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appointments were *ad hoc*; initially for a period of six months which was subsequently extended from time to time. Being similarly circumstanced, undoubtedly, both sets of GDMOs will have to be treated equally and evenly for the purpose of regularization. [Para 13] [378-A-C]

2. If the GDMOs appointed in Phase-II are similarly circumstanced as **Dr. Anuradha Bodi and others*, their claim to regularization with effect from the date of their initial appointments cannot be countenanced except perhaps if a view contrary to that has been recorded in **Dr. Anuradha Bodi* is taken. Any departure from the views expressed and conclusions reached in **Dr. Anuradha Bodi* will not be necessary or justified. [Para 14] [379-C-D]

**Dr. Anuradha Bodi and Ors vs. Municipal Corporation of Delhi and Ors. (1998) 5 SCC 293: 2010 (12) SCR 413 – relied on.*

Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Ors. (1990) 2 SCC 715: 1990 (2) SCR 900; State of West Bengal and Others Vs. Aghore Nath Dey and Ors. (1993) 3 SCC 371: 1993 (2) SCR 919; Narender Chadha and Ors. Vs. Union of India and Ors. (1986) 2 SCC 157: 1986 (1) SCR 211; Keshav Chandra Joshi and Ors. Vs. Union of India and Ors. 1992 Suppl (1) SCC 272: 1990 (2) Suppl. SCR 573 – referred to.

Case Law Reference:

2010 (12) SCR 413	Relied on	Para 6
1990 (2) SCR 900	Referred to	Para 13
1993 (2) SCR 919	Referred to	Para 13
1986 (1) SCR 211	Referred to	Para 15
1990 (2) Suppl. SCR 573	Referred to	Para 15

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8414-8415 of 2014.

B From the Judgment & Order dated 05.07.2007 of the High Court of Delhi at New Delhi in Writ Petition (Civil) No. 2357 of 2011 and impugned order dated 05.09.2011 of the High Court of Delhi at New Delhi in Review Petition No. 486 of 2011 in Writ Petition (Civil) No. 2357 of 2011.

C Vikas Singh, Garima Prashad, Vinay Gupta, K.K. Mishra for the Appellants.

C Sudarshan Rajan, Dr. Kailash Chand, P. Parmeswaran, Deepak Goel for the Respondents.

The Judgment of the Court was delivered by

D **RANJAN GOGOI, J.** 1. Leave granted.

E 2. The appellants are General Duty Medical Officers (GDMO) Grade-II who were appointed on *ad hoc* basis between 1986 and 1989. They are aggrieved by the denial of their claim to regularization with effect from the dates of their initial appointments. Regularization granted from the date of the recommendations of the Union Public Service commission (for short 'UPSC'), namely, 24.07.1998 as approved by the High Court of Delhi by means of the impugned order dated F 05.07.2011 has been called into question in the present appeal.

3. The relevant facts are as follows.

G The post of GDMO Grade-II is a Group 'A' post governed by the Delhi Municipal Corporation Health Service Recruitment Regulations, 1982 (hereinafter referred to as 'the Regulations'). Under the said Regulations appointment in the post of GDMO Grade-II is required to be made through the UPSC. Between 1982 and 1986 (for convenience may be referred to as the Phase-I) 82 GDMOs were appointed on *ad hoc* basis for an H initial term of six months which was subsequently extended from

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time to time. In what may be again conveniently referred to as the Phase-II, between 1986-1989, another 69 number of GDMOs were appointed on *ad hoc* basis on terms similar to the appointments made in Phase-I. Both sets of appointments were not through the UPSC but were made on the basis of a selection held by a Specially Constituted Selection Committee.

4. The cases of the GDMOs appointed on *ad hoc* basis in Phase-I were referred to the UPSC for its recommendations for the purpose of regularization. The UPSC approved 63 cases while holding 10 candidates to be unfit for regularization. The recommendations of the UPSC were communicated to the Municipal Corporation of Delhi on 27.06.1991. Accordingly, by order dated 17.08.1992 the Municipal Corporation regularized the services of the 63 GDMOs recommended by the UPSC with effect from the date of recommendation i.e. 27.06.1991. Aggrieved by their regularization with effect from the date of the recommendation of the UPSC, the GDMOs appointed in the Phase-I approached this Court under Article 32 of the Constitution claiming regularization from the date of their initial appointments.

5. While the aforesaid writ petition was pending, the Municipal Corporation of Delhi sent the cases of the GDMOs appointed in Phase-II to the UPSC for its recommendations for regularization of the incumbents. The UPSC refused to consider any of the cases on the ground that the 10 GDMOs appointed in Phase-I, who were found by it to be unfit, had not been dismissed from service. This had led the GDMOs appointed in Phase-II to file a writ petition (Writ Petition (C) No. 1550/1996) before the Delhi High Court.

6. The writ petition filed by the Phase-I GDMOs before this Court under Article 32 was decided on 8.5.1998 holding that their regularization with effect from the date of recommendation of the UPSC was validly made and they were not entitled to such regularization from the dates of their initial appointments. The judgment of this Court is reported as *Dr. Anuradha Bodi*

A *and Others Vs. Municipal Corporation of Delhi And Others*¹ and will be specifically referred to at a later stage of the present order.

B 7. Six days after the judgment was rendered by this Court in *Dr. Anuradha Bodi* (supra) the Delhi High Court on 14.05.1998 allowed the writ petition (Writ Petition (C) No. 1550/1996) filed by Phase-II GDMOs by directing the UPSC to consider their cases for regularization from the dates of their initial appointments. In compliance of the aforesaid order of the Delhi High Court, the UPSC recommended regularization of the C said GDMOs from the dates of their initial appointments by its communication dated 24.07.1998.

D 8. There being an apparent conflict with regard to regularization of the GDMOs appointed in Phase-I and Phase-II, though made in identical circumstances and on the same terms, the Municipal Corporation of Delhi by its Resolution dated 17.01.2000 decided to regularize the services of both sets of GDMOs with effect from the date of their initial appointments. On the basis of the said Resolution dated E 17.01.2000 a formal Order dated 16.08.2000 was passed to the said effect.

F 9. The Resolution dated 17.01.2000 and the formal Order dated 16.08.2000 came to be challenged by the regularly appointed GDMOs before the Delhi High Court. The writ petition filed was, however, withdrawn and instead the order dated 14.05.1998 passed by the Delhi High Court in Writ Petition (C) No. 1550/1996, which has led to the alleged Resolution dated 17.01.2000 and the formal Order dated 16.08.2000, were challenged in a Letters Patent Appeal by the G regularly appointed GDMOs. It is at this stage that the Municipal Corporation of Delhi issued another Order dated 15.06.2007 and a Corrigendum dated 18.06.2007 to the effect that the regularization of both sets of GDMOs would be effective from

H 1. (1998) 5 SCC 293.

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the date(s) of communication of the recommendation of the UPSC. The said action of the Municipal Corporation was challenged in a writ petition (Writ Petition (C) No. 4619/2007) before the Delhi High Court by the present appellants. A

10. The Letter Patent Appeals (LPA Nos. 708/2001 and 138/2003) filed by the regularly appointed GDMOs against the order dated 14.05.1998 passed in Writ Petition (C) No. 1550/1996 were disposed of by the Division Bench of the High Court on 05.02.2008 by holding that the challenge made in the appeals stood answered by the subsequent order of the Municipal Corporation of Delhi dated 15.06.2007. The Division Bench also took note of the fact that the said order dated 15.06.2007 was under challenge in Writ Petition (C) No. 4619/2007 and directed that the views expressed in the order dated 14.05.1998 in Writ Petition (C) No. 1550/1996 would have no relevance or bearing while deciding Writ Petition (C) No. 4619/2007. B
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11. Writ Petition (C) No. 4619/2007 was thereafter transferred to the Central Administrative Tribunal and numbered as T.A. No. 398/2009. By order dated 09.12.2010 the learned Tribunal decided the aforesaid case (T.A. No. 398/2009) alongwith a connected matter holding that the Resolution dated 17.01.2000 with regard to regularization of GDMOs appointed in both phases from the dates of their initial appointments was contrary to the decision of this Court in *Dr. Anuradha Bodi* (supra). Accordingly, while the Resolution dated 17.01.2000 was quashed, the subsequent Order of the Municipal Corporation of Delhi dated 15.06.2007 was upheld. The aforesaid order has been confirmed by the Division Bench of the High Court by means of the impugned order dated 05.07.2011. It is the said order dated 05.07.2011 as well as the order dated 05.09.2011 refusing to review the order dated 05.07.2011 that have been challenged in the present appeals. E
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12. We have heard learned counsels for the parties. H

A 13. An elaborate recital of the facts had been considered
 necessary to trace out the core issue in the case. Both sets of
 GDMOs i.e. in Phase-I and Phase-II were not appointed on the
 basis of a selection held by the UPSC as mandated by the
 Regulations in force. Their appointments were recommended
 B by a Specially Constituted Selection Committee. Their
 appointments were *ad hoc*; initially for a period of six months
 which was subsequently extended from time to time. Being
 similarly circumstanced, undoubtedly, both sets of GDMOs will
 have to be treated equally and evenly for the purpose of
 C regularization. In *Dr. Anuradha Bodi* (supra) after noticing the
 precise terms of appointment of the Phase-I GDMOs, the
 entitlement of the said GDMOs (Phase-I) to regularization with
 effect from the date of their initial appointments was considered
 by this Court in the light of the decision of the Constitution
 D Bench in *Direct Recruit Class II Engineering Officers'
 Association Vs. State of Maharashtra and Others*², particularly,
 in the backdrop of the two propositions (A) and (B) set out in
 paragraph 47 of the Report. A subsequent judgment of a three
 Judges Bench in *State of West Bengal and Others Vs. Aghore
 Nath Dey and Others*³ throwing further light and clarity on the
 E contents of propositions (A) and (B) laid down in *Direct Recruit
 Class II* (supra) had also been considered to come to the
 conclusion that the cases of doctors appointed on *ad hoc* basis
 in Phase-I fall within the corollary to conclusion (A) of *Direct
 Recruit* (supra) and therefore they are not entitled to the benefit
 F of service rendered on *ad hoc* basis. Paragraph 12 of the
 report in *Dr. Anuradha Bodi* (supra) may be conveniently
 noticed at this stage.

G “12. If the facts of these two cases are analysed in the
 light of the aforesaid decisions, there can be no doubt
 whatever that the petitioners fall within the corollary in
 Conclusion (A). The orders of appointment issued to the

2. (1990) 2 SCC 715.

H 3. (1993) 3 SCC 371.

petitioners are very specific in their terms. Though the recruitment rules came into force on 6-8-1982, the appointments were not made in accordance therewith. They were ad hoc and made as a stopgap arrangement. The orders themselves indicated that for the purpose of regular appointment the petitioners were bound to pass the UPSC examination in the normal course in the direct competition. Hence the petitioners will not fall under the main part of Conclusion (A) or Conclusion (B) as contended by the learned counsel for the petitioners."

14. If the GDMOs appointed in Phase-II are similarly circumstanced as Dr. Anuradha Bodi and others, we fail to see how their claim to regularization with effect from the date of their initial appointments can be countenanced except perhaps if we take a view contrary to that has been recorded in *Dr. Anuradha Bodi* (supra).

15. Learned counsel for the appellants has tried to persuade us to charter the aforesaid course by placing reliance on two decisions of this Court in *Narender Chadha and Others Vs. Union of India and Others*⁴ and *Keshav Chandra Joshi and Others Vs. Union of India and Others*⁵ It is contended that the denial of benefit of long years of *ad hoc* service, in view of the ratio of the law laid down in the aforesaid two decisions, would be contrary to Articles 14 and 16 of the Constitution.

16. It is the view expressed in *Narender Chadha* (supra) which would require a close look as *Keshav Chandra Joshi* (supra) is a mere reiteration of the said view. In *Narender Chadha* (supra) the lis between the parties was one relating to counting of *ad hoc* service rendered by the promotees for the purpose of computation of seniority qua the direct recruits. The basis of the decision to count long years of *ad hoc* service for the purpose of seniority is to be found more in the peculiar

4. (1986) 2 SCC 157.

5. 1992 Supp (1) SCC 272.

A facts of the case as noted in para 20 of the report than on any principle of law of general application. However, in paragraphs 15-19 of the report a deemed relaxation of the Rules of appointment and the wide sweep of the power to relax the provisions of the Rules, as it existed at the relevant point of time, appears to be the basis for counting of the *ad hoc* service for the purpose of seniority.

C 17. The principle laid down in *Narender Chadha* (supra) was approved by the Constitution Bench in *Direct Recruit Class II* (supra) as the promotion of the officers on *ad hoc* basis was found to be “without following the procedure laid down under the Rules.” That apart, what was approved in the *Direct Recruit Class II* (supra) is in the following terms.

D *“We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service.”* {Para 13}

E 18. In *State of West Bengal and Others Vs. Aghore Nath Dey and Others* (supra) a three Judges Bench of this Court has held that in view of the *lis* involved in *Narender Chadha* (supra) i.e. *inter se* seniority of direct recruits and promotees, the said decision cannot be applied to cases where the initial appointment was not according to the Rules. Paras 19 and 20 of the decision in *State of West Bengal* (supra) may be usefully extracted hereinbelow.

G *“19. The constitution bench in Maharashtra Engineers case, while dealing with Narender Chadha emphasised the unusual fact that the promotees in question had worked continuously for long periods of nearly fifteen to twenty years on the posts without being reverted, and then proceeded to state the principle thus: (SCC p. 726, para 13)*

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"We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service." A

20. The constitution bench having dealt with Narender Chadha in this manner, to indicate the above principle, that decision cannot be construed to apply to cases where the initial appointment was not according to rules." B

19. All the aforesaid discussion would lead us to the conclusion that any departure from the views expressed and conclusions reached in *Dr. Anuradha Bodi* (supra) will not be necessary or justified. Accordingly, we do not find any merit or substance in the appeals under consideration. They are, therefore, dismissed but without any order as to costs. C
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Devika Gujral

Appeals dismissed.