
(2007) 04 DEL CK 0039

In the Delhi High Court

Case No : LPA 262 of 2001 and CM 263/01 and 5524 of 2006

Anand Kumar Makker and Others

APPELLANT

Vs

IIT-Delhi and Others

RESPONDENT

Date of Decision : 25-04-2007

Acts Referred:

Citation : (2007) 140 DLT 424 : (2007) 95 DRJ 674

Hon'ble Judges : Mukul Mudgal, J; J.P. Singh, J

Bench : Division Bench

Advocate : R.M. Bagai and Anu Mehta, for the Appellant; Maninder Singh and Gaurav Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.

CM 5524/2006 (restoration)

For the reasons mentioned in the application, this application is allowed and the appeal is restored to its original number. Accordingly, the application stands disposed of.

LPA 262/2001

1. This appeal has been filed against the common judgment and final order dated 10th April 2001 passed in C.W.P. Nos. 1454/1990, 2255/1988, 2275/1988, 380/1989 and 490/1988 by the Hon'ble Single Judge of this Court.

2. The appellants were appointed as Senior Research Assistants (SRAs) by the Respondent Indian Institute of Technology (hereinafter referred to as the "Institute"). Since the Respondent had unilaterally converted the services of the appellants to contractual services and was also attempting to terminate their services, writ petitions were filed praying for directions to the Respondent to seek a prayer that the appellants (writ petitioner before the Learned Single Judge) were confirmed and declared permanent employees of the Respondent in

the cadre of Senior Research Assistants.

3. The writ petitioner in CWP 1454/1990, Shri Anand Kumar Makker (Appellant No. 1) was appointed as SRA and the appointment letter confirming the same was placed on record stipulating the pay scale, which was temporary for a period of one year in the first instance. Another stipulation in the said letter was that the services of Appellant No. 1 were liable to be terminated by giving one month's notice in writing on either side and that for the termination of his services after confirmation; the appellant would have to give three months' notice to the Respondent. Relying on the stipulation in the said appointment letter, learned Counsel for Shri Anand Kumar (writ petitioner/appellant No. 1) Shri R. M. Bagai submitted that the petitioner was appointed initially in the temporary capacity to the post of SRA, which is a cadre post, and Therefore he was entitled to be confirmed for the post on completion of this temporary appointment. It was also contended by counsel appearing for the petitioners that the subsequent orders of appointment issued by the Respondent Institute in respect of Shri Anand Kumar, the petitioner in CWP 1454/1990, appointing him as Senior Research Assistant on a contract basis for a period of one year, dated 30th May, 1998 and 16th May 1989 are illegal and without jurisdiction. It was prayed in the writ petition that the petitioner be declared regularized and confirmed in the cadre of Senior Research Assistant. As far as the remaining petitioners (Appellants in the present LPA) were concerned, similar relief was sought for. By virtue of interim orders passed by this Hon'ble Court, only Shri Anand Kumar (Appellant No. 1) and Shri Manoj Kumar (writ petitioner in C.W.P. No. 380/1989 and Appellant No. 2) had continued to work with the Respondent/Institute.

4. The learned Counsel for the Petitioners relied on Resolutions No. 24/1974 and 94/1985 of the Respondent/Institute and urged before the Learned Single Judge that all the employees including the petitioners who had been recruited as temporary Senior Research Assistants against permanent posts be considered for appointment against the permanent posts and be confirmed in their services after they have put in a minimum of one year of service.

5. Learned Counsel for the Respondent Institute however submitted that the issues raised by the petitioners that their appointment as Senior Research Assistants is to a regular cadre post in view of which confirmation/regularization of their services is a natural consequence is no longer rest integra in view of the Division Bench decision of this Court in Ms. Amita Gulati and Ors. v. Union of India and Ors. CWP No. 2273/1995 decided on 6th March 1996. It was held in the above judgment that Senior Research Assistants were not borne on any cadre and that there were no regular posts sanctioned for SRAs in the Institute, and that it was the requirement of projects that determined the number of SRAs required. Learned Counsel for the Respondent Institute Shri Maninder Singh also submitted that all the petitioners were appointed to work on projects undertaken by the Institute and they were not appointed to any regular cadre post and

Therefore cannot expect to be regularized as no such regular posts exist within the institute.

6. The Learned Single Judge considered the contents of the Resolutions of the Respondent/Institute adopted in 1974, 1985 and 1986 and the ratio of the Division Bench decision of this Court in the light of the facts of the present case and while dismissing the writ petition recorded inter alia the following finding:

7. The initial appointments of Shri Anand Kumar and Shri Manoj Kumar were on a temporary basis for one year, which terms however, were changed later in 1988 and 1989 to convert the appointments to be under the contract basis. The Learned Single Judge took note of the fact that the Supreme Court has on more than on occasion laid down that in order to be regularized and confirmed there must be a regular and permanent post and it must be established that the work is of regular and permanent nature. Reliance was placed on the decisions of the Supreme Court in the cases of C.S.I.R. and Others Vs. Dr. Ajay Kumar Jain, , and Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, and on the decision of the Division Bench in the case of Ms. Amita Gulati and Ors. (supra). Where, however, the appointment is temporary or on contract basis or on project post for a limited duration, the same cannot create any right for regular appointment of a person and such engagement would come to an end by efflux of time on expiry of the tenure or on completion of the project.

8. After considering various decisions of the Supreme Court, the Division Bench in Amita Gulati (supra) held that temporary engagement/ appointment to a particular tenure post or on project post of limited duration does not create any right for regular appointment of a person and such engagement will come to an end by efflux of time on the expiry of the tenure or the completion of project. In the said case it was further held that as the petitioners were appointed purely on ad hoc temporary basis they were not entitled to be regularized as regular Senior Research Assistants. The SLP filed against the said judgment was also dismissed by the Supreme Court.

9. The Learned Single Judge Therefore narrowed the issue down to consideration of whether the appointment of the petitioners in the writ petitions were to a regular cadre post and if so, whether they were entitled to be confirmed pursuant to the policy of the Institute as adopted in Resolution No. 24/1974 and again re-affirmed in Resolution No. BG-94/1985 by the Board of Governors provided they were applicable to the cases of the petitioners. Since all these Resolutions were considered by the Division Bench in the case of Ms. Amita Gulati (supra), the applicability of the Division Bench decision to the writ petitions is the relevant issue in these appeals.

10. All the Resolutions mentioned above, along with the Resolution of 1986 came up for consideration before the Division Bench of this Court in the case of Ms. Amita Gulati and Ors. (supra). The contents of the said Resolutions of 1974,

1985 and 1986 were taken notice of and the Division Bench held that what was implicit was made explicit by the Board of Governors in the Resolution of 1986 inasmuch as, Senior Research Assistants appointed on project posts on ad hoc basis and for temporary periods were not entitled to claim regularization in the Institute. the relevant portion of the impugned judgment dated 10th April 2001 is as under:

12. All the aforesaid Resolutions along with the resolution of 1986 came up for consideration before the Division Bench of this Court in the case of Ms. Amita Gulati and ors. The contents of the said Resolutions of 1974, 1985 and 1986 were taken notice of and considered by the Division Bench and in the light, thereof, it was held that what was implicit was made explicit by the Board of Governors in the resolution of 1986 inasmuch as, Senior Research Assistants appointed on project posts on ad hoc basis and for temporary periods were not entitled to claim regularization in the Institute. the Division Bench also found that the position regarding the demand of Senior Research Assistants for permanent appointment/regularization at the Institute was examined by the Senate Sub-Committee of appointment of Senior Research Assistants and its report as accepted by the Ecs, in its 58th meeting minutes. The said recommendations were approved by the Board of Governors in its meeting held on 17th August, 1989 and in the light thereof, it was held by the Division Bench of this Court that there are no regular posts sanctioned for SRAs in the Institute and it is the requirement of projects that determines the number of SRAs required.

13. It was the contention of the counsel appearing for the petitioners that the aforesaid circular of 1986 and the ratio of the decision of the Division Bench are not applicable to the facts and circumstances of the case of the petitioners in view of the fact that they were appointed prior to the Resolution of 1986 and pursuant to the Resolutions of the Institute of 1974 and 1986. In order to support his contention, the learned Counsel drew my attention to the reasoning given by the Division Bench wherein it was observed by the Division Bench that all the petitioners in the said writ petitions were appointed after the Resolution was passed in 1986 whereas, the two petitioners, namely Shri Anand Kumar Makker and Shri Manoj Kumar, were appointed prior to the aforesaid Resolution of 1986.

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15. In my considered opinion, the ratio of the decisions of the Division Bench of this Court are squarely applicable to the facts of the present case since there does not exist a regular cadre of senior Research Assistants. As there is no regular post of senior Research Assistants in the Institute, no relief as sought for by the petitioners in these writ petitions could be granted in their favor. No direction could also be issued to the respondents directing them to regularise / confirm the petitioners in the post of Senior Research Assistants as no such regular posts are sanctioned for Senior Research Assistants in the Institute.

11. The Learned Single Judge held that the ratio of the decision rendered by the Division Bench of this Court in the case of Ms. Amita Gulati and Ors. (supra) was squarely applicable to the instant case since there were no regular posts sanctioned for SRAs in the Institute and all the petitioners were appointed to work on projects undertaken by the Institute and were not appointed to any regular cadre post. It was held that the appellants cannot expect to be regularized in the absence of such regular posts already in existence within the institute.

12. We are of the view that the decision of the Division Bench of this Court in the case of Ms. Amita Gulati and Ors. (supra) is squarely applicable in the instant case since all the petitioners were recruited to work on specific projects undertaken by the Institute and could not be regularized in the absence of the regular posts within the Institute. Consequent, both the learned Single Judge and indeed this Court are bound by that judgment.

13. Accordingly, the order of the learned Single Judge does not warrant any interference by us and the appeal is dismissed along with CM 263/2001.