

J.S. CHHABRA ETC.
v.
STATE OF M.P. AND ORS. ETC.

A

NOVEMBER 28, 1996

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

B

Service Law :

M.P. Regulation of Ad hoc Appointment Rules, 1986—Regularisation under—Of ad-hoc CMO (Lecturer Grade) having teaching experience—To the post of lecturer—Recruitment to the post generally by direct selection—Qualification for both the posts same—Whether declaration of CMOs. as Lecturers and Regularisation by government is in contravention to Recruitment Rules—Held, the action of Government in regularising the Service of CMOs. cannot be regarded as improper or illegal.

C

D

Seniority—Determination of—Regularisation of ad-hoc CMO (Lecturer Grade) as Lecturers under Regularisation Rule—Regularisation accepted by CMO—Held, having accepted the regularisation, he could not have been given seniority prior to date of regularisation—Benefit on the basis of continuous officiation could not have been given—It would be not fair and just to give seniority from the date of declaration.

E

The Government not being able to appoint lecturers selected by M.P. Public Service Commission, and with a view to improve the casualty services in hospitals attached to medical colleges, upgraded the post of casualty Medical Officer (Lecturer Grade) (hereinafter called CMO) by appointing 21 lecturers on and post of CMO on *ad-hoc* basis, vide G.O. dated 11.8.1971. The said appointment was subject to selection by M.P. Public Service Commission. The qualification for the posts of CMO and Lecturer were the same. Respondent 'T' was one of the 21 candidates appointed. After the appointment, he appeared before Public Service Commission for selection in 1977 and 1981, but could not succeed. On 4.4.1987, the appointment above-mentioned was regularised under M.P. Regularisation *Ad-hoc* appointment Rules and on 21.7.1989 the Government passed order declaring them lecturers. Respondent 'T' accepted the regularisation and did not challenge the validity of the regularisation Rules.

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H

A The name of respondent 'T' did not appear in Gradation List dated 9.6.1989 and his previous service as CMO was not counted for considering his seniority. Therefore, the respondent 'T' made representation to the government and then filed Writ petition before High Court seeking the relief that his seniority should be counted from 11.8.1971. The Writ Petition was transferred to Central Administrative Tribunal.

B

The appellant herein intervened in the above Application. He also filed separate petition challenging the recognition of the respondent 'T' and others as lecturers. The petition was transferred to Central Administrative Tribunal. Allowing the application of the respondent 'T' (TA No. 91 of 1991), the Tribunal held that after regularisation government should have considered the CMOs, as full fledged lecturers and that such CMOs became entitled to seniority from the date of their continuous officiation. The application of the appellant [TA No. 75 of 1991] was dismissed.

C

D The appellant filed separate appeals against both the orders and the State filed appeal against the order in T.A. No. 91 of 1991 before this Court. Appellant contended that recruitment to the post of Lecturer is by direct selection through M.P. Public Service Commission and it was not open to the State to declare CMOs. as lecturers and the regularisation is in contravention of Recruitment Rules, and that the regularised CMOs could not have been given seniority from the date earlier than 21.7.1989. The State contended that the respondent 'T' has rightly been given seniority from 4.4.1987.

E

F Dismissing the appeal of the appellant against order in T.A. No. 75 of 1991, partly allowing the appeal of the appellant against order in T.A. No. 91 of 1991 and allowing the State appeal, this Court

G **HELD :** 1. The action of the Government in regularising the services as CMOs. cannot be regarded either as improper or illegal. Once their services were regularised, they were required to be treated as CMOs, holding the posts equivalent to the posts of lecturers. Though the cadre of CMO was different from the cadre of lecturers, the government by upgrading 21 posts of CMOs desired to take them equivalent to the posts of lecturers so that the lecturers could be appointed on those posts. The qualification required for appointment on those upgraded posts of CMOs. were the same as required for appointment as lecturers. If the doctors who

were appointed as CMOs. on those upgraded posts had been selected by the Public Service Commission, then the appointments would have been regular and there would have been no necessity to regularise their services. Because their appointments were not regular and as they were serving since many years as *ad-hoc* CMOs, their services deserved to be regularised. Therefore, the Government in exercise of the power available to it under the regularisation rules framed under Article 309 of the Constitution regularised the services of some CMOs. As the required qualification for both the posts are same and as those CMOs, had also teaching experience, it was open to the Government to re-designate those posts or merge them into cadre of lecturers. [319-B-H]

2. Since, 'T' accepted his regularisation under regularisation Rules and did not challenge the validity of the rules, he could not have been given seniority as CMO [Lecturer Grade] from a date earlier than the date of his regular appointment. The Tribunal was wrong in directing that his seniority as a lecturer should be counted from the date he has started working as CMO [Lecturer Grade]. The Tribunal failed to appreciate that the said direction was contrary to the statutory rules and for that reason, no benefit on the basis of principle of continuous officiation, could have been given to him. As the services of 'T' were regularised on 4.4.1987 and he was appointed regularly from that date on an equivalent post the Government has rightly determined his seniority as a lecturer from that date. Merely because the Government declared him as a lecturer on 21.7.1989, it would not have been fair and just to grant him seniority as a lecturer only from that date. [320-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6590-91 of 1995 Etc.

From the Judgment and Order dated 25.3.94 of the Madhya Pradesh State Administrative Tribunal, Gwalior in Transferred Application No. 91 and 75 of 1991.

Ms. Shymala Pappu, K.B. Sinha, Rajendra Srivastava, Niraj Sharma, Krishnamurthi, Pramod Sharma, Shiv Sagar Tiwari, Sakesh Kumar, S.K. Agnihotri, Amitabh Verma, Prakash Srivastava for the appearing parties.

The Judgment of the Court was delivered by

A **NANAVATI, J.** These three appeals arise out of the common order passed by the Madhya Pradesh State Administrative Tribunal, Gwalior in T.As. No. 75 and 91 of 1991.

B Dr. Tiwari, Respondent herein, was initially appointed as a Research Assistant on 25.3.68. On 1.12.69 he was appointed as a Demonstrator in Surgery in G.R. Medical College of Gwalior. By a Government order dated 11.8.71 he was appointed along with some other doctors to officiate temporarily as a Casualty Medical Officer (Lecturer Grade) in Madhya Pradesh Medical Service Class II in the pay scale of Rs. 360-700. This appointment was subject to his selection by the Madhya Pradesh Public Service Commission. Claiming that as a CMO he was also doing the work of teaching in the Medical College and like other lecturers he was also paid non-practising allowance, he made a representation to the Government on 17.1.84 for being absorbed in the post of a lecturer and for counting his seniority as a lecturer from 11.8.71. As the Government did not consider his representation and further representations made thereafter he filed a petition in the Madhya Pradesh High Court in 1987 for obtaining the said reliefs. During the pendency of that petition the services of seven *Ad hoc* CMOs (Lecturer Grade) including the respondent, were regularised under the M.P. Regularisation of *Ad hoc* Appointment Rules, 1986 and he was appointed on the same post on temporary basis. On 21.7.89 the Government passed an order declaring him as a lecturer in Surgery. In view of these subsequent developments the Madhya Pradesh High Court dismissed his petition as infructuous. As his service as CMO was not counted for considering his seniority as a lecturer and also because his name was not included in the gradation list of lecturers published on 9.6.89, he first approached the Government and then the High Court by way of a writ petition. That petition was subsequently transferred to the Tribunal and was numbered as T.A. No. 91 of 1991. Dr. J.S. Chhabra (Appellant in Civil Appeal Nos. 6590-91 of 1995) had applied to intervene in that petition and his application was granted. Thereafter on 15.9.90 he filed a substantive petition (M.P. 2265/90) in the High Court challenging recognition of Dr. Tiwari and others as lecturers. It was also transferred to the Tribunal and numbered as T.A. No. 75 of 1991.

H The Government and Dr. Chhabra opposed the application filed by Dr. Tiwari on the ground that appointment of Dr. Tiwari was as an *ad hoc* CMO and not as a lecturer, which post is required to be filled up by

hundred percent direct recruitment through the Public Service Commission. It was also contended that as a CMO Dr. Tiwari was required to perform mainly the casualty duties and only additionally he was permitted to work in the Surgical Ward and do some teaching also. Dr. Tiwari had appeared before the Public Service Commission for selection and appointment for the post of a lecturer in 1977 and 1981 but was not successful. On this ground they justified the action of the Government in not giving him seniority from 14.8.71 and not including his name in the seniority list of Lecturers published on 9.6.89.

The Tribunal was much impressed by the three circumstances namely, (1) Dr. Tiwari was a duly qualified doctor and right from the date of his appointment as CMO he was assigned teaching work (2) he was paid non-practising allowance, and (3) the object behind upgrading the post of CMO on which Dr. Tiwari was appointed. It was of the view that these three circumstances could not have been overlooked and the Government could not have subsequently changed the position to the prejudice of such CMOs. The doctors who were appointed as CMOs could not have anticipated then that would be treated differently from lecturers in future in matters of promotion and other service benefits. It held that after regularising their services and giving them the status of full-fledged lecturers it was improper and unfair on the part of the Government not to treat them as lecturers. Invoking the principle of continuous officiation it further held that such CMOs became entitled to seniority from the date of their continuous officiation. The Tribunal, therefore, allowed the application filed by Dr. Tiwari and directed the authorities to give him seniority in the post of lecturer with effect from the date he had started working as CMO (Lecturer Grade). The inconsistent condition regarding the date from which his seniority is to be counted, contained in the order dated 21.7.89, has also been quashed. The Tribunal also directed the authorities to consider him for promotion to the post of a Reader. T.A. No. 75 of 1991, filed by Dr. Chhabra was dismissed. Therefore, Dr. Chhabra has filed two appeals, one against the order whereby the T.A. No. 91 of 1991 has been allowed and the order against the order whereby T.A. No. 75 of 1991 has been dismissed. The State has also filed Civil Appeal No. 6592 of 1995 feeling aggrieved by the order passed by the Tribunal in T.A. No. 91 of 1991.

The learned counsel for Dr. Chhabra has challenged the order of the tribunal on the ground that as recruitment to the post of lecturer is by

- A direct selection through Public Service Commission, it was not open to the State Government to declare CMOs (Lecturer Grade) as lecturers and thus act in contravention of the relevant recruitment rules. The tribunal in upholding the said action of the Government has committed a grave error of law. In the alternative it was contended on behalf of Dr. Chhabra and also by the learned counsel appearing for the State that CMOs thus regularised and designated as lecturers could not have been given seniority from an earlier date and the direction given by the tribunal is not only improper and unjust but being contrary to Rule 12 of the M.P. Regularisation of *Ad hoc* Appointment Rules 1986 is also illegal.
- C From the material placed on record it is now clear, and therefore it is not disputed, that the post of lecturer is the lowest post in the set up of teaching staff of medical colleges in the State of M.P. and that the posts of CMOs are not a part of the cadre of lecturers. It also appears that sometime in 1971 the Government decided to strengthen casualty services in the medical college hospitals and, therefore, by a letter dated 29.4.1971 it informed all the Deans of the medical that it was decided to appoint CMOs in the scale of Rs. 360-700 (same as the scale of lecturers) in each medical college. By the said letter all the Deans were directed to propose names of suitable doctors possessing post-graduate qualifications i.e. M.S./M.D. in clinical subjects with three years experience. After upgrading 24 posts of CMOs the Government appointed 21 doctors as CMOs in M.P. Medical Service Class II in the pay scale of Rs. 360-700. They were appointed to officiate on the said post temporarily and their appointments were made subject to selection by Public Service Commission. Dr. Tiwari was one of the doctors thus appointed as a CMO. Though the original object of the Government was to appoint lecturers in medicine and surgery with post-graduate qualification on those upgraded posts, for some reasons, it could not appoint lecturers on those posts. It, therefore, appointed doctors with post-graduate qualifications on all those posts. As they were till then not recruited as lecturers their appointments were made subject to selection by the Public Service Commission. But to achieve the desired object the Government by its letter dated 20.11.1971 informed all the Deans of the medical colleges that it was desirable to give such CMOs some teaching work so that they could keep in touch with their subject. The Government also made them eligible for getting non-practising allowance like other lecturers. Pursuant to those general directions Dr. Tiwari was assigned teaching work in the department of surgery from

December 1971 and was also given non-practising allowance. Dr. Tiwari appeared before the Public Service Commission for selection as a lecturer in 1977 and 1981 but on both those occasions he was not selected and, therefore, he continued to be a CMO (Lecturer Grade) on an *ad hoc* officiating basis right upto the date on which his services came to be regularised.

In the context of this factual and legal position the contention raised on behalf of the appellant that the regularisation of Dr. Tiwari's services and declaring him as a lecturer was improper and illegal is required to be considered. As pointed out earlier when the Government upgraded 24 posts of CMOs that was done with a view to improve the casualty services in the hospitals attached to the medical colleges by appointing lecturers on those posts. For reasons beyond its control the Government could not appoint lecturers or persons selected by the Public Service Commission for the posts of lecturers. Though the cadre of CMO was different from the cadre of lecturers the Government by upgrading 21 posts of CMOs desired to make them equivalent to the posts of lecturers so that the lecturers could be appointed on those posts. The qualification required for appointment on those upgraded posts of CMOs were the same as required for appointment as lecturers. If the doctors who were appointed as CMOs on those upgraded posts had been selected by the Public Service Commission then the appointments would have been regular and there would have been no necessity to regularise their services. Because their appointments were not regular and as they were serving since many years as *ad hoc* CMOs, their services deserved to be regularised. Therefore, the Government in exercise of the power available to it under the regularisation rules framed under Article 309 of the Constitution regularised the services of some CMOs. It is, therefore, difficult to appreciate how the action of the Government in regularising their services as CMOs can be regarded either as improper or illegal. Once their services were regularised they were required to be treated as CMOs holding the posts equivalent to the posts of lecturers. As the required qualification for both the posts are same and as those CMOs had also teaching experience it was open to the Government to redesignate those posts or merge into the cadre of lecturers. The learned counsel for the appellant Dr. Chhabra was not able to point out how it was beyond the power of the Government to declare those CMOs as lecturers. Therefore, the first contention raised on his behalf has to be rejected.

A What is required to be considered next is from which date seniority of Dr. Tiwari whose service were regularised on 4.4.1987 and was declared/redesignated as lecturer on 21.7.1989 should be considered as a lecturer. Accepting his contention the tribunal has granted him seniority as a lecturer right from the date he started working as CMO (Lecturer Grade) in 1971. As against that the contention raised on behalf of Dr. B Chhabra is that in any case Dr. Tiwari could not have been granted seniority from the date earlier than 21.7.1989. The contention raised on behalf of the State is that it has rightly given him seniority from 4.4.1987. The services of Dr. Tiwari were regularised under the M.P. Regularisation of *Ad hoc* Rules 1986. Rule 12 of the said Rules provides that a person C appointed under those Rules shall be entitled to seniority only from the date of the order of regular appointment and shall be placed below the persons already appointed in accordance with the relevant recruitment rules. Dr. Tiwari accepted his regularisation under those Rules. Neither at D the time of regularisation of his services nor at any subsequent time he challenged the validity of the said Rules. Therefore, he could not have been given seniority as CMO (Lecturer Grade) from a date earlier than the order of his regular appointment. The tribunal was, therefore, wrong in directing that his seniority as a lecturer should be counted from the date he has started working as CMO (Lecturer Grade). The tribunal failed to appreciate that the said direction was contrary to the statutory rules and E for that reason no benefit on the basis of principle of continuous officiation could have been given to him. As the service of Dr. Tiwari were regularised on 4.4.1987 and he was appointed regularly from that date on an equivalent post the Government has rightly determined his seniority as a lecturer from that date. Merely because the Government declared him as a lecturer on F 21.7.1989, it would not have been fair and just to grant him seniority as a lecturer only from that date. The contention to that effect raised on behalf of the appellants Dr. Chhabra has thus no substance and has to be rejected.

G In the result the appeal filed by Dr. Chhabra against the order of the tribunal in T.A. No. 75 of 1991 is dismissed. The appeal filed by him against the order passed by the tribunal in T.A. No. 91/1991 is partly allowed. Civil Appeal No. 6592 of 1992 filed by the State is allowed. However, in the facts and circumstances of the case there shall be no other as to cost.

K.K.T.

State's appeal allowed.