
(2010) 01 DEL CK 0024

In the Delhi High Court

Case No : Writ Petition (C.) No. 3111 of 2001

Dr. Rashmi Paul

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0024

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Nem, for the Appellant; Atul Nanda and Gaurav Gupta for Respondent No. 1, Ravi Sikri and Vaibhav Kalra, for the Respondent

Judgement

Anil Kumar, J.—Learned Counsel for the respondent contends that SLP No. 13948/2003 titled Council of Scientific and Industrial Research and Ors. v. Ramesh Chandra Aggarwal and Anr. has since been decided and is also reported as CSIR and Others Vs. Ramesh Chandra Agrawal and Another, .

2. In the said appeal before the Supreme Court, the apex court was concerned with the scheme framed by the Council of Scientific and Industrial Research and others pursuant to the directions of the Central Administrative Tribunal and the Supreme Court contemplating absorption of only those researcher who had put in 15 years of such continuous research as Fellow/Associate/Project Associate as on 2nd May, 1997.

3. The cut-off dated 2nd May, 1997 was challenged before the High Court as being arbitrary which plea was accepted by the High Court holding that scheme should have covered all the researcher up to date of the circulation of the scheme i.e. 3rd July, 1998. The plea of researcher that the period of 15 years prescribed in the scheme was arbitrary because ordinarily the tenure of the researcher on various positions was 13 years and consequently the scheme was unreasonable as only two chances were given for submitting the application for regularization was also accepted by the High Court.

4. The apex court, thereafter, has, however, reversed the decision of the High Court, and has held that the State is entitled to fix the cut-off date and such decision can be struck down only when it is arbitrary. The Supreme Court, in the circumstances, has upheld the scheme which was framed by Council of Scientific and Industrial Research pursuant to the order of Central Administrative Tribunal and the Supreme Court.

5. The relevant paragraphs paras 33, 34 and 43 of the Supreme Court Judgment are as under:

33. Indisputably, a policy decision is not beyond the pale of judicial review. But, the court must invalidate a policy on some legal principles. It can do so, inter alia, on the premise that it is wholly irrational and not otherwise. The contention of the respondents that only two chances are granted for consideration of the candidature of the employees for the purpose of regularization is, in our opinion, misconceived. The Scheme being a one-time measure, even one opportunity could have been granted.

34. It was with a view to give benefit to the employees concerned that their services are continued so that they can avail another opportunity. Indisputably, the quantity/quality of research work done by a researcher is a very important consideration for assessing the suitability. But, that would not mean that any researcher as on 2-5-1997 may not be in a position to complete 15 years of the service but would do so on 03-07-1998 and, thus, may be deprived of the opportunity of two chances by itself. This could not have been a ground to strike down the cut-off date fixed by the appellants. It is reiterated that a person may get, having regard to the Scheme, one chance or two chances.

43. Regularization, as is well known, cannot be a mode of recruitment. It does not mean permanence. Only an irregularity can be regularized; an illegality cannot be. Contention raised by the learned Counsel for the parties that the Rules were unworkable is equally meritless apart from the fact that at least fifty candidates had been found eligible for consideration, out of whom eight had been selected. Even according to the respondents themselves they have been working for more than 13 years. Thus, it is not correct to contend that the period of 15 years which was fixed, was an unreasonable one.

6. Therefore under the decision of Supreme Court, the petitioners are not entitled to regularization as they are beyond the purview of the scheme which was framed by the Council of Scientific and Industrial Research which has been upheld by the Supreme Court.

7. The notice of the petition was issued to the counsel for the petitioner, Dr. Sumant Bhardwaj, who had been served, however, no one has appeared on his behalf despite the matter having been passed over once. In view of the Judgment of the Supreme Court, the petitioner is not entitled for any further relief. The writ petition is accordingly disposed of. Parties are left to bear their own costs. All the pending applications are also disposed of accordingly.