. But the doctors who have had the benefit of direction given by the courts to regularise their services with effect from the dates on which they were appointed are entitled to count their seniority from the respective dates of initial appointments. [997-G-H, 998-A]

2. Doctors whose names were recommended by Public Service Commission in 1972, should be appointed in order of merit determined by the Public Service Commission with effect from the date on which the State received the merit list from the Public Service Commission. They be placed below the candidates whose appointments were upheld by the Courts and became final. [998-B-C]

3. Candidates recommended by the Public Service Commission in 1977, 1978 and 1979 be appointed in the order of merit in the respective lists with effect from the dates on which the State Government had received the respective lists. Their seniority would be as per the determination of the Public Service Commission in the respective lists. 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 third list and their seniority should be determined with effect from the date of the receipt of the list dated 10.5.79. Among non-selectees, the date on which the list dated 10.5.1979 was received by the State Government would be the cut-off date and taking into consideration the respective dates of appointments as on that date and if made thereafter, seniority will be counted from those respective dates. [998-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4438-42 of 1995 etc. etc.

From the Judgment and Order dated 3.2.92 of the Allahabad High Court in W.P. No. 5809/87, 10921, 10926, 10923 and 10922 of 1989.

D.V. Sehgal and R.B. Misra with him for the Appellants.

A.B. Mathew, S.K. Misra, G.K. Bansal, Ms. Geetanjali Mohan and S.A. Syed for the Respondents.

The following Order of the Court was delivered :

Delay condoned. Leave granted.

The State is caught by inaction between deep sea and the devil and it seeks the help of this court for its 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.

Now the question is that what would be the just principle to be adopted in determination in *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.

It is settled law that all ad hoc appointments made *de hors* the rules do not confer any right to permanency 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 courts 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.

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 appointment were upheld by the Courts or Service Tribunal and became final.

As to the candidates whose names were recommended by the PSC in three installments - first on 23.12.77, second on 16.6.78 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 lists. 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 cut-off 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.

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 notionally treat them to be regularly appointed from respective dates of initial appointment only for the purpose of giving them pensionary and retiral 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.

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.

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

S.L.P. 9430/1995 (CC 22831)

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

T.N.A.

Appeal allowed.