

Supreme Court of India

Union Of India (Uoi) And Ors. vs Dr Arun Kumar Sharma on 22 July, 1994

Equivalent citations: 1994 (3) SCALE 441, 1994 Supp (3) SCC 154, 1994 (2) UJ 426 SC

Bench: S Agrawal, M Mukherjee

ORDER

1. Leave granted.

2. Arun Kumar Sharma, respondent, herein, was employed as Medical Officer on short term contract basis with the Central Government Health Scheme (C.G.H.S.) at Jaipur during the period December 16, 1985 to August 19, 1987 with short breaks in between under various orders passed from time to time. The first such order was dated December 17, 1985 and the last such order was dated August 18, 1987 which related to the appointment for the period from July 29, 1987 to August 19, 1987. In the said order, it was stated "His services will stand terminated in the A.N. of 19.8.87 if not discontinued earlier". Aggrieved by the termination of his services the respondent filed a petition (O.A. No. 239/88) before the Central Administrative Tribunal at Jodhpur [hereinafter referred to as "the Tribunal"] wherein he sought the relief of quashing of the order by which his services were terminated. The said petition was subsequently transferred to the Jaipur Bench of the Tribunal where it was renumbered as O.A. No. 874/92. During the pendency of the said petition before the Tribunal the Government of India, Ministry of Health and Family, issued an order dated November 2, 1988 whereby all the participating units in the Central Health Service were directed that the cases of all such ad hoc medical officers whose ad hoc appointments are likely to continue/have continued for more than one year should be reported to the Ministry within 10 days for making a reference to the Union Public Service Commission as per judgments of the Tribunal in the petitions filed by Dr. (Mrs.) Sangeeta Narang and Dr. Sunil Kumar Arya. In accordance with the said directions the CGHS Office, Jaipur, vide letter dated June 27, 1991 sent the bio-data of medical officers who were working on ad hoc basis at Jaipur to the Union Public Service Commission for the purpose of considering them for regularisation. The name of the respondent was not sent presumably because he was not in employment with CGHS at that time. Thereafter order dated August 17, 1992 was passed by the Government of India, Ministry of Health and Family Welfare, whereby the services of a number of medical officers working on ad hoc basis were regularised. The grievance of the respondent before the Tribunal was that by the said order dated August 17, 1992 the services of a number of medical officers who were junior to him have been regularised but he has been wrongly excluded from such regularisation. The Tribunal by its order dated September 27, 1993 held that the respondent was entitled to be considered for regularisation of his services on the same terms and conditions and on the same basis on which the regularisation of services of doctors mentioned in the order dated August 17, 1992 has been made. The Tribunal has, therefore, directed that the appellants herein shall consider the respondent's case in the light of the observations made in the order within a period of six months from the date of the receipt of the copy of the order and if the respondent is found eligible for appointment on regular basis he may be given the said appointment from the same date from which the doctors mentioned in the order dated August 17, 1992 have been given and all other consequential benefits which are available to the doctors mentioned in the order dated 17, 1992 shall be extended to the respondent except that he shall not be entitled to wages for the period from August 20, 1987 to the date when he actually takes over

charge after he is appointed on regular basis. The Tribunal has not recorded any finding on the question regarding the validity of the termination of the services of the respondent with effect from August 19, 1987. Feeling aggrieved by the said order of the Tribunal, the appellants have filed this appeal,

3. A perusal of the order dated November 2, 1988 shows that it deals with the matter of regularisation of medical officers who were in employment on ad hoc basis on the date of the passing of the said order and whose ad hoc appointments were likely to continue or had continued for more than one year. Since the services of the respondent had been terminated on August 19, 1987, prior to the passing of the said order, he could not be granted the benefit of that order and he could avail its benefit only if the termination of his services with effect from August 19, 1987 was set aside by the Tribunal in the petition which the respondent had filed and which was pending before the Tribunal on the date of issuance of the order dated November 2, 1988. The Tribunal, while extending the benefit of order dated November 2, 1988 to the respondent, has failed to note that the said benefit could be extended to the respondent only if it was found that the order terminating his services was invalid and he was in employment with the CGHS on November 2, 1988. The Tribunal has, however, not considered this part of the claim of the respondent about the invalidity of the termination of his services and in the absence of any finding in that regard the order passed by the Tribunal extending the benefit of the order dated November 2, 1988 to the respondent cannot be upheld. Since the Tribunal has not considered the question regarding validity of the termination of the services of the respondent it would be appropriate that the matter is remitted to the Tribunal for considering the said question and in the light of the finding recorded on the said question the Tribunal should consider whether the respondent is entitled to the benefit of the directions contained in the order dated November 2, 1988.

4. The appeal is, therefore, allowed, the order dated September 27, 1993 passed by the Tribunal in O.A. No. 874 of 1992 is set aside and the matter is remitted to the Tribunal for reconsideration in the light of the aforesaid observations. No order as to costs.