
(2001) 05 DEL CK 0113

In the Delhi High Court

Case No : C. Ms. 10783 of 2000, 3616 of 2001, 9709 of 2000 and C.W.P. No. 6369 of 2000 (With C.W.P. No's. 1407 of 2000, 1597 of 2000, 1651 of 2000, 1755 of 2000, 1922 of 2000, 2607, 2000, 4905 of 2000 and 5154 of 2000)

Mr. Om Parkash and Others

APPELLANT

Vs

The Director, AIIMS and Another

RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2001) 94 DLT 232 : (2001) 60 DRJ 717

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Dr. Surat Singh, for the Appellant; Mr. Mukul Gupta, for the Respondent

Judgement

Vikramajit Sen, J.—The question that arises in these petitions is whether the personnel engaged by the All India Institute of Medical Sciences (hereinafter referred to as AIIMS) from time to time in sundry "projects" undertaken by it are entitled to regular employment with it. These persons have worked for periods varying from one year to over fifteen years. In respect of some of them who were engaged as "Researchers" for periods of over twelve years, the Hon'ble Supreme Court had in Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, ensured their regularisation despite the argument of the AIIMS that they had been appointed only to projects and were not entitled to continue in service after the competition of the project. To appreciate the views of the Apex Court, the relevant paragraphs are reproduced below:

"The Institute set up by statute is intended to carry on research in a continuous way to improve the level of medical knowledge. Under the Act the Instituted is an autonomous body though the Chairman thereof is no other than the Union Minister of Health. It is true that the Institute is entrusted from time to time with research projects by the World Health Organisation, the Indian Council of Medical

Research and other government and semi-government bodies. It is appropriate that a scheme should be evolved by the Institute in coordination with the Health Ministry and the India Council of Medical Research so that a team of researchers is built up to meet the general requirements of research. It is quite possible that the certain projects would require specialized hands and on such occasions a special team could be set up on casual basis by drawing the competent hands from different institutions for a period but to keep up the tempo for search if a team of researchers is built up, it would be convenient for the Institute for purposes of discipline and control as also for efficiency. the Health Ministry must also sponsor continuous research projects in the field of medicine and health and for such purpose several projects should be listed out from time to time and entrusted to the respondent-Institute as also a similar Institute at Chandigarh and to institutes as and when set up elsewhere. This would assist in updating relevant medical information and knowledge, apart from building up a scientific tone and temper for general circulation. We command that the Institute initiates seriously action in this regard without delay and we suggest that the Ministry of Health and the Indian Council of Medical Research collaborate with the Institute to work out the same.

Respondent 3 -- Indian Council of Medical Research has not chosen to appear separately before us in spite of service of notice. Since we have been told that the respondent-Institute has immediately no scope to employ the petitioners excepting the one that we have named above, we direct that the remaining three petitioners in these two petitions should be provided employment either as researchers or in any suitable alternative employment until their inclusion in a team of researchers is considered. The Indian Council of Medical Research shall take appropriate steps to offer adequate employment to the three petitioners within two months hence. If the question of funding becomes necessary, we direct the Ministry of Health to cooperate and place adequate funds at the disposal of the Indian Council of Medical Research.

These two petitions are disposed of with the aforesaid directions and without any order for costs, with liberty to the petitioners to apply, with the fond hope that all concerned will appreciate the spirit of the order and implement the direction in the proper way as stipulated."

2. In these petitions my Learned Brother Madan B. Lokur, J. had on 23.5.2000 ordered that "the services of the petitioner can be dispensed with if they are not required in some other projects or if the projects in which they are working are not extended." The understanding of my learned brother was palpably complete and in conformity with the approach adopted by the Apex Court. As I see it since the AIIMS is primarily and principally engaged in undertaking projects of various kinds, the petitioners can Therefore quite easily be accommodated or engaged in another projects in the event that the one in which they are presently engaged comes to an end. Dr. Surat Singh, learned counsel for the Petitioner informs that in 1999-2000 as per the Annual Report of the AIIMS it had received grants

amounting to Rs.11,20,00,000/- for research projects, whereas the administrative budget was less than Rs.50,00,000/-. It is in this context that the interim orders, which the applicants /AIIMS are incorrectly relying, were passed. Otherwise there would scarcely have been any need for my learned Brother to mention that the services of the Petitioners could be ended if they were not required in some other project.

3. The situation is graver than that which is discernible understandable at the first glance. The present litigation is not the first batch of writ petitions filed against the Respondents on the question of engagement of persons to projects undertaken by the AIIMS. In 1990 several Petitioners who were working as 'Researchers' had articulated their grievances before the Hon'ble Supreme Court. The same reasoning as has been laid before me was also put before the Hon'ble Supreme Court by the AIIMS, a decade earlier. None of the petitions were rejected or dismissed. What is startling is that even after making a submission before the Hon'ble Supreme court that these Researchers were employed by the then Officers of the AIIMS from project to project and de hors the Rules, the same procedure has again been regularly adopted by AIIMS for almost a decade afterwards. Despite making these specific submissions before the Hon'ble Supreme Court, the AIIMS has considered it appropriate to continue to engage persons project-wise. Mr. Gupta, learned counsel appearing for the Respondents has submitted that after 1st December, 1999 no recruitment/engagement has been carried out de hors the Rules. What cannot be overlooked is the fact that for the ten previous years the same policy which was sought to be assailed before the Hon'ble Supreme Court was followed. It is palpably evident that the words of the Respondents do not match with their actions. I perceive an effort to mislead the Court. At least after the decision of the Hon'ble Supreme Court the AIIMS should have desisted from engaging persons project-wise, since this practice is irreconcilably contrary to their stand before the Apex Court. The immediate consequences of the action of the Respondents is that there are several petitioners now constrained to seek the protection of the Court, whose services have commenced in the period post 1990. Inasmuch as affidavits have been filed on behalf of the AIIMS painting a picture totally different to that which actually exists, a piquant and awkward situation has arisen. It can perhaps be set to rest by this judgment.

4. Even before the Hon'ble Supreme court the stand of the AIIMS was that in all cases where the Researchers were engaged for periods of 15 years and upwards, they will be forthwith regularised. In the cases where the Researchers had worked for 12 years or more they would continue to be engaged from time to time in projects, and once they had completed 15 years they would be forthwith regularised. These persons were paid their salaries without any break or interruption. Learned counsel for the AIIMS has belaboured the point that had the Hon'ble Supreme Court had granted relief only to the category of Petitioners who had served the AIIMS for 12 years or more and hence no relief ought to be granted to the present Petitioners. As I see it, this submission begs the question.

None of the Petitioners who had approached the Hon"ble Supreme Court had failed to receive its protection. This position is not controverted by Mr. Gupta, learned counsel for the Respondents. The protection that was granted to those petitioners in their entirety was that "if some other projects are to be started they will be made to adjust them against those projects if they are found suitable and qualified for these projects." Even now Dr. Surat Singh, learned counsel appearing for the Petitioners, states that all the Petitioners are ready and willing to serve on any project to which they may be assigned. Keeping in perspective that at any given time there would be at least a score of projects which may be underway in the AIIMS, this assignment should not pose any problem. This is also obvious from the nature and ratio of the grants/funding received by the AIIMS when compared with its administrative budget.

5. The submission of Mr. Gupta, learned counsel appearing for the Petitioner, that the Petitioners should be asked to apply for the project may appear fair, but it is fraught with insidious dangers for the Petitioners. The AIIMS is well aware of the qualifications and experience of all the persons working in their projects. They are, Therefore, in the best suited position to engage the Petitioners in any of the on-going or future project. It would be dangerous to insist that the Petitioners should apply for any particular project since they may not possess the requisite qualifications or experience for that project. This would not mean that these persons would not be appropriately and suitably absorbed or engaged in any other project. Therefore, it would be against the interest of the Petitioners who have already worked for several years with the AIIMS to insist on their applying for any particular or new projects. It would arm the AIIMS with the weapon of rejection, even though they must well be aware of an alternative project where the Petitioners could be ably engaged. The duty to apportion work lies on the employer and not the employee.

6. Mr. Gupta has also submitted there is no decision of the Hon"ble Supreme Court to the effect that persons engaged on projects should be absorbed as a regular basis. Keeping in view the decision in Dr. V.L. Chandra's case (supra) itself, this proposition is not correct in entirety. However, he has also not been successful in citing any decision which pronounces that "project-employees" are not entitled to permanent/regular employment. He has relied on a decision in State of H.P., through The Secretary (Rural Development) to the Govt. of Himanchal Pradesh, Shimla Vs. Ashwani Kumar and Others, . No doubt the Hon"ble Supreme Court deprecated and overruled the decision of the High Court which had regularised the services of the Petitioner who had been engaged in the project. A reading of the judgment, however, seems to indicate that, contrary to the facts existing in the present cases, the Petitioner in that case had been engaged in the project (meaning thereby one) and not consecutively in a series of projects as appears have happened in the present case. Learned counsel for the Respondents has also relied on the decision of C.S.I.R. and Others Vs. Dr. Ajay Kumar Jain, . Here the Respondent was employed under the Quick Hire Scheme on a contract basis. He was not governed by CSIR Service Rules, 1994.

He was employed for an initial period of one year which was extended for six months. It was on the expiry of this period that he sought regularisation, which was turned down. The facts and the situation are totally different. The difference is obvious when it is recollected that the procedure by which the Petitioners have been engaged was assailed by the AIIMS itself before the Hon'ble Supreme Court as far back in 1990. Yet, it was still adhered to for one decade afterwards. After the decision of the Apex Court, the Respondents cannot be heard to say that the engagement was contrary to the Rules, when they themselves have adhered to the same procedure for several years afterwards. They cannot be allowed to take advantage of their own wrong.

7. Mr. Gupta has also relied on the decision in *Ashwani Kumar and Others Vs. State of Bihar and Others*, . It had been contended that if the initial entry of an employee was illegal then it would not be appropriate for the Court to regularise his services. To appreciate the opinion of the Hon'ble Supreme Court in its entirety, it would be best to reproduce paragraph 13 thereof.

"13. In this connection it is pertinent to note that question of regularisation in any service including any Government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily wage basis by a competent authority and are continued from time to time and if it is found that the concerned incumbents have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularise them so that the concerned employees can give their best by being assured security of tenure. But this would require one pre-condition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularisation may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by competent authority and the irregular initial appointment may be regularised and security of tenure may be made available to the concerned incumbent. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment. In any case back door entries for filling up such vacancies have got to be strictly avoided. However, there would never arise any occasion for regularising the appointment of an employee whose initial entry itself is tainted and is in total breach of the requisite procedure of recruitment and especially when there is no vacancy on which such an initial entry of the candidate could even be effected. Such an entry

of an employee would remain tainted from the very beginning and no question of regularising such an illegal entrant would ever survive for consideration, however competent the recruiting agency may be. The appellants fall in this latter class of cases. They had no case for regularisation and whatever purported regularisation was effected in their favor remained an exercise in futility. Learned counsel for the appellants, Therefore, could not justifiably fall back upon the orders of regularisation passed in their favor by Dr. Mallick. Even otherwise for regularising such employees well established procedure had to be followed. In the present case it was totally by-passed. In this connection we may profitably refer to Government Order dated 31st December, 1986 to which our attention was invited by learned counsel for the appellants. The said Government Order is found in the additional documents submitted in C.A. Nos. 10758-59 of 1995 at Annexure-IV. Secretary to Government of Bihar, Health Department, by Communication dated 31.12.1986 had informed all regional Deputy Directors, Health Services; Tuberculosis Civil Surgeon-cum-Chief Medical Officer; and other concerned authorities in connection with the compliance and implementation of the orders passed and instructions issued by Deputy Director (Tuberculosis) Bihar, Patna under the Tuberculosis Control Programme covered under the 20-Point Programme. It was stated in the said Communication that steps will be taken of till up sanctioned Third and Fourth Grade posts as soon as possible according to the prescribed procedure and all possible efforts should be made to achieve the fixed targets in a planned and phased manner. Even this letter clearly indicates that the posts had to be filled up by following the prescribed procedure. Despite all these communications neither the initial appointments nor the confirmations were done by following the prescribed procedure. On the contrary all efforts were made to by-pass the recruitment procedure known to law which resulted in clear violation of Articles 14 and 16(1) of the Constitution of India both at the initial stage as well as at the stage of confirmation of these illegal entrants. The so-called regularizations and confirmations could not be relied on as shields to cover up initial illegal and void actions or to perpetuate the corrupt methods by which these 6000 initial entrants were drafted in the Scheme by Dr. Mallick. For all these reasons, Therefore, it is not possible to agree with the contention of learned counsel for the appellants that in any case the confirmations given to these employees gave them sufficient cloak of protection against future termination from services. On the contrary all the cobwebs created by Dr. Mallick by bringing in this army of 6000 employees under the Scheme had got to be cleared lock, stock and barrel so that public confidence in Government administration would not get shattered and arbitrary actions would not get sanctified."

8. In this case the initial appointments were made contrary to the recruitment procedure, and thus were viewed as being in violation of Articles 14 and 16(1) of the Constitution. Mr. Gupta could only show that some recruitment rules were formulated in 1999. The ratio of this judgment does not apply with such vigour as would defeat the Petitioner's claim. In the case in hand, the initial engagement

of the Petitioners was neither illegal nor contrary to the AIIMS recruitment policy, which came in much later. It also flies in the face of its own Memorandum dated 1.8.1992 for establishing a core cadre for research projects.

9. The practice followed by the AIIMS even post 1990 militates against their own arguments. While it can be accepted that some engagements/appointments had escaped the notice of the administration, this cannot be appreciated or accepted after 1990 when the matter had been argued and fought threadbare before the Hon''ble Supreme Court. If the Petitioners were engaged even after this decision, the only possible conclusion that can be arrived at is that there were no Rules which were applicable to such recruitment. This also stands confirmed by the submission of Mr. Gupta that after December, 1999 recruitments even to projects were carried out in compliance with the Recruitment Rules framed at that time.

10. The Hon''ble Supreme Court had itself taken note of an argument that was raised on behalf of ICMR that funding is received by the AIIMS related to a particular project. On a reading of the judgment it will be evident that all that the Hon''ble Supreme Court considered necessary was to note the argument, and nothing more. It had further observed that the Union Health Minister was the Chairman of the AIIMS. It was in these circumstances that it ordered in Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, that "if the question of funding becomes necessary, we direct the Minister of Health to co-operate and place adequate funds at the disposal of the Indian Council of Medical Research." On this high authority of the Hon''ble Supreme Court and on the strength of ex cathedra judgments, I can safely extrapolate the observations into the facts of this case. It will also be relevant to mention that in these series of judgments delivered by the Hon''ble Supreme Court viz a viz the AIIMS it had also expressed that it was not averse to the formation of the core cadre of Researchers. As is to be expected of an institute of the high repute and stature of the AIIMS the observations of the Hon''ble Supreme Court were transmuted into action in 1999. The Memorandum dated 1.8.1992 of the AIIMS appears to convey the sanction of the Committee to the creation of the scientific/technical/administrative posts for the core research cadre and for maintaining administration, accounts, stores management of research division at the AIIMS. The posts contained in this Memorandum are not restricted only to scientists (50 posts) but also to technical posts, administrative posts. The Petitioners before me are 86 in number and can more than easily be absorbed again in this scheme floated by the AIIMS itself. Having already rendered service to the AIIMS for varying periods, and not having been inducted into the system illegally and/or contrary to any Rules & Regulations, their services are entitled to be protected to the same extent as that of any other person. Most of them have worked for periods far in excess of 240 days in a year.

11. For these several reasons I am satisfied that the petitions are well founded. The petitions are allowed. The Respondents are directed not to terminate the service of the Petitioners. As per the existing scheme all the persons who have

already served for fifteen years and above must be automatically regularised. Those persons who have worked for 12 years and above should be allowed to work, awaiting their completion of this period and consequent absorption on regular appointment. For those persons working for lesser period their services should be continued. It is for the AIIMS to consider which project their services can be best utilised in. All the Petitioners must be paid their salaries as without any interruption from the date of their initial engagement unless such interruption has occasioned consequent upon the volition of the Petitioner. The scheme envisaged in the Memorandum dated 1.8.1992 is commended and the AIIMS is expected to implement it at the very earliest. All arrears of salaries shall be cleared within a period of six months.

12. A copy of this judgment be placed in all the connected writ petitions.

13. The writ petitions are disposed off in the above terms.