

PETITIONER:
STATE OF U.P. & ORS. ETC.

Vs.

RESPONDENT:
DR. R.K. TANDON & ORS. ETC.

DATE OF JUDGMENT: 26/07/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (7) 174 1996 SCALE (5)625

ACT:

HEADNOTE:

JUDGMENT:

WITH

I.A. No2 in C.A. NO.4445/95, I.A. Nos.2 in C.A.4447/95, I.A. Nos.2 in C.A. No.4448/95, I.A. Nos.2 in C.A. No.4451/95 I.A. Nos.2 in C.A. No.4454/95 & I.A. No.26 in C.A. No.4439/95, I.A.Nos.36 & 37 in C.A.4439/95

AND

Contempt Petition No.308/96 in SLP [C] No.828/93

O R D E R

I.A. Nos.16-20 etc. etc. in C.A.4438-42/95

Application for intervention and impleadment are dismissed.

This is second instalment and we hope it to be the last instalment of the unending litigation. This Court by order dated March 23, 1995 disposed of a batch of cases relating to the appointment of ad hoc doctors in U.P. Provincial Medical and Health Service. Pending making of the rules, ad hoc appointments came to be made and the doctors who were already working in Medical and Health Departments were given options to come to this Department. As a result thereof, all of them had opted to come to this Department. Admittedly, the posts are governed by the PSC recruitment and appointments thereto are made accordingly. No such appointment came to be made. Consequently, all of them remained on ad hoc basis de hors the rules right from 1961-62 onwards and some of them retired. Some of the doctors had gone to the Court and obtained relief of regularisation of their services from the respective dates of appointments which became final. The recruitment through the PSC came to be made on two occasions, viz., in 1972 and 1974. When there was an inter ce dispute between the candidates selected by the PSC and ad hoc doctors, the dispute ultimately came to this Court and this Court directed the State Government to adopt a fair procedure so as to avoid further litigation in the matter. This Court stated in the order as under:

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" It is settled law that all ad hoc appointments made

de hors the rules do not confer any rights only from the date of their regular appointment according to rules they get their seniority. If, however, the initial appointments were 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 directions given by the courts to have their services regularised 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 which the State Government had received the merit list from the PSC and they be placed below the candidates whose appointments 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 vacancy position in 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 in nationally treat them to be regularly appointed from respective dates of initial appointment only for the purpose of giving them pensionary and retrial 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."

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These I.As. came to be filed for the reason that though their special leave petition was posted along with other batch of cases, admittedly the petitioners-appellants had not been served. Consequently, they initially filed these I.As. for review which we have directed to be heard in the COURT. Accordingly, the cases have been posted to-day.

Shri K. Madhava Reddy, learned senior counsel appearing for these ad hoc doctors who have not been selected by the

PSC, has placed before us the initial order passed by the Governor creating these services and the statutory rules framed under proviso to Article 309 of the Constitution on May 14, 1979, viz., the U.P. Regularisation of Ad-hoc Appointees [on posts within the purview of the Public Service Commission] Rules, 1979 [for short, the "Ad-hoc Rules"] to regularise their services as indicated in the Rules. Based thereon, it is contended that after due selection by the committee constituted under Rule 4 of the Ad hoc Rules, they are required to be appointed under Rule 5; their seniority was directed to be reckoned under Rule 7 from the date of the order of appointment after selection under Rule 4 and they be placed below the persons appointed in accordance with the relevant procedure prior to the appointment of these ad hoc regularised doctors. Since they have been appointed according to rules, the candidates recommended by the Public Service Commission in 1977, 1978 and 1979 were yet to be appointed and, therefore, they cannot be made senior to the petitioners. It is his contention that though the recommendations came to be made by the PSC, it was not as if they have got an absolute right to appointment. The State Government after due consideration may not appoint them, their right to seniority arises only from their date of discharging the duties on the post and, therefore, since they have not been appointed according to the rules, they cannot be treated to be seniors. If the direction in 3rd part of the order is given effect to, the petitioners in these IAS (for short, "non selectees") would become junior to him and, therefore, it requires clarification. Shri Harish Salve, learned senior counsel for the State and also Shri A.B Mathur, learned senior counsel for the direct recruits, resisted the contentions.

Having considered the respective contentions, we think that there is not much controversy in the matter. It is stated in the order that in case of doctors who had already retired from service their seniority would be on notional basis, It presents no difficulty to work out the same. Equally, in respect of doctors in whose favour there were order from either High Court or the Tribunal or this Court which had become final, their seniority was directed to be regularised with effect from the respective dates of appointments. The second part of the order dealt with the candidates selected pursuant to the advertisement in 1972 by the PSC. It would, therefore, be obvious that the candidates selected in the year 1972 and appointed in furtherance thereof would become seniors to all the ad hoc appointees though they were continuing on ad hoc basis. Accordingly, the second part of the order will not create any impediment in preparation of the inter se seniority among the doctors.

The third part consists of the candidates selected by the PSC pursuant to the recruitment made in 1974 and recommended for appointment in three instalments. The dates of the lists were mentioned in the order as December 23, 1977, June 16, 1978 and May 10, 1973. It is to be seen that there appear to be a tussle between the direct recruits and the promotees as regards inter se seniority. At one time, the Government seems to have taken a decision to cancel the selection lists and regularise all the ad hoc appointees en mass. It would appear that most of the candidates selected by the PSC were also ad hoc doctors but gained an edge over non-selectees. Under these circumstances, what legal principle should be adopted to determine their inter se seniority is the question. Had the appointments been made pursuant to the list submitted by the PSC in December 1977 and June 1978, it would be obvious that the non-selectee ad

hoc doctors cannot have any seniority over them. It would, therefore, be clarified that such of the candidates recommended by the PSC in the lists dated December 23, 1977 and June 16, 1979 would rank below the 1972 appointees in their order of merit recommended by the PSC in the respective lists.

Then comes the case of the candidates of third list dated May 10, 1979. Mr. Madhava Reddy has rightly contended that the date of recommendation is not conclusive. Normally, the settled law is that the seniority would be counted from the date on which the candidate actually started discharging the duties of the posts and in the case of direct recruitment, the date of appointment in the order of merit prepared by the PSC. But in view of the loggerhead between the recruits and the ad hoc doctors. It would be obvious that the ad hoc non-selectees should be regularized as per the procedure prescribed in the Ad-hoc Rules. As seen, the third list was sent by the PSC on May 10, 1979 while the Ad-hoc Rules came to be made on May 14, 1979. It is seen that a committee was required to be constituted under Rule 4 to go into the relative merits the non-selectees and those who fulfil the qualifications prescribed in Rule 3 are found to be eligible and fit to be appointed. A list was required to be drawn on the basis thereof and appointments made accordingly. All this exercise obviously would take considerable time. Therefore, the non-selectees cannot claim dry seniority over the candidates already recommended by the PSC in the 3rd list dated May 10, 1979. Under those circumstances, though they were not heard in the first instance, when the matter was disposed of, in substance they would not get any advantage or detriment in the order, in view of the peculiar circumstances prevailing in the service in the State of U.P.

Yet another problem that was brought to our notice is that while preparing their inter se seniority and fitment, the Government was not strictly following the rule of roster and reserved for Scheduled Caste, Scheduled Tribe and Backward Class candidates and their placement on the respective vacancies earmarked for them in the roster. It would be obvious that when the Government makes appointments, through administrative instructions or statutory rules, the appointment of candidates should be according to order of merit and roster. The Government should follow the rule of reservation and make appointments as per roster points. That procedure is also prescribed even in the Ad hoc Rules. Therefore even appointments from the lists of 1972, 1977, 1978, 1979 and among those retired from service or had the benefit of court orders or non-selectees the inter se seniority should accordingly be determined as per the rule of reservation and roster. Even among the non-selectees when they are appointed under Ad hoc Rules and seniority under Rule 7 thereof is determined the same principle should be followed. Their roster points should also be worked out and appointments made accordingly. There shall be not any deviation from the rules of appointment, reservation so that and order of appointment would become according to rules and remain legal.

Yet another circumstance which was brought to our notice by the direct recruits is that they are made junior to the non-selectees and promotions were given to non-selectees overlooking the claims of direct recruits. In view of the directions now given, after drawing the respective seniority lists, appropriate steps are directed to be taken to make appointments or the promotions, as the case may be, according to the rules.

The fourth circumstance that was brought to our notice is that some of the candidates appear to have gone to the court and obtained directions on the ground that they were not parties to the orders passed by this Court and that, therefore they seek to claim rights independently. This order would cover all the cases and would apply to all the candidates who are concerned in this service and the Government would determine their inter se seniority in accordance with these directions within four months from today. Before parting with the case, we are pained to notice that the Government has resorted to adhocism which resulted in distortion in the service and heart burning, manipulation and corruption. We hope and trust that the Government would put a stop to the ad hoc appointments that has become breeding ground for corruption and nepotism so as to inculcate discipline in services.

All the applications and petitions are accordingly disposed of. No costs.