

A

UNION OF INDIA AND ORS.

v.

HARISH BALKRISHNA MAHAJAN

OCTOBER 23, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIAK, JJ.]

*Service Law.*

C

*Termination of Service—Medical Officer appointed on monthly basis in the Central Government Health Scheme—Tribunal directing regularisation in consultation with the Public Service Commission—On appeal, held : such a direction is in violation of Article 320 of the Constitution—Hence set aside—It is open to respondent to apply for selection—If overaged, Union of India would consider necessary age relaxation to the extent of the period of service rendered on temporary basis.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14527 of 1996.

E

From the Judgment and Order dated 21.12.94 of the Central Administrative Tribunal at Bombay in O.A. No. 790 of 1989.

N.N. Goswami, Ms. Binu Tamta and V.K. Verma for the Appellants.

Gopal Jain and Mukul Mudgal for the Respondent.

F

The following Order of the Court was delivered :

Leave granted.

G

The respondent was temporarily appointed as a Medical Officer on monthly basis in the Central Government Health Scheme on August 10, 1982. During the unfortunate strike of the doctors as trade unionists, unmindful of the ethical and medical code of conduct, he was appointed and even continued in the service till August, 1987. When his services were terminated, he had gone to the Tribunal and filed OA No. 701/89. The Tribunal in the impugned order dated 21.12.1994 directed the appellants to regularise the service of the respondent in consultation with the Public

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Service Commission. Thus, this appeal by special leave.

The controversy is no longer *res integra*. In similar circumstances, this Court had considered the entire controversy in *J & K Public Service Commission & Ors. v. Dr. Narinder Mohan & Ors.*, [1994] 2 SCC 630. Admittedly, the post of doctors in the Central Government Health Scheme are required to be filled up by recruitment through Union Public Service Commission. Therefore, the direction to consider the case of the respondent in consultation with the Public Service Commission for regularisation is in violation of the statutory rules and Article 320 of the Constitution of India. The only course known to law is that the Union of India shall be required to notify the recruitment to the Public Service Commission and Union Public Service Commission shall conduct the examination inviting the applications from all the eligible persons including the persons like the respondents. It would be for the respondent to apply for and seek selection in accordance with Rules. Therefore, the direction is in violation of Article 320 of the Constitution.

The learned counsel for the respondent seeks to place reliance on the directions issued by this Court in *Jacob M. Puthuparambil v. Kerala Water Authority*, [1987] Supp. SCC 497. It is seen that the Public Service Commission was required to recruit the candidates and, therefore, the additional Medical Officers working in the Railway Department in the latter case were directed to be regularised in consultation with the Union Public Service Commission. It would be seen that when the recruitment was to be made in accordance with the procedure prescribed by the Public Service Commission in terms of the statutory Rules made under Article 320 of the Constitution, necessarily the recruitment is required to be made in that manner and in no other manner. Therefore, this Court did not intend to by-pass the above procedure in regularisation of their services. This Court, in similar circumstances, considered the same question in *Union of India v. Dr. Arun Kumar Sharma*, [CA No. 4876/94].

In that view, the appeal is allowed. The order of the Tribunal stands set aside. It would be open to the respondent to apply for selection. In case he is barred by age, it is needless to mention that the Union of India would consider necessary relaxation of the age to the extent of the period of service he has rendered on temporary basis. No costs.