

A DR. ARUNDHATI AJIT PARGAONKAR

v.

STATE OF MAHARASHTRA AND ORS.

AUGUST 31, 1994

B [R.M. SAHAI AND N.P. SINGH, JJ.]

*Service Law :*

C *Appointment—Regularisation of temporary appointment—Class-II post of lecturer in Dentistry—Within the purview of selection by Public Service Commission—Candidate appointed to the permanent post on temporary basis—Public Service Commission recommending another candidate for permanent appointment—Held : the candidate appointed temporarily though working continuously for a number of years not entitled to be regularised.*

D The appellant, a Bachelor in Dental Surgery was selected by the Divisional Selection Board and was appointed as Lecturer in Dentistry on a purely temporary basis in 1978. In 1980 and 1985 the appellant was selected by the public Service Commission for the post of Lecturer of Dental Mechanics and Periodontia respectively, but she did not join. In 1987 her name was sponsored for post graduation on deputation. But the Government did not agree to it since the qualification for the post of Lecturer in dentistry had changed in the meantime in 1986.

F In March, 1988 the post held by the appellant was advertised through Public Service Commission. The appellant filed a Writ Petition before the High Court claiming that since she had rendered nine year continuous service she stood regularised as per the Government resolution dated 19.9.1975. The petition was transferred to the Tribunal which passed an interim order in favour of the appellant but the selection to the post was not stayed. Respondent No. 3 was selected but he could not joined in view of the said interim order. He filed a petition before the Tribunal.

G Both the petitions were decided by the Tribunal. The appellant's claim was rejected as her appointment was not in accordance with the recruitment rules according to which since the said post was a Class-II post it had to be filled through the public Service Commission. Hence this appeal.

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Dismissing the appeal, this Court

**HELD : 1.** The post on which the appellant was appointed was a permanent post. A person appointed temporarily to a permanent post cannot be equated with a person appointed *ad-hoc*. A temporary appointee to a permanent post has all the privileges of a regular employee except that the appointment becomes permanent only in the manner provided in the rules. Even the tenor of the appointment letter indicates that the appellant was not to be treated a temporary employee in the sense in which it is, normally, understood. It was not a tenurial appointment or an appointment till further orders. It was not even said that the appellant was being appointed till a regular candidate was selected. However, that by itself could not confer any permanent status on the appellant nor she could claim regularisation unless it is established that she became permanent under some rule or order or the 1975 Resolution by satisfying the conditions mentioned therein. [812-D-F]

**2.** The method of appointment of a lecturer in Dentistry in the Medical College was to be governed by the rules made in 1977. The two methods provided are by transfer and by nomination. A person appointed by nomination was to be placed on probation for two years. The rules do not throw any light on the procedure of nomination. But that does not help the appellant as she was not placed on probation. Nor it is claimed by her that she was appointed by nomination. [812-G-H, 813-A]

**3.** Since the Government has been treating the class-II post in purview of Public Service Commission and these posts were not included in the notification issued on 8th October 1965 by the State Government the Tribunal did not commit any error in recording finding that the post of Lecturer in Dentistry in the State of Maharashtra even in 1978 was within purview of the Public Service Commission. Even otherwise the Temporary Government Services Regularisation Rules issued by the Government in 1975 should not, in the larger interest, be made applicable to those cases where the post specially class-II service is in purview of the Public Service Commission. [813-E-F]

*Dr. M.A. Haque v. Union of India*, [1993] 2 SCC 213, relied on.

**4.** Eligibility and continuous working for howsoever long period should not be permitted to over-reach the law. Requirement of rules of

- A** selection through Public Service Commission cannot be substituted by humane considerations. Law must take its course. consequently the appellant was not entitled to claim that she should have been deemed to have been regularised as she had been working without break for nine years.

[814-D-E]

- B** **CIVIL APPELLATE JURISDICTION** : Civil Appeal No. 5794 of 1994.

From the Judgment and Order dated 24.9.93 of the Maharashtra Administrative Tribunal, Bombay In T.A. No. 484/91.

- C** R.P. Bhatt, S.C. Birla and Ashok Chordia for the Appellant.

A.S. Bhasme for the Respondent Nos. 1 & 2.

M.D. Adkar and Ezad Maqbool for the Respondent No. 3.

- D** The Judgment of the Court was delivered by

**R.M. SAHAI, J.** The question of law that arises for consideration in this appeal directed against order of Maharashtra Administrative Tribunal, Bombay Bench, is whether the appellant who was appointed temporarily against a permanent post was entitled to be regularised under Temporary Government Servants Extension of Permanency Resolution issued by the State Government in 1975 or under any other equitable principle as she had been working continuously since then and had worked for nine years, without break on the date the government advertised the post to be filled through Public Service Commission.

- F** Few dates and facts which are more or less undisputed may be narrated in brief. The appellant, a Bachelor in Dental Surgery (B.D.S.) was selected by the Division Selection Board and was appointed as Lecturer in Dentistry in Government B.J. Medical College, Pune on 16th September 1978. In the appointment letter it was mentioned that the appellant was appointed, 'on a purely temporary basis pending further orders as Lecturer in Dentistry at the B.J. Medical College, Pune from date of taking over charge .....'. The letter further mentioned that the appointment of the appellant was subject to her being found physically fit for government service by the Medical Board and satisfactory report regarding antecedents and character. The appellant was prohibited from doing any private practice and it was stated that her appointment was, 'purely on a temporary
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basis subject to termination without notice and without any reasons being assigned. It was provided that she, 'shall not quit service without giving one month's notice in advance to the Government or to the appropriate authority. In the case of any default in giving proper notice as stated above', she, 'shall pay to Government one month's pay in lieu thereof. And her resignation was not to be accepted in the middle of the academic session. In 1980 and 1985 the appellant was selected by the Public Service Commission for the post of Lecturer of Dental Mechanics and Periodontia respectively. But admittedly she did not join. In August 1987 the Dean of the Medical College appears to have written some letter to the Government for placing the appellant on deputation for post graduation. The Government did not agree to it, presumably, because the qualification for a lecturer in dentistry had been changed in the meantime in 1986. In March 1988 the post which was held by the appellant was advertisement through Public Service Commission. The appellant filed a writ petition claiming that there was no vacancy as she having rendered nine years of service without break as a lecturer she stood regularised as per the Government Resolution dated 19.9.1975. Her claim was contested by the State on various grounds, including that the petition was pre-mature. The petition was transferred in 1991 to the Tribunal. It appears that even though there was an interim order in favour of appellant but the selection was not stayed. Therefore, Dr. Satish B. Barale, respondent no. 3 was selected by the Public Service Commission but he could not join due to the interim order in favour of the appellant. He, too, therefore, filed petition before the Tribunal for a direction to the Medical College, Pune, to appoint him to the post for which he was selected.

Both these petitions have been decided by the Tribunal and the Claim of the appellant has been rejected as the benefit of resolution dated 19.9.1975 could not be extended to her. It was held that this resolution required a temporary Government servant to satisfy three conditions before his services could be regularised. One, that the original appointment of the Government servant must have been made in conformity with the relevant recruitment rules and the prescribed method of recruitment. The other two conditions that the Government servant should have produced the requisite physical fitness certificate and that he must have possessed a good record of service are not necessary to be discussed as it was not disputed by the Tribunal that these two conditions were satisfied. But according to Tribunal the appointment of appellant was not in accordance

- A with recruitment rules even though it found that the appellant was duly qualified and was eligible to be appointed on the post of Lecturer. What led the Tribunal to reject the claim of the appellant was that since this was a class-II post it had to be filled in through Maharashtra Public Service Commission. The Tribunal did not find any merit in the claim of appellant
- B that there was no specific denial by the respondent that the post was not in the purview of the Commission at the relevant time. The Tribunal held that on 8th October 1965 a notification was issued by the Government specifying therein the posts which were excluded from the purview of the Public Service Commission. But since the post of lecturer in Government Medical College Class-II was not mentioned in it, it could not be claimed
- C by the appellant that her appointment stood regularised and the first condition of the 1975 Resolution was satisfied.

- The terms of appointment letter had been extracted earlier. It is not disputed that the post on which the appellant was appointed was a permanent post. A person appointed temporarily to a permanent post cannot be equated with a person appointed *ad-hoc*. A temporary appointee to a permanent post has all the privileges of a regular employee except that the appointment becomes permanent only in the manner provided in the rules. Even the tenor of the appointment letter indicates that the appellant was not to be treated a temporary employee in the sense in which it is, normally
- E understood. It was not a tenurial appointment or an appointment till further orders. Even this was not said that the appellant was being appointed till the regular candidate was selected. However, that by itself could not confer any permanent status on the appellant nor she could claim regularisation unless it is established that she became permanent under
- F some rule or order or 1975 Resolution by satisfying the conditions mentioned therein.

- The rules for appointment to the post of a lecturer in Dentistry were framed by the Governor in 1977 in exercise of the power under Article 309 of the Constitution. They were in supersession of all existing rules and orders issued in this behalf. The method of appointment of a lecturer in Dentistry in the Medical College was to be governed by this rule. The two methods provided in the order were by transfer and by nomination. A person appointed by nomination was to be placed on probation for two years. The rules do not throw any light on the procedure of nomination.
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- H But that does not help the appellant as she was not placed on probation.

Nor it is claimed by her that she was appointed by nomination. Further it appears from various advertisements issued by the Government from time to time that the appointments for permanent selection were made through Public Service Commission. It is true as is clear from the counter-affidavit filed by the Under Secretary in the Education Department that the temporary appointments for lecturers were made by the selection Board. That procedure is still resorted to as appears from the recent advertisement stated to have been issued by the University. But even such appointments were not regularised *ipso facto* by the Government Resolution of 1975 as in 1983 when the Government was faced with similar problem of large number of medical officers in Class-II it sent a proposal to the commission to hold a special test which was agreed to as is clear from the Resolution dated 3rd February 1984 to the following effect :

"On the proposal made by Government for regularisation of appointments of Medical Officers mentioned in para I, the Maharashtra public Service Commission agreed as a very special case, to absorb such Medical Officers who had put in 3 or more years of service as on 28th February 1983 and were successful in the special test conducted by the Commission for the purpose of their absorption."

Since the Government has been treating the class-II post in purview of Public Service Commission and these posts were not included in the notification issued on 8th October 1965 by the State Government the Tribunal did not commit any error in recording the finding that the post of Lecturer in Dentistry in the State of Maharashtra even in 1978 was within purview of the Public Service Commission. Even otherwise the Temporary Government Services Regularisation Rules issued by the Government in 1975 should not be held, in the larger interest, to be applicable to those cases where the post specially class-II service is in purview of the public Service Commission. In *Dr. M.A. Haque v. Union of India*, [1993] 2 SCC 213 (219) it was observed by this Court :

"..... we cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the by passing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment without limit. In fact this

A Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public service commission. It appears that since this Court has in some cases permitted regularisation of the irregularly recruited employee, some Governments and authorities have been increasingly resorting to irregular recruitments. The result has been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidate dictated by various considerations are being recruited as a matter of course."

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C The claim of the appellant therefore, that she stood regularised under 1975 Resolution cannot be accepted.

Nor the claim of the appellant, that she having worked as Lecturer without break for nine years on the date the advertisement was issued she should be deemed to have been regularised appears to be well founded. Eligibility and continuous working for however long period should not be permitted to over-reach the law. Requirement of rules of section through Commission cannot be substituted by humane considerations. Law must take its course. Consequently the appellant was not entitled to claim that she should have been deemed to have been regularised as she had been working without break for nine years.

Even then, at one stage, the selection and appointment of the appellant by a duly constituted Board against a temporary post in accordance with rules against a permanent post and her continuance for nine years coupled with inaction of the Government to take any steps to fill the post through Commission thus preventing the appellant from availing of any opportunity for regular selection was bothering us. But when the Under Secretary in the Medical Department filed the additional affidavit on direction of this Court what transpired indicated that in fact the appellant has continued partly because of the circumstance that the regularly selected candidate did not join and partly due to interim orders granted by the courts. In the affidavit it is stated that advertisement for regular selection through Commission was issued by the Government on 13th January 1984 for the post of Lecturer in Dentistry. The appellant along with others applied for the same but it was one Dr. S.C. Bhoir who was selected and posted as Lecturer in B.J. Medical College, Pune. He, how-

ever, did not join due to certain unavoidable circumstances. The affidavit states that it was due to this reason that the appellant continued as temporary lecturer even when she was not selected by the commission. The appellant, therefore, cannot make any grievance that she was not afforded any opportunity to become regular through appointment by the Commission. And unfortunately, for her when the post was advertised again in 1988 the eligibility criteria had changed under Maharashtra Medical and Research Services Class-II in Directorate of Medical and Research (Recruitment) Rules, 1986, yet she has continued till now on strength of interim orders granted in her favour first from the High Court, continued by the Tribunal and then by this Court. The interim orders have already caused enough injury to the selected candidate.

In the result this appeal fails and is dismissed. But there shall be no order as to costs.

G.N.

Appeal dismissed.