

**(2001) 03 DEL CK 0118**  
**In the Delhi High Court**  
**Case No : C.W. No. 4162 of 1994**

Ms. Tejinder Kaur

APPELLANT

Vs

Union of India and others

RESPONDENT

**Date of Decision :** 03-03-2001

**Acts Referred:**

Constitution of India, 1950 — Article 12

**Citation :** (2001) 03 DEL CK 0118

**Hon'ble Judges :** Dr. M.K. Sharma, J

**Bench :** Single Bench

**Advocate :** Party in perso, for the Appellant; Mr. N.K. Kaul and Mr. A.K. Singla, for the Respondent

## **Judgement**

Dr. Mukundakam Sharma, J.—The petitioner filed the present writ petition in this court praying for the following reliefs:

(a) Issue an appropriate writ/order/directions commanding the respondents to consider the petitioner to have been regularly appointed on the post of Research Assistant with effect from 21.4.1989 in terms of the joining report given by the petitioner and to grant the petitioner seniority in the cadre of Research Assistant from that date;

(b) Pass an appropriate writ/order or direction commanding respondents to grant petitioner all consequential benefits by considering the date of appointment of petitioner on the post of Research Assistant on regular basis with effect from 21.4.1989;

(c) Pass appropriate orders commanding respondents to issue order of confirmation in the case of petitioner from the date the petitioner completed her period of probation i.e. 21.4.1991.

2. The petitioner joined the respondent No.2 on 21.9.1987 on a Project as Research Investigator. On completion of the aforesaid project the petitioner joined as Research Investigator on another project on 1.6.1988. On 1.3.1989 the

petitioner was appointed as Research Assistant on yet another project and on that project the petitioner worked up to 31.8.1990. The respondent No. 2, meanwhile advertised 10 posts of Research Assistants to be appointed on regular basis, selection for which was held on 6.4.1989. The petitioner applied for one of the aforesaid posts and was also called for the aforesaid selection. The petitioner was selected in the aforesaid selection as a regular Research Assistant and an offer was made to the petitioner under Memorandum dated 13/17.4.1989 offering her a temporary post of Research Assistant in the scale of pay of Rs. 1640-2900. In the said letter it was also mentioned that the petitioner would be on probation for a period of 2 years from the date of her appointment. In reply to the aforesaid letter the petitioner sent a communication on 21.4.1989 addressed to the Director of respondent No. 2 conveying her acceptance for the said post as per the terms and conditions in the said memo dated 17.4.1989. The last paragraph of the said letter having relevance is extracted below:-

"As I understand informally, my posting has been earmarked for Training Division. Even the vacancies in the C.D. Division do not suit my field of specialisation and the nature of work I am presently doing in C.D. Division. It is my humble request that my case may be favorably considered in the light of the above facts and the offer may please be kept open until any such opportunity is available in the fields of Health or Nutrition."

3. The petitioner, as it appears, even thereafter was given another project appointment as ad hoc Research Assistant under the Project entitled "Assessment of female health workers, knowledge of ICDS and non-ICDS projects". The petitioner accepted the aforesaid appointment on a consolidated salary. The petitioner received the consolidated salary as against the aforesaid project appointment as ad hoc Research Assistant and continued to work as such till 31.8.1990 when she was relieved on expiry of her tenure on project. By a letter dated 28.9.1990 the petitioner informed the Director of respondent No. 2 that she had already submitted her joining report on 26.9.1990 for regular appointment to the post of Research Assistant and sought for posting order consequent thereto and also for allowing her to get herself medically examined. It is alleged that however, no positive action was taken by Director of the respondent No. 2 even in spite of the said letter and accordingly the petitioner approached the Chairperson of respondent No. 2, upon which an order was issued holding that the petitioner had a right to the appointment, with a further direction to the Director of respondent No. 2 to allow the petitioner to join back by allowing acceptance of her joining report. The petitioner, thereafter joined as a Research Assistant. However, in the seniority list of the Research Assistance published/circulated by respondent Institute, the petitioner was shown to be non-confirmed although the date of selection was shown there as 6.4.1989, and the date of appointment in the post of Research Assistant was shown as 26.9.1990. Being aggrieved by the same the petitioner filed the present writ petition claiming for the aforesaid reliefs.

4. The respondent No. 2 has filed a detailed counter affidavit contending inter alias that the respondent No. 2 is not a State within the meaning of Article 12 of the Constitution of India. It was also submitted that the petitioner is not entitled to any of the reliefs as sought for. It was stated in the counter affidavit that the petitioner came to be regularly appointed to the post of Research Assistant in the scale of pay from the date of her joining the said post i.e. 26.9.1990 and Therefore, she cannot claim and cannot be paid any salary and allowances in the post of Research Assistant prior to the aforesaid date. It is further stated that since the petitioner joined the said post on 26.9.1990 the petitioner cannot claim to be confirmed before expiry of 2 years period from the said date in terms of the condition of her appointment to the said post. So far seniority is concerned it is stated that the petitioner has been given due seniority in the seniority list published.

5. The petitioner appeared in person and the respondent No. 2 was represented by Mr. A.K. Singla, Advocate. It was submitted by the petitioner that the orders issued showing a wrong date of appointment are always liable to be corrected as the petitioner had joined the said post of Research Assistant on 21.4.1989 and in terms of her joining report dated 21.4.1989, the said date should be accepted as her joining date and she should be paid all pay and allowances from the said date. She also submitted that she is entitled to be confirmed w.e.f. 20.4.1991 and Therefore, the date of confirmation shown by respondent No. 2 is wrong and without jurisdiction. She also submitted that in the seniority list which has been published by respondent No. 2 on 30.6.1992 the date of appointment was also shown wrongly as 26.9.1990.

6. Mr. Singla, however, refuted the said allegations and submitted that since the petitioner joined the post on 26.9.1990 she is shown regularly appointed to the said post of Research Assistant in the scale of pay applicable to the said post from the date of her joining i.e. 26.9.1990. He also submitted that since the selection of the petitioner was on 6.4.1989 she has been given due seniority from the aforesaid date although the date of joining has been shown as 26.9.1990, the date she actually joined the said post. He also submitted that she could not claim to be confirmed in the post of Research Assistant prior to expiry of 2 years period from the date of her joining.

7. In the context of the aforesaid submissions and the records of the case, I may proceed to decide the issues raised herein. Prior to the advertisement issued by respondent No. 2 the petitioner was working as Research Investigator and thereafter as Research Assistant on ad hoc basis as against specified project. However, pursuant to the selection held on 6.4.1989 the petitioner was selected as regular Research Assistant and an offer of appointment to the regular post of Research Assistant was also sent to the petitioner on 17.4.1989 offering to the petitioner a regular scale of pay as well. Although the petitioner sent a letter of acceptance to the said offer, she however, made it conditional that the offer may be kept open until an opportunity is available to her in the field of Health or

Nutrition. The same was accepted by respondent No. 2 as a conditional acceptance and no posting order was issued to the petitioner and instead the petitioner was given an ad hoc appointment as Research Assistant as against a specified project on consolidated pay. The said appointment carried a consolidated salary which the petitioner received without any demur or protest. The said appointment Therefore, cannot be said to be as against a regular post of Research Assistant and certainly not as against a regular pay scale. The petitioner continued to work as such and was relieved of her duties in the institute w.e.f. 31.8.1990 pursuant to the letter dated 31.8.1990, which also bears her signature and no protest from her side. The petitioner thereafter submitted an application to the Director of respondent No. 2 bringing to his notice that she had submitted her joining report on 26.9.1990 and she should be informed about her posting. In view of the fact that the petitioner continued to work on various term projects on consolidated salary up to 31.8.1990 and she having joined the post of Research Assistant as a regular employee in a regular scale of pay on 26.9.1990 she cannot claim salary and allowances in the said regular scale of pay till the date of her joining in the said post in the regular capacity on 26.9.1990. The petitioner up to 31.8.1990 received consolidated salary as against specified term assignment given by respondent No. 2 against project work which she completed and also received the consolidated salary as against such project appointments. The claim, Therefore, made in the writ petition for payment of salary and allowances for a period during which she worked in another capacity and received consolidated salary without protest with her open eyes cannot be entertained.

8. Since the petitioner had joined the said post of Research Assistant in regular capacity in the regular scale of pay w.e.f. 26.9.1990 although selected earlier, she cannot also claim to be declared confirmed prior to expiry of 2 years period from the aforesaid date i.e. w.e.f. 25.9.1992.

9. So far the seniority position of the petitioner is concerned, the seniority list of Research Assistants as on 30.6.1992 is placed on record and in the said seniority list the petitioner has been shown as against Serial No. 3. It transpires there from that the date of selection of the petitioner is shown as 6.4.1989 and her date of appointment is shown as 26.9.1990. However, in the seniority list her position in the selection panel has been retained although she joined subsequent to some of the persons selected with her. Although the petitioner joined later than some of the persons who were selected Along with her, her seniority position has been shown higher than those persons and thus so far seniority position is concerned the petitioner has not suffered at all, although she has joined later.

10. So far as issue with regard to the date of confirmation is concerned, it was one of the stipulations in the appointment letter issued to the petitioner that the petitioner would be on probation for 2 years from the date of her joining. The petitioner joined the post on 26.9.1990 and completed the probation period on

25.9.1992 and Therefore, she should be declared confirmed from the aforesaid date, which I hereby do.

11. In terms of the aforesaid directions and observations the writ petition stands disposed of but without any order as to costs.