

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
S.K. BHARGAWA

DATE OF JUDGMENT: 08/07/1997

BENCH:
SUJATA V. MANOHAR, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:
Present:

Hon'ble Mrs.Justice Sujata V.Manohar
Hon'ble Mr.Justice V.N.Khare

Mr.N.N.Goswami, Sr.Advocate, Mr.S.Wasim A Qadri, and
Mr.A.K.Sharma, Advocates with him for the appellant.
Mr.R.P.Gupta, Advocate for the respondent.

J U D G M E N T

The following Judgment of the Court was delivered:

J U D G M E N T

MRS. SUJATA V. MANOHAR, J.

The respondent was appointed as Assistant Medical Officer in the Railways on ad hoc basis in 1986. His case along with the case of other ad hoc Assistant Medical Officers was referred to the Union Public Service Commission for the purpose of regularisation. The Commission, after the scrutiny of the confidential Service record and after conducting an interview, has rejected the case of the respondent for regularisation. The Tribunal however, by its order (dated 3rd November, 1992) has directed that the case of the respondent should be considered de novo only on the basis of his service record and he should be retained in service if found fit on a regular basis. Hence the present appeal.

The case of the respondent is squarely covered by a decision of this Court in Union of India & Ors. v. Dr.Gyan Prakash Singh (1994 Suppl. (1) SCC 306) where this Court has laid down that the decision of this Court in Dr. A.K. Jain & Ors. v. Union of India & Ors. [(1988) 1 SCR 335] only applies to ad hoc Assistant Medical Officers appointed prior to 1st October, 1984. The Court further held that the respondent in that case who was appointed 1st October, 1984 was found unfit by the Union Public Service Commission and hence could not be regularised. The facts of the present case are similar to those in the Case of Union of India v. Gyan Prakash Singh (supra). The respondent was appointed on ad hoc basis much after 1st October, 1984. He was found unfit for regularisation by the Union Public Service Commission. Hence the appellant has correctly declined to continue him.

We have seen the counter affidavit of the respondent

and the documents annexed. The letter of appointment dated 8.7.1995 pertaining to the respondent has been produced before us. The letter sets out that the appointment of the respondent will be purely temporary on ad hoc basis for a period of six months or till the respondent is replaced by a candidate selected by the Union Public Service Commission, whichever is earlier. The letter further provides as follows:-

"In case your services are continued on ad hoc basis beyond six months due to shortage of candidates duly selected by UPSC, and if you fail to get selected in the selection/Competitive examinations held by the UPSC on three successive occasions or do not avail of three chances successively, your service shall be terminated."

Pursuant to this appointment letter the respondent was appointed as Assistant Medical Officer on ad hoc basis with effect from 9.1.1986. The appellant has filed an additional affidavit which sets out that the respondent did not make use of any of the chances available to him. The Union Public Service Commission had conducted competitive examinations every year. The particulars of these examinations are given in the said affidavit of Ashok Bhandari, Joint Director Estt.(Gaz), Railway Board, New Delhi dated 9th of April, 1996. It sets out, inter alia, that the Union Public Service Commission notified Combined Medical Services Examination (CMSE) 1986 on 12.10.1985. The written examination was held on 6.4.1986 and interviews were held during the months of October-November 1986. The results were declared on 4.3.87. CMSE 1987 was notified by the UPSC on 11.10.86 for which written examination was held on 5.4.1987 and interviews were held during October-November 1987 and final results were declared on 14.3.1988. CMSE 1988 was notified by UPSC on 19.9.87. Written examination was held on 28.2.88 and the interviews were held in October-November 1988 and the final results were declared on 5.12.1988. Similar examinations had been held every year thereafter in 1989, 1990 and 1992 and so on. The respondent did not avail of three successive chances and more to get himself qualified through these examinations for his regular appointment. Apart from these competitive examinations a special selection for regularisation of existing ad hoc doctors of the railways who had been appointed after 1.10.84, was conducted by the Union Public Service Commission. He was, however, not found suitable for regularisation by the Union Public Service Commission and, therefore, the services of the respondent were terminated. Thus the termination of the respondent is in accordance with the terms of his appointment as also the ratio laid down by this court in the case of Union Of India v. Gyan Prakash Singh (supra).

The respondent has relied upon the order of this Court in the case Union of India v. S.K. Rajan dated 23.8.1993 (S.C. Agrawal and Sahai JJ.) in SLP No. 10807/93 dismissing the SLP 7318/95 and Ca 7471/94 respectively. The two latter orders have relied upon the dismissal of SLP in Union of India v. S.K. Rajan (supra) which was against the order passed by the Madras Bench of the Central Administrative Tribunal came to the conclusion, after noting the terms of the appointment letter, that the applicant there was not given three successive chances in the selection conducted by the UPSC. Hence he should not be discontinued unless he is

given these three successive chances and fails to qualify. The ratio of that decision will not have any application to the present case in view of the facts already set out. The three orders of dismissal of SLPS/CAs of this Court are non-speaking orders. Presumably, looking to the reasoning of the Tribunal in the orders impugned in those cases, three chances were not given to the ad hoc Assistant Medical Officers before termination of service as set out in their appointment letters. The present case is not of that type. The termination of the respondent is in accordance with the terms of his letter of appointment and is based on his failure to qualify for regularisation as per his appointment letter and also in the special selection. His case is, therefore, covered by the ratio of this Court in *Union of India v. Gyan Parkash Singh* (supra).

The respondent has also relied upon certain observations in the case of *Dr. A.K Jain and Ors.* (supra) relating to the discharge of ad hoc medical officers appointed after 1.10.1984. In view of the clear findings of this Court in the case of *Gyan Prakash Singh* (supra), the observations made therein cannot be pressed into service in the present case. An ad hoc officer who has not availed of three successive chances for regularisation and has not been found suitable for regularisation in a special selection by the Union Public Service Commission can be removed from service.

The appeal is, therefore allowed and the impugned judgment and order is set aside. In the circumstances of the case there will be no order as to costs.