

(2011) 11 DEL CK 0155
In the Delhi High Court
Case No : LPA 262 of 2001

Dr. Anand Makker and Others		APPELLANT
	Vs	
IIT, Delhi and Others		RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Citation : (2011) 10 AD 330 : (2013) 1 SLJ 88

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : R.M. Bagai, for the Appellant; Maninder Singh with Mr. Gaurav Sharma and Mr. Nitin Kaushal, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. By means of this Letters Patent Appeal, the appellants challenge the validity of common judgment dated 10th April, 2001 passed by the Learned Single Judge in five writ petitions. The learned Single Judge has dismissed all these writ petitions. Though these five appellants had filed five separate writ petitions, in view of the commonality of the issue they are disposed of by the learned Single Judge by one common judgment. In these circumstances, it was necessary for the appellants to prefer separate appeals. However, having regard to the aforesaid prayer of the learned counsel for the appellant no1 has agreed to pay the court fee in each of the appeals is accepted, the Registry is directed to give five appeals numbers i.e. LPA 262/2011, 262-A/2001,262-B/2001, 262-C/2001 and 262-D/2001.

2. The brief factual matrix leading to the filing of the writ petitions and consequentially instant appeals is recapitulated hereunder.

3. All the appellants were appointed on different dates as Senior Research Assistants by the respondent Indian Institute of Technology. As per the appellants the cadre of SRA has been classified as academic post and is a group

B post. They all applied in response to advertisements given by the respondent in the leading newspapers for filling the post of SRAs. They were called for interviews before the duly constituted selection committees as per Acts and Statutes of IIT. They were issued offers of appointments having characteristics of regular employment which was dully accepted by them. The necessary details are as below-

Dr. AnandMakker

Appellant No.1

CWP No

1454/1990

Advertisement No.

17/84

Last date of receipt of completed application

19/01/1985

Date of application

16/01/1985

Date of interview

19/04/1985

Date of offer of appointment

16/06/1985

Last date of joining

16/07/1985

Date of appointment

31/05/1985

Age as on Date of appointment

27 years 1 month

Date of termination

11/04/2001 (FN)

Duration of continuous service

15 years 10 months

Date of birth

20/04/1958

Dr. AnubhaMandal

Appellant No.2

CWP No

2255/1988

Advertisement No.

1/81

Last date of receipt of completed application

02/03/1981

Date of application

24/02/1981

Date of interview

30/04/1981

Date of offer of appointment

17/07/1981

Last date of joining

28/07/1981

Date of appointment

22/07/1981

Age as on Date of appointment

25 years 10 months

Date of termination

22/01/1988 (FN)

Duration of continuous service

6 years 6 months

Date of birth

10/09/1955

Dr. Anamika

Appellant No.3

CWP No

2275/1988

Date of application

14/10/1982

Date of interview

10/01/1983

Date of offer of appointment

13/01/1983

Last date of joining

12/02/1983

Date of appointment

13/01/1983

Date of termination

09/03/1989 (FN)

Duration of continuous service

6 years 2 months

Dr. Manoj Kumar

Appellant No.4

CWP No

380/1989

Advertisement No.

22/83

Last date of receipt of completed application

26/12/1983

Date of application

26/12/1983

Date of interview

03/03/1984

Date of offer of appointment

19/03/1984

Last date? for joining

30/03/1984

Date of appointment

21/03/1984

Age as on Date of appointment

24 years 4 months

Date of termination

11/04/2001 (FN)

Duration of continuous service

17 years 1 month

Date of birth

11/11/1959

Dr. O.P. Bhardwaj

Appellant No.5

CWP No

490/1988

Date of Adhoc Appointment

15/10/1979

Age? as on adhoc appointment

33 years 5 months

Duration of Adhoc appointment

2 years 4 months

Advertisement No.

15/81

Last date of receipt of completed application

24/12/1981

Date of application

23/12/1981

Date of interview

12/02/1982

Date of offer of appointment

01/03/1982

Last date? for joining

12/03/1982

Date of appointment

01/03/1982

Age as on Date of appointment

35 years 10? months

Date of termination

31/12/1986(FN)

Duration of continuous service

4 years 10 months

Date of birth

10/05/1946

4. According to the appellants, they were neither appointed against any time bound projects funded by any outside agency nor on purely adhoc basis. Rather their appointment was as regular employee of the Institute against Non Plan Funds of the IIT. They were thus entitled to be regularized in terms of the resolution BG/94/85 passed by the Board of governors of the Institute on 23rd September, 1985 which reads as under:-

Resolved that the confirmation of temporary employees at the Institute be regulated in accordance with Govt. of India rules, after they have put in a minimum of one year service against available posts at the same or higher level.

5. It is submitted that instead of confirming the regular temporary SRAs as per the Govt. of India decision, the Institute clubbed the cases of SRAs with those of Research Associates who come under Students strength and on fixed remuneration and passed another Resolution in 1986 viz. Resolution No. BG/38/86. This resolution was passed on 16/04/1986 and notified vide letter dated 27/01/1988. It was resolved that provision of BOG Resolution No. BG/94/85 shall not be applicable to the incumbents of the posts of Senior Research Assistants and Research Associates. It was further resolved that the appointments of these posts in future be made on contract basis for a period ranging from 1 to 3 years depending upon the merit of each case. According to the appellants the above resolution was to be operative prospectively only whereas all the appellants herein were appointed prior to year 1986. It is the grievance of the appellants that the respondent misused the said resolution to temper with the service conditions of two of the appellants Dr. Anand Makker and Dr. Manoj Kumar by adversely and unilaterally changing the same to that on

contract basis by terming it as a fresh appointment in 1988 although there was neither any fresh advertisement nor any fresh interview nor any fresh offer of appointment. The appellants personally met the Director and also sent representations dated 23.01.1990, 13.03.1990 and 23.03.1990 for confirmation. However, when these representation did not yield any result and the appellants were threatened with termination, they approached this Court for filing the aforesaid writ petitions. These writ petitions were finally heard by the learned single Judge of this Court as mentioned above vide judgment dated 10th April, 2001 whereby all these writ petitions have been dismissed. A perusal of the impugned decision of the learned Single Judge would demonstrate that the learned Single Judge has banked upon the judgment of this Court in Ms. Amita Gulati & Ors. Vs. Union of India & Ors. (CWP No.2273/1995 decided on 6th march, 1996) as according to the learned Single Judge the matter is squarely cover by the aforesaid judgment. The operative portion of the impugned judgment reads as under:

14. I have considered the said submissions also in the light of the records. The Resolution No.24/1974 which was again re-affirmed in Resolution No. BG-94/1985 by the Board of Governors, do not specifically refer to the post of Senior Research Assistants for on a bare reading of the said Resolution, it would be apparent that the same were applicable to those persons who were appointed against regular post. The Division Bench considered all the three resolutions vis-a-vis appointment made to the post of Senior Research Assistant and categorically held that there is no regular post for Senior Research Assistants in the Institute and, therefore, there is no cadre called Senior Research Assistants Cadre and the said findings rendered by the Division Bench of this Court are binding on me. There is also no document placed on record to show that the petitioners were appointed against any regular cadre post. It further transpires from the records that Resolution No. BG-94/1985 was considered as Item No.14 in the 84th meeting held on 16th April, 1986 and in the said meeting the application of the said Resolution to the Senior Research Assistants was excluded vide Resolution No. BG-38/1986. I have extracted above the contents of the note placed before the Board of Governors as also the Resolution passed by the Board of Governors and it is apparent therefrom that the contents of the Resolution of 1985 was specifically made inapplicable to the incumbent to the post of Senior Research Assistants and Research Associates with a further stipulation that the appointment to the said posts in future would be made on contract basis for a period ranging from one to three years depending on the merits of each case. Pursuant thereto, all the petitioners were appointed on contract basis and they continued to work as such.

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 favour. No

direction could also be issued to the respondents directing them to regularize/ confirm the petitioners in the post of Senior Research Assistants as no such regular posts are sanctioned for Senior Research Assistants in the Institute.

6. However, while dismissing the writ petition, the learned Single Judge also directed the respondent to consider the case of the appellants in accordance with law which is clear from the last para of the impugned judgment which is to the following effect:

In view of the aforesaid position, I find no merit in these writ petitions and the writ petitions stand dismissed. The interim orders stand vacated. Pending applications stand disposed of accordingly. However, before parting with the records, I would like to observe that atleast two of the petitioners by virtue of the interim orders have now worked for several years in the post of Senior Research Assistants and by now must have crossed the age limited prescribed as maximum age for a new and fresh appointment. Accordingly, it is observed that the respondent Institute would consider the case of the petitioner in accordance with law and merit for appropriate positions in the Institute as and when the same is available and in that event the bar of age, if any, shall be condoned and their past services rendered in the Institute shall be given due weightage.

7. These appeals were earlier heard by a Division Bench of this Court and concurring with the view taken by the learned Single judge that the matter was covered by the judgment of Amita Gulati's case (*supra*), the appeals were dismissed vide orders dated 24th April, 2007. However, thereafter the appellant sought review of the said judgment by filing Rev. Petition No. 228 of 227. It was contended that judgment in Amita Gulati (*supra*) was not applicable as that case pertained to appointment on contract basis relating to a particular project and on the other hand, appointment of the appellants was temporary for one year in the first instance. which difference had escaped the attention of the Court. The Division Bench accepted the aforesaid argument of the appellants that the aforesaid difference was not noticed or discussed in the judgment while dismissing the LPA vide orders dated 25th April, 2007. Accordingly, the review petition was allowed vide orders dated 28th May, 2009 recalling the order dated 25th April, 2007 and listing the matter for fresh hearing. This is how the present appeals have been heard again by us.

8. Mr. Bagai, learned counsel appearing for the appellants made a fervent plea to the effect that after such a long service the appellants were entitled to be regularized. He was vehement in his argument that the orders dated 28th May, 2009 passed in the review petition was a clincher inasmuch as the Division Bench in the said order accepted the fact that the case of the appellants was different from that of Amita Gulati (*supra*) and the judgment in Amita Gulati was therefore of no avail to the respondents. He again highlighted the distinguishing feature namely the appellant in the case of Amita Gulati was on contract basis relating to a particular project whereas the appellants of the present appeals were appointed on temporary basis for one year, at the first instance. According to him

this distinguishing feature made all the difference.

9. Proceeding therefrom, he submitted that the impugned order passed by the learned Single Judge was also erroneous inasmuch as the impugned decision entirely rested upon the judgment in Amita Gulati's case. On merits, his submission is, that the appellants were appointed albeit on temporary basis after following all the norms and selection process in accordance with the extant Rules and, therefore, they were entitled to the benefit of resolution dated 23rd September, 1985 passed by the Board of Governors of the IIT as per which it was resolved that such temporary employees be confirmed after putting in minimum one year of service against the available post. He further submitted that the appointment of the appellants had all the characteristics of regular appointment like other permanent employees which was clear from the terms and conditions contained in the appointment letters. He particularly highlighted the following stipulations in the said appointment letters:

(i) Provision of confirmation i.e. "for termination of your services after confirmation you will have to give 3 months notice to the Institute.

(ii) Provision of exercising option, within three months after completion of 1 year service, out of two schemes for Provident Fund namely:-

(a) General Provident Fund-cum-Pension cum Gratuity

(b) Contributory Provident Fund cum Gratuity.

In addition, there was also a provision for grant of LTC and medical etc. He also submitted that unilateral change of service conditions of two appellants namely Dr. Anand Makkar and Dr. Manoj Kumar by converting their appointment from temporary to contract basis was illegal and the respondent should not be allowed to take advantage thereof.

10. Taking up for the argument of discrimination, Mr. Bagai further submitted that it was clear from the following facets:-

(a) That similarly placed SRAs have been confirmed at another IIT i.e. at Kharagpur. It is pertinent to submit that all IITs are governed by the same IIT Council and thus same rules are applicable.

(b) That the respondent had issued a similar appointment letter containing similar terms and conditions to one Sh. R.P. Verma for the post of Assistant Foreman and he was duly confirmed in the said post after one year of service.

(c) It is pertinent to submit that even appointment on compassionate grounds have been made to the post of SRAs and one of them has been continuing for about two decades.

11. Mr. Maninder Singh, learned Senior Counsel appearing for the respondent refuted the aforesaid submissions of Mr. Bagai. His argument was that while allowing the review petition, the Court simply opined that matter needed further

consideration as on earlier occasion it was not pointed out as what part of judgment dated 25th April, 2007 (which was reviewed) dealt with the issue relating to the difference in terms of the appellants and Amita Gulati. He argued that, under these circumstances, it was open to the respondents to point out the various portions of the judgment in Amita Gulati and still satisfy this Court that the case of the appellant was squarely cover by the judgment even if the appointments of the appellants were on temporary basis and that of Amita Gulati on contract basis.

12. Towing this line of argument, learned Senior counsel took us through various portions of the judgment in Amita Gulati (supra) in an endeavour to demonstrate that thread bare discussion in the said case laying down the law predicated on various judgments of the Supreme Court was sufficient to cover the case of the appellants and, therefore, the learned Single Judge was right in applying the ratio of the said case and such an order did not call for any interference.

13. We have given our thoughtful considerations to the submissions made by the learned counsel for the parties and shall now proceed to discuss the same.

14. Insofar as argument of Mr. Bagai founded on the orders dated 28th May, 2009 passed by a Division Bench in Review Petition 228/2007 is concerned, the same is of no consequence. On the basis of that order the appellant cannot argue that the matter stands concluded in their favour. The Division Bench while dismissing this appeal on earlier occasion vide orders dated 25th April, 2007 had held that Amita Gulati's (supra) judgment was 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.? In the review petition a distinction was sought to be drawn by the appellants on the ground that in Amita Gulati's case the appointment was on contract basis for a particular project whereas the appellants were appointed on temporary basis for one year, at the first instance.

15. This review petition was allowed only because of the reason that such a distinction had escaped the attention and was not discussed in the judgment dated 25th April, 2007. It would be apt to reproduce para 4 of the orders dated 28th May, 2009 passed in the review petition:-

The learned counsel for the respondent was asked to respond to this plea of the learned counsel for the review petitioners, he has however, relied on the fact that this Division Bench affirmed the judgment of the learned Single Judge where this issue was dealt with. However, it was not pointed out as to what part of our judgment dealt with this issue relating to the difference in terms of the petitioners? and Amita Gulati. In this view of the matter, we are satisfied that the learned counsel for the review petitioners has been able to point out this court's failure to notice the difference between the terms of the appointment of Amita Gulati and the petitioner. Since our judgment is substantially based on Amita Gulati's judgment, we are satisfied that Judgment of this Court dated 25th April

2007 deserves to be reviewed. Accordingly, the review is allowed and the judgment dated 25th April 2007 is set aside. List the LPA before the Regular Bench for hearing in accordance with the roster on 13th July 2009. The review petition stands disposed of.

16. Thus, the reason for review was that the counsel for the appellant had been able to point out the gross failure to notice between the terms of the appointment of Amita Gulati and the appellants. Obviously, therefore, matter is to be examined afresh keeping in view the aforesaid distinction and that would not mean that on the basis of that order passed in review petition, the present appeal is to be allowed straightaway. It is stated at the cost of repetition that the matter needs fresh examination on merits and it is to be seen as to whether judgment of Amita Gulati is still applicable, notwithstanding the aforesaid difference. At the same time, the appellants can take advantage of the said order to the extent that the appointment of Amita Gulati was on contract basis relating to a particular project and on the other hand, the appointment of the appellants was temporary for one year, at the first instance.

17. Thus, we keep in mind the aforesaid distinction. We also keep in mind the various terms and conditions in the appointment letter and the benefit which were accorded to the appellants on their appointment like provision for regular pay scales, grant of increment, provision for Provident Fund, LTC and medical, residential accommodation etc. We also keep in mind the argument of the learned counsel for the appellants that there is regular cadre of SRAs in the respondent Institute and regular vacancies are also available in the said cadre and that the services rendered by the appellants range from 6 years to 17 years at the time of filing of the petition. The question for determination is as to whether these features make it a different case than that of Amita Gulati and the appellants would be entitled to the relief claimed by them in the writ petition.

18. A microscopic examination of the judgment in Amita Gulati would point out that the petitioner in the said petition was also appointed pursuant to advertisement and selection process through interview, they were also offered pay in the pay scale, their appointments also carried certain benefits as which given to the appellants herein. In fact, the appointment letters in both the cases are substantially the same except that in the case of Amita Gulati, there was a clear stipulation that "the appointment is purely on temporary basis and will not continue beyond the duration of the above scheme". It was also stipulated that appointment is in outside funded project and will not confer any right for appointment/regularization against the Institute post. We further found that in the counter affidavit filed in the Amita Gulati case, it was stressed by the respondents that the primary functions of the Institute is to impart higher technical education of international standard. In addition, the Institute also takes up various industrial research projects at the request of outside funding agencies. For the purpose of imparting higher education the Institute engages faculty and subordinate staff for carrying out the functions. However, insofar as

running of projects funded by outside agency is concerned, the Institute had created a separate section known as Industrial Research and Development Section (IRD Section). The persons engaged on different projects are not the employees of the Institute. They are engaged on contractual and temporary basis and the funds are given by the outside agencies. It was explained that petitioner in Amita Gulati case was appointed on contractual basis, on temporary appointments/engagements, on specified projects with clear stipulation that their engagement/appointment shall come to an end on expiry of the time for which such appointments are made and also with the stipulation that the same can be terminated by one month's notice. The respondent had also mentioned that various research and development projects come to an end on conclusion of the projects or when no funds are made available by the outside funding agencies. It was also stated that SRAs is not a regular cadre post in the Institute.

19. The Division Bench referred to various judgments including Director Institute of Management Development U.P. Vs. Smt. Pushpa Srivastava, JT 1992 (4) SC 489 wherein it is held that when the temporary engagement/appointment is made to a particular tenure post or a project post of limited duration that does not give any right for regular appointment and resultantly, their writ petition was dismissed.

20. What follows from the reading of the aforesaid judgment is that if the appointment to a particular tenure post or on project post of limited duration, it would not make difference whether it is on contract basis or on temporary basis. This brings to the system of appointment of SRAs in the institute. In the Counter Affidavit filed by the respondent to the writ petitions preferred by these appellants, the respondents have clarified that it has a system of appointing SRAs in various Department/Centres of the Institute for specific research projects on temporary basis for specific periods according to the requirement of that specific project. There are 52 posts of SRAs in the Institute for being allocated to various Departments/Centres according to the need of Research Projects undertaken by the said Departments/Centres. The posts of SRAs are filled on temporary basis and/or for a specific period according to the proposed duration of the Research Project. Normally, the research students who are doing or proposing to do the Ph.D. course are appointed as SRAs. The idea of the Institute behind this policy is to give financial assistance to the Research students for completing their Ph.D. course by giving the job of SRAs in the Institute itself. The duties and responsibilities of the SRA as revised by the Board of Governors vide its Resolution No. BG/78/89 are as under:

To assist the faculty in their research, hardware and software development activities including preparation of AV and multimedia software and to simultaneously undergo training for research career.

It was further stated that from the duties and responsibilities of SRAs it was clear that the very nature of job of the SRA is temporary. The contention of the appellants that the posts are permanent is misconceived and denied. It was

pointed out that 52 posts of SRAs are sanctioned in the Institute for being allocated to the various Departments and Centres according to the needs of research project undertaken/approved by the Director in the said Departments/Centres. The appointment of SRA is made on temporary basis for a period of one year and its term is extended from time to time as per the requirement of the Research Project and/or till the concerned SRA has completed his Ph.D. course. A categorical assertion was made that the appellants were appointed as SRAs in departments against temporary post allocated to the said department for a time bound research and further extension were given from time to time according to the need of the research project being carried out by the particular department in which these appellants were appointed. Insofar as appointment on compassionate ground of certain persons against those SRAs who died in harness is concerned, it was explained that they were appointed on compassionate ground because their husband died while in service of the Institute. However, at the same time, even those appointed on compassionate basis were SRAs only and continued on temporary basis and were never made permanent in the post of SRAs.

21. It is thus clear from the aforesaid facts that there is no regular cadre of SRAs in the sense that there are no permanent post in the SRAs and these SRAs are appointed for specific project and always on temporary basis. The purpose is to make them work while continuing their Ph.D. Furthermore, as there is no regular cadre of SRAs and no regular post of SRAs in the Institute, it is not possible to give mandate to the respondent to regularise/confirm the appellants in the absence of such regular post of SRAs. After all, regularization has to be against regular post.

22. Even when we take the cases of these appellants on standalone basis having regard to the nature of their appointments in the lines of facts mentioned above, law is clear, namely, there cannot be any regularization. This so held by the Supreme Court repeatedly (See Secretary, State of Karnataka and Others Vs. Umadevi and Others,). The only relief that can be given to the appellants is that their cases would be considered in accordance with law on merit for appropriate position in the Institute as and when the same is available.

23. This direction has also already been given by the learned Single Judge. The impugned order of the learned Single Judge does not call for any interference. These appeals are accordingly dismissed.

24. No order as to costs.