

UNION OF INDIA AND ORS.

A

v.

DR. GYAN PRAKASH SINGH

SEPTEMBER 30, 1993

[J.S. VERMA, B.P. JEEVAN REDDY AND S.P. BHARUCHA, JJ.]

B

Service Law :

Railways—Assistant Medical Officers/Assistant Divisional Medical Officers—Regularisation of Ad-hoc appointees—Directions of Court—Extension of benefit—Applicability of.

C

The Respondent was offered on 28. 9.1984 appointment on *ad hoc* basis. The post of Assistant Medical Officer (Class-II) in the North Eastern Railway for the period of six months or till the candidates selected by U.P.S.C. joined the railways, whichever was earlier. Pursuant to the offer, the respondent was issued an appointment order on 1.10.1984 and he joined duty on 9.10.1984.

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The decision of this Court in *Dr. A.K. Jain and Ors. v. Union of India and Others* [1987] Supp. SCC 497, was rendered on 24.9.1987 directing regularisation of the services of all doctors appointed either as Assistant Medical Officers or as Assistant Divisional Medical Officers on *ad hoc* basis up to 1.10/1984. The respondent was not treated to be a doctor falling within the category indicated in *Dr. A.K. Jain* since his appointment was effective from 9.10 1984 on which date he joined duty.

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Later on, the Railway Board decided to regularise the services even of those doctors appointed between 1.10.1984 and November 1986 who were found suitable by the U.P.S.C. after an interview and screening of their service record. In all 105 such doctors were considered for regularisation. Out of them, 14, including the respondent, were found unfit by the U.P.S.C. for retention in service and, therefore, they were not regularised. The *ad hoc* service of the respondent was then terminated on 9.4.1992 and the respondent filed an application before the Central Administrative Tribunal challenging the same. The Tribunal held that the *ad hoc* appointment of the respondent having been made by an order dated 1.10.1984, he was governed by the direction given by this court in *Dr. A.K. Jain*

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- A Being aggrieved by Tribunal's decision Union of India preferred the present appeal.

Allowing the appeal, this Court

- B HELD : 1.1. The expression "up to October 1, 1964" in the direction for regularisation obviously does not include appointments made on October 1, 1984. This is clear from a further part of the same direction in which the expression "prior to October 1, 1984" occurs. After directing the regularisation of the *ad hoc* appointees up to October 1, 1984 in very same direction, it was said that those appointed "prior to October 1, 1984" also would be considered for regularisation in spite of termination of their services. It is apparent that this category of doctors required to be considered for regularisation in spite of the termination of their services are those belonging to the same class of *ad hoc* appointees "up to October 1, 1984" which means the same as the *ad hoc* appointees "prior to October 1, 1984". If an appointment made on October 1, 1984 is included in that class, then it would be in conflict with the expression "prior to October 1, 1984" used later. Both these expressions occur in the same context and must have the same meaning. [556B-D]

- E 1.2. Availability of confidential report for some period prior to October 1, 1984 is contemplated in respect of the doctors to be so regularised. The direction further is that the doctors so regularised shall be appointed as Assistant Divisional Medical Officers "with effect from the date from which they have been continuously working" as Assistant Medical Officers/Assistant Divisional Medical Officers. This direction cannot relate to any one who joined the service after 1.10.1984. This was meant to benefit only those *ad hoc* appointees who had been continuously working from a date prior to October 1, 1984 and not from any date subsequent to it. If the benefit of the direction in *Dr. A.K. Jain* is given to the respondent, his appointment as Assistant Divisional Medical Officer can be only from October 9, 1984, the date from which he began working on the post. He can be regularised in this manner only with effect from October 9, 1984 and not from October 1, 1984. There can be no doubt that the direction for regularisation was not meant to benefit any *ad hoc* appointee who was not working on the post of Assistant Medical Officer/Assistant Divisional Medical Officer on October 1, 1984. [556-F-H & 557A]

- H 1.3. The respondent not being entitled to the benefit of the direction

given by this Court in *Dr. A.K. Jain*, his claim for regularisation could have been based only on the ground available to an *ad hoc* appointee during the period between October 1, 1984 and November 1986., for which the respondent had to be found fit by the U.P.S.C. Since the respondent was found unfit, he can have no grievance against the termination of his service.

[557-C-D]

Dr. A.K. Jain & Ors. v. Union of India & Ors., [1987] supp. SCC 497, explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 765/1993.

From the Judgment and Order dated 28.3.92 of the Central Administrative Tribunal, Allahabad in Original Appeal No. 856 of 1988.

J. Ramamurthy, Hemant Sharma, V.K. Verma and C.V.S. Rao (N.P.) for the appellants.

Yogeshwer Prasad and Ms. Rachna Gupta for the respondent.

The Judgment of the Court was delivered by

VERMA, J. Respondent Dr. Gyan Prakash Singh was offered on 28.9.1984 an appointment on *ad hoc* temporary basis to a post of Assistant Medical Officer (Class-11) in the North Eastern Railway for the period of six months or till the candidates selected by the Union Public Service Commission (U.P.S.C.) joined the railways, whichever was earlier. Pursuant to that offer, the respondent was issued an appointment order on 1.10.1984 and he joined duty on 9.10.1984. While the respondent continued to work as an *ad hoc* Assistant Medical Officer, the decision of this Court in *Dr. A.K. Jain and Others v. Union of India and Others*, [1987] Supp. SCC 497, was rendered on 24.9.1987 directing regularisation of the services of all doctors appointed either as Assistant Medical Officers or as Assistant Divisional Medical Officers on *ad hoc* basis up to 1.10.1984, in the manner indicated therein. The respondent was not treated to be a doctor falling within the category indicated in *Dr. A.K. Jain* since his appointment was effective from 9.10.1984 when he had joined duty. The respondent claimed to be governed by the direction given in *Dr. A.K. Jain*, but his representation was rejected by the Railway Board. It appears that the Railway Board decided to regularise the services even of those doctors appointed between 1.10.1984 and November 1986 who were found suitable by the U.P.S.C. after an interview and screening of their service record. In all 105

- A such doctors including the respondent were considered for regularisation on this basis. Out of them, 14 including the respondent were found unfit by the U.P.S.C. for retention in service and, therefore, they were not regularised. The *ad hoc* service of the respondent was then terminated on 9.4.1992.
- B Aggrieved by his non-regularisation, the respondent filed an application before the Central Administrative Tribunal challenging the same. By the impugned order dated 28.3.1992, the Tribunal has allowed the respondent's application taking the view that the respondent is entitled to regularisation of his *ad hoc* appointment on the basis of the decision of this
- C Court in Dr. A.K. Jain. It has been held that the *ad hoc* appointment of the respondent having been made by an order dated 1.10.1984, he is governed by the direction given by this Court in Dr. A.K. Jain. The Union of India, being aggrieved by that decision, has preferred this appeal by special leave.
- D On the above facts, the question is: whether the Tribunal has correctly read the decision of this Court in Dr. A.K. Jain hold that the respondent is entitled to regularisation on the basis of the direction given therein?
- E The contention of learned counsel for the appellant is that the respondent having joined duty on 9.10.1984 pursuant to the appointment order dated 1.10.1984, his appointment became effective on 9.10.1984 and not on 1.10.1984. For this reason, it is urged, the respondent is not entitled to the benefit of the direction given in Dr. A.K. Jain even on his own case. The further submission of learned counsel for the appellant is that even if
- F the date of the appointment order be taken as the date of the respondent's effective appointment, the order in Dr. A.K. Jain read as a whole cannot apply to the appointments made on 1.10.1984 since it must be confined to only those doctors who were in service on 1.10.1984 as a result of their appointment on dated prior to, and not inclusive of, 1.10.1984. It was also submitted on behalf of the appellant that the respondent was found unfit
- G by the U.P.S.C. in the batch of *ad hoc* appointees between 1.10.1984 and November 1986 on account of which his non-regularisation cannot be challenged. In reply, the learned counsel for the respondent contended that the respondent's appointment was effective from 1.10.1984, the date of the appointment order and not from the subsequent date of his joining duty.
- H He submitted that the direction of this Court in Dr. A.K. Jain clearly

applies to such appointments made even on 1.10.1984. He further submitted that the respondent being found unfit by the U.P.S.C. is of no consequence since the test applied by the U.P.S.C. included an interview and not mere screening of service record as in the case of *ad hoc* appointees up to 1.10.1984. Lastly, it was submitted, that it is a solitary case of appointment on 1.10.1985 which does not call for interference.

It is unnecessary in the present case to decide whether the respondent's appointment can be treated as made on 1.10.1984 by virtue of the date of appointment order even though it became effective only from 9.10.1984 when he joined duty. Even on the assumption that the respondent can be treated as having been appointed on 1.10.1984 as claimed by him, the respondent does not get the benefit of the decision in *Dr. A.K. Jain*.

The decision in *Dr. A.K. Jain and Others v. Union of India and Others*, [1987] Supp. SCC 497, was rendered in writ petitions under Article 32 of the Constitution challenging the action of the Union of India in terminating the services of petitioners as *ad hoc* Assistant Medical Officers and replacing them by freshly recruited Assistant Divisional Medical officers. The petitioners in those cases were appointed *ad hoc* Assistant Medical Officers (Class-II) in the Zonal Railways. The material part of the operative order containing the direction therein is as under :-

"The services of all doctors appointed either as Assistant Medical Officers or as Assistant Divisional Medical Officers on ad hoc basis up to October 1, 1984 shall be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports in respect of a period subsequent to October 1, 1982. Such evaluation shall be done by the Union Public Service Commission. The doctors so regularised shall be appointed as Assistant Divisional Medical Officers with effect from the date from which they have been continuously working as Assistant Medical Officer/Assistant Divisional Medical Officer. The Railway shall be at liberty to terminate the services of those who are not so regularised. If the services of any of the petitioners appointed prior to October 1, 1984 have been terminated except on resignation or on disciplinary grounds, he shall be also considered for regularisation and if found fit his services shall be

- A *regularised as if there was not break in the continuity of service but without any back wages."*

(emphasis supplied)

- B The expression "up to October 1, 1984" in the direction for regularisation obviously does not include appointments made on October 1, 1984. This is clear from a further part of the same direction in which the expression "prior to October 1, 1984" occurs. After directing the regularisation of the *ad hoc* appointees up to October 1, 1984, in the very same direction, it was said that those appointed "prior to October 1, 1984" would also be considered for regularisation in spite of termination of their services. It is apparent that this category of doctors required to be considered for regularisation in spite of the termination of their services are those belonging to the same class of *ad hoc* appointees "up to October 1, 1984". In other words, the *ad hoc* appointees "up to October 1, 1984" means the same as the *ad hoc* appointees "prior to October 1, 1984". If an appointment made on October 1, 1984 is included in that class, then it would be in conflict with the expression "prior to October 1, 1984" used later. Both these expressions occur in the same context and must have the same meaning.
- E There are other indications to this effect: The direction requires regularisation to be made on the basis of work and conduct evaluated from confidential reports in respect of period subsequent to October 1, 1982. Thus, availability of confidential report for some period prior to October 1, 1984 is contemplated in respect of the doctors to be so regularised. The direction further is that the doctors so regularised shall be appointed as Assistant Divisional Medical Officers "with from the date from which they have been continuously working" as Assistant Medical Officers/Assistant Divisional Medical Officers. This direction cannot relate to any one who joined the service after 1.10.1984. This was meant to benefit only those *ad hoc* appointees who had been continuously working from a date prior to October 1, 1984 and not from any date subsequent to it. If the benefit of the direction in Dr. A.K. Jain be given to the respondent, his appointment as Assistant divisional Medical Officer can be only from October 9, 1984, the date from which he began working on the post. He can be regularised in this manner only with effect from October 9, 1984 and not from October 1, 1984. There can be no doubt that the direction for regularisation was

not meant to benefit any *ad hoc* appointee who was not working on the post of Assistant Medical Officer/Assistant Divisional Medical Officer on October 1, 1984.

These are clear indications that the direction in Dr. A.K. Jain cannot be construed in the manner suggested by the learned counsel for the respondent to give its benefit to the respondent. The Tribunal misread and misconstrued the decision in Dr. A.K. Jain to give its benefit to the respondent.

For the same reason, the contention of learned counsel for the respondent, that the respondent being found unfit by the U.P.S.C. is immaterial, has no merit. The respondent not being entitled to the benefit of the direction given by this Court in Dr. A.K. Jain, his claim for regularisation could have been based only on the ground available to an *ad hoc* appointee during the period between October 1, 1984 and November 1986. For that the respondent had to be found fit by the U.P.S.C. Since the respondent was one of the 14 such *ad hoc* appointees found unfit in the category of 105 doctors appointed between October 1, 1984 and November 1986, the respondent can make no grievance against the termination of his service in these circumstances. No exception can be made for the respondent who was found unfit along with some of his class.

Consequently, the appeal is allowed. The impugned order passed by the Tribunal is set aside with the result the respondent's application made to the Tribunal stands dismissed. No costs.

G.N.

Appeal allowed.