

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 30th April, 2021**

+ **W.P.(C) 4755/2021**

ALL INDIA INSTITUTE OF MEDICAL SCIENCES ...Petitioner

Through: Mr. Atul Kumar and Ms. Archana
Kumari, Advocates.

Versus

ELSY JACOB & ORS.

.... Respondents

Through: Dr. M.P. Raju, Advocate for Mr. E. J.
Varghese for R-1 to R-52.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

RAJIV SAHAI ENDLAW, J.

[VIA VIDEO CONFERENCING]

CM No. 14640/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) No.4755/2021 & CM No.14639/2021 (for stay)

3. This petition, under Article 226 of the Constitution of India, impugns the order dated 31st October, 2019 of the Central Administrative Tribunal (CAT), Principal Bench, New Delhi, allowing O.A. No.4342/2014 preferred by the respondents no.1 to 52, being Nurses Grade-II in the petitioner All India Institute of Medical Sciences (AIIMS).

4. The respondents no.1 to 52 filed the O.A. aforesaid, pleading that (i) the respondents no.1 to 52, from time to time, on different dates, from the year 1996 onwards, were interviewed by the Competent Authority and appointed on *ad hoc* basis, to the temporary post of Sister Grade-II, in the petitioner AIIMS, initially for a period of 3 months, against leave vacancies etc.; (ii) the letters of appointment issued to the respondents no.1 to 52 on such appointment, besides providing that the appointment was *ad hoc* and initially for a period of 3 months, further specified the monthly pay (which was different in different appointment letters issued at different times) and which monthly pay was “with usual allowances” of the subject pay scale; it was also a stipulation in the appointment letter, that the appointment was subject to the respondents no.1 to 52 having the prescribed qualification and furnishing documents in proof thereof; (iii) however the services of the respondents no.1 to 52 were continued, even after expiry of 3 months, without interruption; (iv) though after the date of such *ad hoc* appointment of respondents no.1 to 52, process of regular appointments to the post of Sister Grade-II in the petitioner AIIMS took place and though the respondents no.1 to 52 and/or some of them participated in the selection process for regular appointment, but none of them was selected or appointed; and, (v) however in the year 2004, each of the respondents no.1 to 52 was appointed on a regular basis, on the terms and conditions mentioned in the letters of appointment then issued to each of them.

5. Though the respondents no.1 to 52 claimed several reliefs in the O.A., from which this petition arises, but at the time of hearing, confined the reliefs to that of, (a) counting of the service rendered by the respondents

no.1 to 52 on *ad hoc* basis, for fixation of seniority; and, (b) consideration of the respondents no.1 to 52 for promotion to the post of Sister Grade- I, as per Recruitment Rules, on the basis of such seniority.

6. Since the reliefs with respect to seniority and promotion were also claimed in the O.A., the respondents no.1 to 52, who were applicants before CAT, in their O.A., besides impleading the petitioner AIIMS, also impleaded respondents no.53 to 62 herein, who were/are also holding the post of Sister Grade-II in petitioner AIIMS but who were appointed on regular basis, though after the date of *ad hoc* appointment of the respondents no.1 to 52, but before the date of regular appointment in the year 2004 of respondents no.1 to 52, since the said reliefs sought were likely to affect their seniority and promotion.

7. A perusal of the impugned order of CAT does not show the respondents no.53 to 62 herein to have contested the claim of the respondents no.1 to 52 qua seniority and promotion and which relief was likely to affect the respondents no.53 to 62 herein.

8. The counsel for the respondents no.1 to 52, appearing on advance notice/caveat, also on enquiry confirms that the respondents no.53 to 62, inspite of notice, did not file any reply to the O.A. or otherwise contest the O.A. of the respondents no.1 to 52.

9. The counsel for the petitioner as well as the counsel for the respondents no.1 to 52 are also *ad idem* that the respondents no.53 to 62 have also not impugned the order of CAT, though affecting their seniority and promotion.

10. It can thus safely be assumed that the respondents no.53 to 62 whose seniority and time of promotion, even if affected by the relief granted by CAT to respondents no.1 to 52, are not aggrieved therefrom.

11. CAT has allowed the aforesaid two reliefs claimed by the respondents no.1 to 52 and directed the petitioner AIIMS to count the services rendered by the respondents no.1 to 52 on *ad hoc* basis, before their regular appointment in the year 2004, in fixing their seniority and for the purposes of promotion to higher grade etc., reasoning (i) that from the letter of appointment of each of the respondents no.1 to 52 on *ad hoc* basis, it was crystal clear that they were appointed in a pay scale and were given increments every year and that on regular appointment, their pay was protected and fixed at a higher level than the entry level pay; (ii) that in a meeting held on 18th January, 2014 of the Nursing Union with the Director of petitioner AIIMS, it was informed that the period of service rendered by the respondents no.1 to 52 on *ad hoc* basis, followed by regular appointment, would be counted for pensionary benefits, allotment of accommodation etc. but not as qualifying service for voluntary retirement and not for the purposes of seniority and promotion; (iii) that though usually seniority of an employee would be counted only from the date of his appointment as per Recruitment Rules, but in view of the peculiar facts of the case i.e., of the respondents no.1 to 52 having been (a) appointed after an interview, by a Competent Authority; (b) appointed in a pay scale; (c) given increments every year, though their initial appointment was for 3 months only; (d) continued uninterruptedly till 2004; (e) given a pay scale higher than the entry level pay scale, on regular appointment in the year 2004,

taking into account all the increments they had earned from the date of initial appointment on *ad hoc* basis; (f) given protection of pay earned on *ad hoc* basis, at the time of regular appointment; (g) given the benefit of period of *ad hoc* service for pensionary benefits and for allotment of accommodation, and both of which also affected the respondents no.53 to 62 herein, they were also entitled to the relief of seniority including for promotion; and, (iv) that the respondents no.53 to 62 herein, inspite of service, had not entered appearance or contested the claim of the respondents no.1 to 52 herein.

12. The counsel for the petitioner AIIMS has contended, (i) that though the respondents no.1 to 52 were interviewed prior to their *ad hoc* appointment, but not by the Selection Committee in accordance with the Recruitment Rules; (ii) that the *ad hoc* appointment of the respondents no.1 to 52 was not in pursuance to any public advertisement or through Employment Exchange but through word of mouth; and, (iii) that the respondents no.1 to 52 were not subjected to any probation and thus the period of their *ad hoc* service cannot be counted for the purposes of seniority and promotion and the same would be contrary to the Recruitment Rules.

13. We have however enquired from the counsel for petitioner AIIMS, why the respondents no.1 to 52, at the time of regular appointment in the year 2004, were not subjected to probation.

14. No answer is forthcoming.

15. The counsel for the petitioner AIIMS then contends, that if the impugned order of CAT is sustained, it would open a pandora's box qua seniority.

16. The respondents no.1 to 52, in their O.A. before CAT, impleaded respondents no.53 to 62 herein, for the reason of the relief claimed qua seniority and promotion being prejudicial to respondents no.53 to 62. The respondents no.53 to 62, as aforesaid, did not contest the claim of the respondents no.1 to 52 and have also not challenged the relief granted by CAT to respondents no.1 to 52. The petitioner AIIMS also, though in this petition has pleaded, that grant of seniority and promotion as aforesaid to the respondents no.1 to 52 will open a pandora's box, before CAT did not plead that there were any others besides the respondents no.53 to 62, whose seniority or promotion was likely to be affected by the relief claimed by the respondents no.1 to 52. Even in this petition, a vague plea of pandora's box being opened is taken, without any particulars. The bogey of pandora's box being opened unless the Court intervenes, cannot be raised without laying down any foundation therefor. We are thus not inclined to agree with the said submission.

17. Be that as it may, even if there were to be some legal merit in the contentions aforesaid of the counsel for the petitioner AIIMS, this petition, against the order dated 31st October, 2019 of CAT, has come up before this Bench during the prevalent pandemic which has been raging across the country now for the last more than one year and during which time the medical/healthcare professionals, particularly Nurses, to which profession the respondents no.1 to 52 belong, have, sacrificing their own personal

comforts and life, rendered immense services to the fellow citizens of Delhi and elsewhere. Till now, the citizens of Delhi, including us, have been expressing appreciation for the efforts of the medical/healthcare workers/professionals and our gratitude to the Nursing fraternity, only in words. Today, if on technicalities of law, we set aside the relief granted by CAT to respondents no.1 to 52 Nurses, and to grant of which relief the other Nurses i.e. respondents no.53 to 62 who alone would have been affected therefrom have not objected, the words of appreciation and gratitude expressed till now, would sound hollow and empty to the respondents no.1 to 52 and in these times, when they are rendering services beyond their call of duty and much beyond the hours they are required to work, affect their morale. It cannot also be lost sight of, that the respondents no.1 to 52 have worked as Nurses and performed the same duties as regular appointees, for the period of which they are claiming seniority. The technicality of law, at this hour, should not be allowed to come in their way.

18. Fortunately, we are adjudicating this lis in exercise of our powers under Article 226 of the Constitution of India and in which jurisdiction, as per dicta of the Supreme Court in *Taherakhatoon Vs. Salambin Mohammad* (1999) 2 SCC 635 consistently followed in *Chandra Singh Vs. State of Rajasthan* (2003) 6 SCC 545, *Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd.* (2005) 6 SCC 138, *Filmistan Exhibitors Ltd. Vs. N.C.T.* 131 (2006) DLT 648, *Babu Ram Sagar Vs. Presiding Officer, Labour Court* 2006 SCC OnLine Del 1648, *Pradeep Oil Corporation Vs. Union of India* MANU/DE/0281/2012 and *Management of Municipal Corporation of Delhi Vs. Delhi Administration*

MANU/DE/0835/2010, the Court is empowered not to strike down an illegal order, although it would be lawful to do so. We, as a Court and as citizens of Delhi, are reluctant, during this time when the entire citizenry is literally in the hands of the nursing profession to which the respondents no.1 to 52 belong, to take away from the respondents no.1 to 52 what has been granted to them by CAT.

19. We must also express our appreciation for the spirit of brotherhood / sisterhood / comradery demonstrated by the respondents no.53 to 62 herein, who though possibly prejudiced from the relief granted by CAT in favour of respondents no.1 to 52, chose not to object thereto. Much can be learnt by members of other professions, therefrom.

20. We thus, in our discretion, refuse to entertain the challenge by way of this writ petition to the order of CAT granting relief to respondent no.1 to 52 Nurses.

21. We however clarify that the aforesaid order having been made in the circumstances aforesaid, shall not constitute a precedent on the proposition that period of *ad hoc* service is to be counted in computation of seniority/for the purposes of promotion.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

APRIL 30, 2021
AT/A