

PETITIONER:
STATE OF U.P. & ANR.

Vs.

RESPONDENT:
BRIJ NATH MISRA

DATE OF JUDGMENT: 27/03/1997

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

This appeal by special leave arises from the judgement of the Allahabad High Court, Lucknow Bench, made on August 6, 1993 in Writ Petition No.1126 of 1991.

The admitted position is that the respondent was appointed as an Ayurvedic Medical Officer on ad hoc basis by proceeding dated October 11, 1983 in the pay scale of Rs.850-1720/-. He remained unauthorisedly absent from duty for 5 years. Thereafter, on an application made by him on April 14, 1989, he was informed by the Government Order No.5133 dated September 8, 1989 that he was permitted to resume duty on his furnishing fitness certificate with a condition that his unauthorised absence from duty was treated as a break in service. On so furnishing the certificate, he resumed duty. Subsequently, the Selection Committee was constituted under Rule 4(3) of the U.P. Regularisation of Ad Hoc Appointment (on posts within the purview of Public Service Commission) Rules 1979 (for short, the 'Rules'). Subsequently, the Rules came to be amended. Rule 4 postulates that any person who was directly appointed on ad hoc basis before January 1, 1977 and is continuing in service as such on the date of the commencement of the Rules, which came into force on May 14, 1979, would be regularised subject to the conditions mentioned thereunder. Rule 8 provides that "that services of a person, appointed on ad hoc basis who not found suitable or whose case is not covered by Rule 4(i) shall be terminated forthwith and on such termination, he shall be entitled to receive one month's pay". The case of the respondent was placed before the Committee on January 22, 1991 and he was found to be unfit for regularisation. Accordingly, his appointment came to be terminated. It was challenged in the High Court in the above writ petition and the High Court has stated that the appointment dated September 8, 1989 was fresh appointment and, therefore, the termination was bad in law. Thus, this appeal by special leave.

The question is: whether the view taken by the High Court is correct? It is seen that the Order dated September 8, 1989 clearly mentions that the respondent was permitted

to resume duty subject to production of medical fitness certificate, his unauthorised absence from duty resulted in break in service. Thus, it could be seen that the Order dated September 8, 1989 is not an order of fresh appointment but a permission granted to the respondent to resume duty as Ayurvedic Medical Officer. In furtherance thereof, on production of the medical certificate, he did join duty. On his so joining duty, his right to the post dated back and flowed from his initial appointment, namely, October 13, 1983. In other words, his ad hoc appointment got revived subject to treating the period of unauthorised absence from duty as break in service. Though there is break in service, it cannot be considered to be a fresh appointment as was held by this Court in Dayal Saran Sanan vs. Union of India [(1980) 3 SCC 25] and Shiv Shankar & Anr. Union of India & Ors. [(1985) 2 SCC 30].

In view of the fact that the Committee duly constituted under the Rules had considered the case of the respondent and found him not fit to be regularised, the order of termination is governed by Rule 8 of the Rules. As a consequence, the question of conduction an enquiry of giving an opportunity to the respondent before termination of the service does not arise. The view of the High Court, therefore, is clearly illegal.

The appeal is accordingly allowed and the writ petition stands dismissed but, in the circumstances, without costs.