
(2017) 04 MAD CK 0273

In the Madras High Court

Case No : 7182 of 2016 and WMP No 6376 of 2016

A.P.Arun

APPELLANT

Vs

Jawaharlal Institute of Post Graduate

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

[Central Civil Services \(Leave\) Rules, 1972](#), [Rule 28](#) — Rule 28

Citation : (2017) 04 MAD CK 0273

Hon'ble Judges : K.K.Sasidharan, M.V.Muralidaran

Bench : DIVISION BENCH

Advocate : K.K.Sasidharan, M.V.Muralidaran

Judgement

1. This writ petition is directed against the order dated 17 December 2014 in O.A.No.185 of 2013, dismissing the Original Application filed by the petitioner, claiming continuity of service from the date of his initial engagement for the purpose of fixation of pay, annual increments and pension. Factual Matrix:

2. The petitioner was appointed as Pharmacist by Jawaharlal Institute of Post Graduate Medical Education and Research (hereinafter referred to as "JIPMER") against a leave vacancy in September 2000. The appointment was made through Employment Exchange. The initial appointment was specifically for a period of six months with effect from 31 October 2000. The period was extended periodically taking into account the availability of leave vacancy. Subsequently, JIPMER initiated proceedings for appointment of Pharmacist. The petitioner challenged the notification, calling for applications before the Central Administrative Tribunal in O.A.No.1120 of 2005.

3. The Tribunal, by order dated 28 June 2005 directed the JIPMER to absorb the petitioner in the post of Pharmacist.

4. The petitioner was appointed as Pharmacist by order dated 29 July 2005, pursuant to the order in O.A.No.1120 of 2005. Thereafter, the petitioner

submitted a representation to give him continuity of service from the date of his initial engagement without artificial break. The request was rejected by Memorandum dated 19 November, 2012. The said Memorandum was put in issue before the Central Administrative Tribunal in O.A.No.185 of 2013.

5. The Tribunal found that the earlier direction in O.A.No.1120 of 2005 was only to absorb the petitioner in the post of Pharmacist. There was no direction to regularise his service with effect from the date of his initial engagement. The Tribunal opined that JIPMER was correct in declining to regularise the earlier service from 31 October 2000. Feeling aggrieved by the said order, the petitioner is before this Court. Submissions:

6. The learned counsel for the petitioner contended that the petitioner was appointed as Pharmacist on 31 October 2000 and he continued in temporary service till his regularisation on 29 July, 2005. The artificial breaks in between stand automatically condoned, by virtue of Rule 28 of the Central Civil Service (Pension) Rules, 1972. According to the learned counsel, JIPMER was not correct in denying the petitioner his earlier service. The Issue:

7. The only question that arises for consideration is as to whether the petitioner is entitled to count his earlier period of temporary engagement for the purpose of fixation of pay, annual increments and pension. Discussion:

8. The engagement of the petitioner earlier was for a particular period. It was a brief engagement taking into account the leave vacancy. It was not against a sanctioned vacant post. The engagement was renewed from time to time taking into account the leave vacancy.

9. The Directorate of JIPMER issued a notification on 11 November 2004 calling for applications for appointment to the post of Pharmacist. There was only one post advertised for appointment to the post of Pharmacist. The petitioner challenged the said notification in O.A.No.1120 of 2005. The Tribunal allowed the original application and directed JIPMER to absorb the petitioner in service. There was absolutely no direction to recognise his earlier service for any purpose.

10. It is a matter of record that only to fill up a vacant permanent post, JIPMER issued the notification. To put it otherwise, it was only to fill up a regular vacancy, notification was issued. There is nothing on record to show that even when the petitioner was engaged temporarily, there was a regular vacancy. It is the admitted case of even the petitioner that he was engaged only against a leave vacancy. The direction given by the Tribunal in O.A.No.1120 of 2005 was to absorb the petitioner in the post of Pharmacist notified in the vacancy notification dated 11 November 2004.

11. The request of the petitioner before the Tribunal in O.A.No.1120 of 2005 was only to absorb him in the post of Pharmacist. There was no prayer to absorb him retrospectively taking into account his initial engagement. Therefore, it is clear that the petitioner waived his right to claim retrospective regularisation. When it

is made out that there was no regular vacancy, when the engagement of the petitioner was made in the year 2000, there is no question of giving retrospective effect to the order absorbing him in the post of Pharmacist. The petitioner, ought to have claimed such a larger relief in the earlier round of litigation. The Memorandum absorbing him in the post of Pharmacist dated 29 July, 2005 would not give him a cause of action to claim retrospective absorption taking into account his initial engagement on 31 October, 2000. We are therefore of the view that the claim made by the petitioner was rightly rejected by JIPMER. The Tribunal considered the issue in the light of the background facts and rightly dismissed the Original Application. We do not find any error or illegality in the order passed by the Central Administrative Tribunal warranting interference by exercising the power of judicial review.

12. In the up shot, we dismiss the writ petition, without liability to pay costs. Consequently, connected miscellaneous petition is closed.