

(2013) 03 DEL CK 0174

In the Delhi High Court

Case No : Writ Petition (C) 1554 of 2003

Malaria Research Centre Employees" Welfare Association and
Another

APPELLANT

Vs

Malaria Research Centre Thru" Its Director and Others

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0174

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

**Advocate : C.N. Sreekumar and Mr. Resmitha R. Chandran, for the Appellant;
V.K. Rao, Mr. Vaibhav Kalra, Ms. Neha Bhatnagar, Advocates for R-1 and R-2 and
Mr. Ruchir Mishra, Advocate for R-3, for the Respondent**

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Impugned order passed by the Central Administrative Tribunal pertains to employees inducted in service by the Malaria Research Centre, an Administrative Wing of Indian Council of Medical Research, for eradicating malaria under a UN Funded Project called "Integrated Disease Vector Control (IDVC) Project". Field stations all over India were established. Staff was recruited. Being project employment, regular posts were not sanctioned. On the strength of the pleading that the Indian Council of Medical Research under aegis whereof Malaria Research Centre was working, had the power to create posts, a writ petition filed in this Court by the Malaria Research Centre Employees" Welfare Association, which came to be transferred before the Central Administrative Tribunal has been disposed of along with another petition registered as OA No. 228/2000; directing as under:-

8. As regards OA No. 228/2000, from the material available on record, it is established that whereas applicants had commenced their service in 1986-87 on a running pay scale it was discontinued w.e.f. 1988 according a consolidated salary to them. This OA is disposed of with an observation that applicants may

make a comprehensive representation to their authorities to consider granting them pay and allowances and other financial benefits at par with the employees working under the similar circumstances in the same project. If such employees have been placed in regular pay scales and draw certain other benefits, applicants be also considered for grant of similar pay scales and other benefits provided that they are doing identical work and have been exhibiting the same output of work. Such representation should be sympathetically considered within a reasonable period and should be disposed of by a speaking and reasoned order to be communicated to applicants.

2. The grievance of the writ petitioners is of not being regularized in service, a prayer which was made before the Tribunal, but was declined. As regards the respondents it was happy with the direction issued because the Tribunal has granted no effective relief to the members of the petitioner Association. The only direction is to consider paying salary and allowances to the project employees as per pay-scales of regular employees of Indian Council of Medical Research.

3. It is not in dispute that a similar issue was raised by some employees of Malaria Research Centres and of National Institute of Malaria Research before the Bench of the Central Administrative Tribunal at Chennai which directed regularization of services of the employees requiring them to be placed in the pay-scales in which employees of ICMR were placed. The said decision passed by the Tribunal has been upheld by a Division Bench of the High Court of Judicature at Madras vide WP(C) No. 2260/2011 UOI & Ors. v. R. Srinivasan.

4. The decision has been upheld by the Supreme Court.

5. We adopt the reasoning of the Division Bench of the High Court of Judicature at Madras and thus dispose of the instant writ petition declaring that the law declared by the Madras High Court, which it actually does, shall govern all Project employees who are the members of the first petitioner.

6. Learned counsel for respondents No. 1 and 2 i.e. Malaria Research Centre and Indian Council of Medical Research would urge that compliance with the mandamus issued by the Madras High Court would require funds to be made available by the Union of India for the reason respondents No. 1 and 2 are wholly dependent on the Government for their finances.

7. Learned counsel states that until and unless Union of India makes available the requisite finances, and since the decision of the Madras High Court would require regular posts to be sanctioned, a formal approval for posts being sanctioned, unless Union of India accords the approval, Malaria Research Centre as also Indian Council of Medical Research would be helpless.

8. The fear of Malaria Research Centre and Indian Council of Medical Research of any contempt proceedings against it is unfounded for the reason Union of India is a party in the instant writ petition. Union of India was a party before the Chennai Bench of the Madras High Court.

9. Thus, any mandamus/direction issued would have to be treated as a mandate against the Union of India. Meaning thereby, such codal or procedural formalities or decisions/approvals which are required would have to be taken/given effect to by the Union of India.

10. As regards the Malaria Research Centre and Indian Council of Medical Research the maxim: "Impotentia excusat legem" would be a complete defence, as long as they are able to show that they have taken all reasonable means and requisite steps to comply with the mandamus/direction issued.

11. The petition stands disposed of declaring as above in paragraph 6 above.

12. No costs. Dasti.

CM No. 7555/2004

Since the writ petition stands disposed of, instant application seeking ad-interim relief till disposal of the writ petition stands disposed of as infructuous.