

## **Dr. A.K. Jain & Ors. Etc.Yetc vs Union Of India & Ors on 24 September, 1987**

**Equivalent citations: 1988 SCR (1) 335, 1987 SCC SUPL. 497, AIRONLINE 1987 SC 79, 1987 SCC (SUPP) 497, 1988 SCC (L&S) 222, (1987) 4 JT 445 (SC)**

**Author: E.S. Venkataramiah**

**Bench: E.S. Venkataramiah, K.N. Singh**

PETITIONER:

DR. A.K. JAIN & ORS. ETC.yETC.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT24/09/1987

BENCH:

VENKATARAMIAH, E.S. (J)

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VENKATARAMIAH, E.S. (J)

SINGH, K.N. (J)

CITATION:

1988 SCR (1) 335

1987 SCC Supl. 497

JT 1987 (4) 445

1987 SCALE (2)1002

ACT:

Indian Railways Medical Department (Assistant Medical officers Class II) Recruitment Rules, 1977: Rule 6-Zonal Railways-Ad hoc Assistant Medical Officers-Replacement/regularisation of-Directions issued by Court.

HEADNOTE:

1. Services of all doctors appointed as Assistant Medical (Officers Assistant Divisional Medical officers on ad hoc basis upto 1.10.1984 shall be regularised in consultation with the Union Public Service Commission. The doctors so regularised shall be appointed as Assistant Divisional Medical officers from the date from which they have been continuously working. [338C-D]

2. The petitions of the officers appointed subsequent to 1.10.1984 are dismissed. However, the Assistant

Divisional Medical Officers who have been selected by the Union Public Service Commission shall first be posted to the vacant posts available. If all those selected by UPSC cannot be accommodated they may be posted to the posts now held by the doctors appointed on ad hoc basis subsequent to 1.10.1984. While making such postings the principle of 'last come, first go' shall be observed. The doctors so displaced, if willing to serve in any other zone where there is a vacancy may be accommodated in such vacancy on ad hoc basis. [338E-G]

3. All Assistant Medical Officers/Assistant Divisional Medical Officers working on ad hoc basis shall be paid the same salary and allowances on the revised scale with effect from 1.1.1986. [338H; 339A]

4. No ad hoc Assistant Medical officer/Assistant Divisional Medical officer who may be working in the Railways shall be replaced by any newly appointed Assistant Medical officer/Assistant Divisional Medical officer on ad hoc basis. [333B]

5. If the ad hoc doctors appointed after 1.10.1984 apply for selection by the Union Public Service Commission necessary relaxation in age to the extent of the period of service rendered shall be granted. [339C]

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#### JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 822 of 1987 etc. etc. (Under Article 32 of the Constitution) India. Gobind Mukhoty, P.P. Rao, M.C. Bhandare, Surya Kant, V. Shekhar, M.A. Chinnaswamy, C.K. Sucharita, Ms. Malini Poduval, Raj Kumar Gupta, P.C. Kapur and S.S. Tewari for the Petitioners.

D.N. Dwivedi, R.B. Mishra, Ashok Kumar Sharma, Ms. A. Subhashini, Y.P. Rao, B.D. Sharma, Shrinath Singh and K.K. Gupta for the Respondents.

Supreme Court Editorial Note-Statement of Facts The petitioners in their Writ Petitions under Article 32 of the Constitution challenged the action of the Respondents in terminating their services as 'ad-hoc' Assistant Medical officers on the plea that they were 'ad- hoc' appointees and replacing them by freshly recruited Assistant Divisional Medical officers, and prayed for the issue of a direction to the Respondents to treat the appointments of the petitioners as regular with effect from the dates of their respective appointments as 'ad-hoc' Assistant Medical officers and to assign them consequent seniority in the grades.

It was contended by the petitioners that they were appointed as 'ad-hoc-" Assistant Medical officers (Class II) during the period August 1983 to July 1986 in the South- Eastern, North East Frontier and Northern Zones of the Indian Railways and had been officiating in the said grade for periods

ranging upto four years. Although the initial appointments were for a period of six months, the respondents had extended their tenure from time to time. Instead of regularising the services of the petitioners and conferring the benefits of seniority, the respondents had threatened to terminate their services as and when the UPSC selected Assistant Divisional Medical officers and they joined the service. In the South-Central Zone of the Railways, the petitioners contended that the Respondents had in fact by an order No. 450/86 dated 11.11.1986, terminated the services of eleven officiating 'ad-hoc' Assistant Medical officers as they had not availed of the three chances stated in their appointment order for selection through UPSC. It was alleged that neither the Indian Railways Medical Department (Assistant Medical officers Class II) Recruitment Rules 1977 nor the earlier Rules of 1967 provided for 'ad-hoc' appointment Of Assistant Medical officers, and that the Respondents exercised the powers, to relax the Rules conferred by Rule 8 of the 1967 Rules and Rule 6 of the 1977 Rules, as it was inevitable to prevent dislocation of medical services on the Railways and alleviation of hardship to the employees and their families.

These petitions were contested by the Respondent. In the counter-affidavit filed on behalf of the Union of India, it was contended that the petitioners belonged to the category of 'ad-hoc' doctors who were appointed by the General Managers of the concerned Zonal Railways under their powers, and not by the President of India, purely as a temporary measure for a specified period, that such 'ad-hoc' appointments became unavoidable in the Railways and were resorted to, to tide over temporary shortage of professional doctors and that these 'ad-hoc' doctors' tenures were extended for various periods from time to time. It was further contended that the recruitment of regular doctors on the Railways was done in the capacity of Assistant Divisional Medical officer (Group 'A') in the scale of Rs.700-1600 through the Union Public Service Commission as the posts belonged to Group 'A' for which the appointing authority was the President of India. It was also submitted that the General Managers of the Zonal Railways were empowered to recruit 'ad-hoc' doctors as Assistant Medical officers Group 'B' in the scale of Rs.650-1200 purely on 'ad-hoc' basis for a specified period to maintain the Railways Medical Service till replacement by Assistant Divisional Medical officers, selected through the UPSC.

The Combined Medical Services Examination was introduced by the UPSC in the years 1977, and from 1977 to 1983 maximum age relaxation upto 40 years or even 50 years was granted from time to time to enable the said 'ad-hoc' doctors on the Zonal Railways to avail themselves of the opportunity of appearing in the Combined Medical Services Examination. In addition, the UPSC held two Special Selections based on interview only with sufficient relaxation in the years 1982 and 1985. In these two special selections held in 1982 and 1985, 100 and 67 'ad-hoc' doctors respectively of the Railways were selected and absorbed in the regular cadre. The petitioners who were still 'ad-hoc' doctors in the Zonal Railways, were thus those doctors who either failed to appear in the Combined Medical Services Examination held by the UPSC or after appearing had failed. Having failed to get regularised in accordance with the prescribed rules and regulations for regular appointments, the petitioners services had to be terminated and as such there had been neither any arbitrary nor illegal action on the part of the respondents, nor any violation of the Fundamental A Rights guaranteed under Articles 14 and 16.

The following order of the Court was delivered:

After hearing learned counsel for the parties at great length having regard to the peculiar facts and circumstances of these cases we pass the following order in the above writ petitions:

1. The services of all doctors appointed either, as Assistant Medical officers or as Assistant Divisional Medical officer on ad hoc basis upto 1.10.1984 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 the period subsequent to 1. 10.1982. 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 1. 10.84 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 regularised as if there was no break in the continuity of service but without any back wages.
2. The Petitions of the Assistant Medical officer/Assistant Divisional Medical officers appointed subsequent to 1.10.1984 are dismissed. But we however direct that the Assistant Divisional Medical officers who may have been now selected by the Union Public Service Commission shall first be posted to the vacant posts available wherever they may be. If all those selected by the U.P.S.C. cannot be accommodated against the available vacant posts they may be posted to the posts now held by the doctors appointed on ad hoc basis subsequent to 1. 10.1984 and on such posting the doctor holding the post on ad hoc basis shall vacate the same. While making such postings the principle of 'last come, first go' shall be observed by the Railways on Zonal basis. If any doctor who is displaced pursuant to the above direction is willing to serve in any other Zone where there is a vacancy he may be accommodated on ad hoc basis in such vacancy.
3. All Assistant Medical officers/Assistant Divisional Medical officers working on ad hoc basis shall be paid the same salary and allowances as Assistant Divisional Medical officers on the revised scale with effect from 1.1.1986. The arrears shall be paid within four months.
4. No ad hoc Assistant Medical officer/Assistant Divisional Medical officer who may be working in the Railways shall be replaced by any newly appointed AMO/AMO on ad hoc basis. Whenever there is need for the appointment of any AMO/ADMO on ad hoc basis in any Zone the existing ad hoc AMO/ADMOs who are likely to be replaced by regularly appointed candidates shall be given preference.
5. If the ad hoc doctors appointed after 1.10.1984 apply for selection by the Union Public Service Commission the Union of India and the Railways Department shall

grant relaxation in age, to the extent of the period of service rendered by them as ad hoc doctors in the Railways.

All the Writ Petitions are disposed of in the above terms.

P.S.S.

Petitions disposed of.