
(1993) 03 DEL CK 0086

In the Delhi High Court

Case No : Civil Writ Appeal No. 3007 of 1990

Sheila Roy and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Citation : (1993) 52 DLT 483 : (1993) 26 DRJ 234 : (1994) ILR Delhi 59 :
(1993) LabIC 2027 : (1994) 1 LLJ 445

Hon'ble Judges : P.N. Nag, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Swantantar Kumar and S.P. Kaira, for the Appellant;

Judgement

P.N. Nag, J.

(1) In this writ petition petitioners 1 to 11 seek their regularisation of service from the date of their respective initial appointments in running scales along with consequential benefits as applicable to the regular appointed scientists employed by respondent 2. All India Institute of Medical Sciences (for short "AIIMS"). Petitioner No. 12. whose services had been terminated before filing of the writ petition, has sought for quashing of the order of termination dated 28-12-1989 and thereafter for regularisation of her services in the permanent cadre of respondent No. 3, Indian Council of Medical Research (for short "ICMR"), It has further been prayed for that fair and just schemes should be formulated for research scientists for their regularisation of their services and giving them employment.

(2) The All India Institute of Medical Sciences has been set up under the All-India Institute of Medical Sciences Act, 1956 (here in after referred to as the "Act"). Section 13 of the Act refers to the objects of the Institute which shall be (a) to develop parents of teaching in undergraduate and post graduate medical education in all its bunches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions in India; (b) to

bring, together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and (c) to attain self self-sufficiency in post graduates medical education. With a view to the promotion of the Objects specified u/s 13 of the Act, the Institute u/s 14 of the Act may. inter alia, (a) provide for undergraduate and postgraduate teaching in the science of modern medicine and other allied sciences, including physical and biological sciences; (b) provide facilities for research in the various branches of such sciences; (c) provide for the teaching of humanities in the under graduate course; (d) conduct experiments in new methods of medical education, both under graduate and postgraduate, in order to arrive at satisfactory standards of such education ; and (e) prescribe courses and curricula for both undergraduate and postgraduate studies Since the inception, the Institute has taken up thousands of research projects and has contributed tremendously by way of various research conducted by its staff in the field of medical sciences and for carrying out its research programmes the institute has been employing employees both on regular and temporary basis the various cicatrisation including WHO. Icmr, Department of Science & Technology (for short "DST") and other world renowned organisations from time to time send their requisitions and funds to the Institute to carry out various specified researches in various fields as per their requirements. As a matter of fact the members of the faculties engaged in the matter of research are the regular employees of the Institute while the other Research scientists are appointed by the Institute in the projects in accordance with the directions of the Funding agencies. The practice so far has been that a Researcher is appointed to a project funded by a Funding Agency on ad hoc basis and the employment cannot last beyond the termination of the project. The Researchers on termination of one project keep on applying for being employed in another projects available at that time and they are absorbed as well depending upon the availability of a vacancy in a project to which the applicant is found to be suitable.

(3) The petitioners are qualified Biomedical scientists working on various research projects largely sponsored by Indian Council of Medical Research (for short "ICMR") (respondent No. 3) for long periods retiring from 3 to 12 year on ad hoc or temporary basis. Out of these 12 petitioners, six petitioners are holding the Degree of Doctorate (Ph.D.), four are professional MBBS doctors and the two are M.Sc. The details of periods, projects and the qualifications of the petitioners are referred to in a Chart annexed with the petition from Annexure P-1 to P-12 although certain details are displaced by the respondents. Petitioners 1 to 11 were employed by the All India Institute of Medical Sciences (hereinafter-referred to as the Institute") where as petitioner No. 12" was employed with by a permanent institute Icms of ICMR- The petitioners had been appointed against their posts on ad hoc basis initially for a period of six months which term was extended from time to time and in this process most of the petitioners are now in the age group of 32 to 48 years and have now crossed the age limit for most of the Government jobs and thereby lost opportunities for employment in

permanent cadres/posts. The petitioners being the highly qualified Biomedical scientists have made valuable contributions to various research projects in Biomedical and allied fields with national and international recognitions. Their specialised experience in vital areas of human health has valuable potential. According to them, various research work in which they have worked have been identified by the World Health Organisation (for short WHO) to be of immense value and relevance to the advancement of Biomedical disciplines in particular and towards achieving the goal of India's commitments as "Health for all by 2000 A.D." in its National Health Policy's manifesto. Similarly, the objects for which the Icmr has been established have been set out in the Memorandum of Association of the Icmr which provides for, inter alia, (a) the prosecution and assistance of research, the propagation of knowledge and experimental measures generally in connection with the causation, mode of spread, and prevention of diseases, primarily those of communicable nature; (b) to initiate, aid, develop and coordinate medical scientific research in India and to remote and assist institutions for the study of diseases, their prevention, causation and remedy.

(4) The petitioners have founded their right of regularisation on the basis of the judgments of the Supreme Court in Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, and further orders passed by the Supreme Court in pursuance of that judgment. The petitioners claim that In spite of the law laid down by the Supreme Court that the petitioners should be regularised in view of the aforementioned judgment, the services of petition or No 12 have been terminated by the respondent No 3 arbitrarily w.e.f. 31-3-1990, after 4 years of continuous service as Research Officer although the project in which she was appointed is still going on and the post is still lying vacant. Other petitioners, viz. petitioners 1 to 11 were apprehending termination of their services on the ground that either their ad hoc appointments might not be extended or even otherwise their services might be terminated although some of them have rendered 2 to 10 years of service in various positions as research scientists.

(5) During the course of arguments, it was revealed that services of petitioners 1 & 8 were terminated during the pendency of the writ petition. However, under the stay orders of the court, against "be termination of services, the, remaining petitioners are continuing in service.

(6) It has further been stated in the petition that, earlier persons working in the Institute were regularised in the Institute itself whereas the services of the petitioners were being terminated with discrimination. They, Therefore claim that their appointments have to be regularised in view of the judgment of the Supreme Court referred to above since they have rendered long services without any interruption whatsoever.

(7) The Institute though established more than 25 years ago has appointed more than 400 Faculty members on permanent strength, but has not done anything to

employ research personnel on permanent basis for achieving the objective of excellent research though at any given time, at least 200 300 such Research scientists are being employed on temporary or ad hoc basis. Some of them have also been regularised. With a view to have security of service of the petitioners and to carry out Biomedical research uninterruptedly, the petitioners seek regularisation.

(8) In the counter affidavit filed on behalf of respondents No. 1 & 2, it has been stated that after the Institute was set up under the Act, the Institute has undertaken many research projects on its own and from outside agencies like Icmr, Dst and Who as well. The provision of funds for conducting scientific research is made by the outside agencies and the same is provided to the Institute by the funding agencies on a time bound basis for a period ranging from 1 to 5 years. In exceptional cases, however, the projects are extended beyond five years dependent upon the result achieved and approval of the funding agencies. Insofar as the life of a research project is concerned, the Institute has no say or control and the same entirely depends upon the provisions of funds and the guidelines given by the funding agencies. The staff as sanctioned by the funding agency for carrying out the research project is employed for the duration of the project. The results achieved of the research work are communicated to the funding agency every year directly by the investigators and in case the results found are not to the satisfaction of the funding agencies or the funding agencies do not want to finance the project any further, the project is terminated along with services of the staff employed for the purpose. The funding agencies may extend the duration of the project and provide further funds and in that case the life of the research project is accordingly extended. The staff appointed to the various research projects are thus fully aware that the services are required only till the duration of that particular project lasts and not thereafter. The staff during the course of their employment on the research project keeps on applying and competing for regular appointment within and outside the Institute and also keep in touch with the other project investigators in order to be able to get fresh appointment in another such project on the termination of the earlier one. Whenever the staff thus employed applies for absorption in the regular cadre of the Institute and when any vacancy falls, their eligibility for appointment to the regular cadre is examined by the Standing Selection Committee of the Institute and any member of the staff found suitable is duly appointed. According to the respondents, if the claim of the petitioners for permanent absorption in the regular cadre of the Institute is accepted, it would completely retard and destroy the whole system of research which is being pursued by the Institute and various institutions all the world over. The petitioners request, if accepted, will amount to (i) accept the petitioners in the regular cadre of the Institute without having to appear for selection before the Selection Committee as required under the recruitment rules; (ii) the petitioners who were not found suitable for the Standing Selection Committee as and when they applied for absorption for regular cadre of the Institute would now be absorbed

by virtue of the court's order and this would defeat the rights of many deserving applicants ; However, whenever the vacancy falls and he petitioners if otherwise eligible for being considered for appointment. they would be at liberty to appear before the Selection Committee and in case they are selected, they can also be appointed on he regular cadre of the Institute. It has further been stated that whenever vacancy in the regular cadre of the Institute occurred and he petitioners did apply for the post but none of them was found suitable by the Selection Committee of the Institute and, Therefore, they could not be appointed on the regular cadre of the Institute.

(9) The respondents 1 & 2 have relied upon the letter dated 11-10-1988 of the Icmr written to the Institute. In view of this letter a decision was taken by the Institute that in future appointment in the research projects may only be for title posts of SRF's or Research Associates on a fixed salary/slab. The petitioners all along knew that they had been appointed to a particular project which had a definite duration and the appointment to the said project could last till duration of the project and not thereafter. Since the duration of the projects and extensions of the projects are in the hands of the funding agencies and since the project has been terminated, the Institute has no option except to terminate the staff engaged in the project work.

(10) The stand taken by respondent No. 3. in substance is that there is no relationship of employer and employee between the petitioners and respondent No, 3 and the present petition against them is not at all maintainable. The staff employed on the research schemes will not be the Council's employees and will be subject to the rules and administrative control of the Institute and will be appointed in accordance with the normal recruitment rules and procedure of the Institute.

(11) Mr. Swatanter Kumar, learned counsel for the petitioners, has submitted that some of the scientists of the Institute had" filed writ petitions (Civil Writ 999/88 and Cw 1043 of 1989) (reported as Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, in the Supreme Court of India for regulation of their services in similar circumstances and in those writ petitions the Supreme Court has noticed that the Institute set up by statute is intended to carry on research in a continuous way to improve the level of medical knowledge. 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 Indian 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 certain projects would require specialised 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 of research 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.

(12) For the purpose of formulation of the Scheme and absorption of the scientists like the petitioners, as directed in the aforementioned judgment, and also in certain similar cases, the matter was fixed before the Supreme Court from time to time. Ultimately according to council for the petitioners, the scheme has been evolved by the Institute and the respondents have constituted Core Research Cadre by creating 50 posts of scientists at different levels, to absorb the project scientists like petitioners. Creation of such Core Cadre and sanction of 50 posts is referred to in the memorandum dated 1-8-1992 (Annexure I) to the affidavit dated 16-9-1992 filed on behalf of Dr. Sujata Joshi, petitioner No. 9. The scales and qualifications of the scientists have been recommended by the Institute in that memorandum dated 1-8-1992. According to the petitioners, all the petitioners can be absorbed against the 50 posts of the Core Cadre inasmuch as the total length of service and seniority of the petitioners are placed within 39 and the respondents as per the judgment of the Supreme Court are obliged to regularise the petitioners against the posts.

(13) The submission of learned counsel for the petitioners is completely devoid of force. No doubt in accordance with the aforesaid judgment in Dr. Chandra's case (supra) a Core Research Cadre is sought to be created vide memorandum dated 1-8-1992 by the Institute. However, the source from which funds will flow has not yet been finalised. So, at this stage mere conveying the sanction of the Standing Committee for creation of the posts of scientists vide letter dated 1-8-1992 itself will not result in the appointment, employment of such scientists and other administrative staff unless provisions of funds are made available and it is decided that the salaries of the scientific and technical staff will be charged directly to that project I scheme as per provisions made therein. In other words, this Core Research Cadre itself is in the process of being established and the petitioner cannot claim themselves to be appointed against the posts sanctioned in this Core Research Cadre as appointment of scientists on regular basis in such Core Research Cadre will have to be made in accordance with the relevant rules, instructions to be indicated and framed by the Institute. Mere length of service itself cannot entitle the petitioners to regularisation against those posts. The reliance of the counsel in this context on the order of the Supreme Court in Cw Petition No. 5856-57 of 1985 I.C.M.R. Project Workers Association v. Union of India and others (2) is wholly misplaced as this order deals with the assurance of the respondents and it no where deals with the question of the absorption of scientists after the Core Cadre is created under the Scheme.

(14) Mr. Swatanter Kumar, learned counsel, also relied upon the recommendations of the Institute for creating of scientific/technical administrative posts for Core Research Cadre and for maintaining administrative accounts and stores management of Research Division at the Institute vide memorandum dated 1-8-1992 in which various posts of scientists in different grades and scales have been created and qualifications for their recruitment have

also been recommended. According to the counsel, this is a policy decision taken by the Institute and rules are proposed to be framed accordingly and the petitioners herein fulfill all the qualifications as provided us eligibility criteria for recruitment to the posts of scientists in different grades and, Therefore, the petitioners have every right in accordance with the policy framed under the Scheme under the Core Research Cadre to be appointed and regularised.

(15) This argument of learned counsel for the petitioner has been made merely to be rejected. We fail to understand how the recommendations for such Core Research Cadre of the Institute only lays down various qualifications scales and grades etc. of the scientists proposed to be prescribed, can be considered as a Scheme or a policy framed by the Institute for such recruitment and how such recommendations vest any right in the petitioners to be regularised.

(16) Next submission made by counsel for the petitioners was that, after the Core Cadre of 50 scientists has been made, one Dr. Sarai had been appointed against such sanctioned post. The petitioners similarly situated should also be appointed against such posts.

(17) Mr. Kalra, learned counsel for the respondents, on the other hand, has brought to the notice of the court an affidavit dated 22-7-1991 of Shri B. S. Lamba, Joint Secretary in the Ministry of health and Family Welfare filed in Civil Writ Petition No. 917 of 1990 Dr. V. P. Chaturvedi and others v. Union of India and others (annexed with the written arguments filed on behalf of the respondents) wherein they have explained the steps taken by them for Constituting a Core Research Cadre and for engagement of such scientists in pursuance of the order of the Supreme Court. In that affidavit the deponent has stated that in order to obviate any hardship to those who have been working in the Institutes more or less continuously for a long time, such of those research workers who have put in 15 years or more continuous service in the Institute, would be suitably absorbed on permanent basis. According to that affidavit, persons[scientists who have put in 15 years or more service in the institute would be absorbed on permanent basis as formulated in the Scheme. One Dr. Sarai was absorbed as fresh entrants as she has put in more than 15 years of service although, she at present stands retired on 31-1-1993. The arguments of the petitioners that after the Core Research Cadre has been sanctioned, they have right to be regularised against them as Dr. Sarai who happens to be the wife of the Senior Professor of the Institute was absorbed against the 50 posts of the same cadre, is not correct as she was regularised in accordance-with the policy and scheme formulated by the Institute for regularisation of service after a particular length of service. This scheme has been noticed in the Supreme Court's order dated 20-11-1991 passed in Dr. V. P. Chaturvedi's case (supra) (CW 917j90) and the Supreme Court impliedly approved the absorption against regular Vacancy of the scientists if they have put in more than 15 years of service or more. Since none of the petitioners have 15 years of service, they have no right to be regularised-

(18) It was next contended by counsel for the petitioners, that, in accordance with the judgment of the Supreme Court in Dr. V. L. Chandra & other's case (supra) and the substance and spirit of that judgment the petitioners who have valuable experience in the research work should not be thrown on road like the three petitioners in the aforementioned petitions who were ordered to be provided employment as Researchers or suitable alternative employment until their inclusion in a team of researchers is considered.

(19) We are afraid the services of the petitioners cannot be regularised since now the scheme that a scientists must have 15 years of service for regularisation has been formulated and that such persons cannot be considered in view of the scheme and which has been noticed and tacitly approved by the Supreme Court in its order dated 20-11-1991. Furthermore, the order dated 14-8-1991 in Dr. Chaturvedi's case, the Supreme Court has clarified the intention of the judgment dated 22-3-1990 passed by the Supreme Court in Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, . The Supreme Court has observed that while giving their final decision in Civil Writ Petition No. 999188 they had no intention of creating a permanent cadre. In this connection the relevant extract of the inclusion in a team of researchers is considered.

"MR.Venkataramani seriously presses before ua that the researchers should have some scheme where within two to three years they could as in other Government service be made permanent and given guarantees of service. When we gave our final decision in Writ Petition No. 999(88 we had no intention of creating a permanent cadre of the type Mr. Venkataramani argues about. In fact project-wise research helps to generate better efficiency than caderised research organisation. Once service guarantees are provided and security of service is available, the flow of inspiration from within perhaps slows down. We had, Therefore thought that those who had put in long period of research work should only be provided security so that in the later part of their service life, they may not be put to inconvenience."

(20) In view of this clarification, the petitioners cannot claim regularisation merely on the basis that they have been working against such projects for fairly and long periods.

(21) In this context, reference may also be made to Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, when the question of regularisation of the petitioners employed on daily wage basis under Jawahar Rozgar Yojna was considered. In that case, the schemes under which the petitioners were given employment have been evolved to provide income for those who were below the poverty line and particularly during the periods when they are without any source of livelihood and without any income whatsoever and not to provide the right to work. The Supreme Court held that regularisation of such employees would frustrate the object of the scheme, as the state with limited resources would not be able to provide full employment to such employees and guarantee equal pay for equal work which would lead to

winding up such schemes. The Supreme Court has further noticed that such employments gained by backdoor entry for a short period are given to persons who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. Such employment also circumvent the relevant rules and regulations and some time for various illegal considerations, including money and the public interests are thus jeopardised.

(22) These observations of the Supreme Court apply with equal force in the present case.

(23) In the present case, the stand taken by the respondents is fully justified that the petitioners have been appointed for a short duration on consolidated salary against one project or another for which specific funds are provided by the Funding Agencies. The Institute has no option except to terminate the staff engaged for the purpose of research till the duration of the project and this fact was made clear at the time of their appointment and they know fully well that the life of their employment is for the duration of the project only. In case the petitioners are regularised after a particular length of service, the very purpose of starting these projects would be defeated as the Supreme Court in its order dated 14-8-1992 in Dr. Chaturvedi's case (supra) has rightly pointed out that in fact project wise research helps to generate better efficiency than caderised research organisation. Once service guarantees are provided and security of service is available, the flow of inspiration from within perhaps slows down. Even otherwise if persons are appointed against a regular cadre of the Institute for which so many scholars are needed, funds would not be available which are provided by the Funding Agency outside the Institute. The Institute will not be able to withstand the financial burden of the cadre of the research scientists and thereby the research work of the Institute has otherwise to be stopped.

(24) Further as held in Delhi Development Horticulture Employees' Union's case (supra) that the regularisation of such employees by bypassing the Employment Exchange and circumventing the rules and regulations of the Department would against the public interest. It would encourage the employment through back door entry and deprive the citizens of consideration on merits.

(25) From another angle if the matter is viewed, in order to maintain a petition the petitioners must show some right. No right has been shown by the petitioners for regularisation. Even if Core Research Cadre, assuming, has been sanctioned, the petitioners have no right to be absorbed against such posts as the recruitment of such scientists has to be made in accordance with the rules and regulations or the administrative instructions framed by the Department for the recruitment of scientists in the Core Cadre in which the petitioners can also apply and can be considered. Since the petitioners have no right to continue their services after the completion of the project, which has expired, the petitioners services can be validly terminated by the Institute.

(26) Mr. Kalra, learned counsel for the Institute brought to our notice that similar question arose in the case of (Dietetics)) in Cw 647189 Mrs. Surbhi Krishan v. Aiiims and in the case of Smt. Krishna Gaur v. Aiiims and others 2003 Cw 191 for consideration before a Division Bench of this Court and the writ petitions were dismissed vide orders dated 14-9-1989 and 26-2-1992 passed by B. N. Kirpal and C. L. Chaudhary, JJ. and B. N. Kirpal and Santosh Duggal, JJ. respectively. Cwp No. 647189 was dismissed substantially on the ground that the project had been completed and the petitioners therein had no right to continue. In Cwp 2003 of 1991, the Court held that the back door entry should not be permitted and the recruitment in service can take place only as per relevant Rules which the petitioners have not been able to show.

(27) However, in all fairness, since the present petitioners have served the respondents for a long time and possess valuable experience in their respective field of research, it would be desirable that whenever the posts are sought to be filled up in accordance with the rules and regulations, a relaxation in age should be given to them to enable them to compete along with others and due weight to experience should also be given by the department. However, they will have to compete along with others for recruitment to the posts of scientists created in the Core Research Cadre.

(28) It was next contended by Mr. Swatanter Kumar, counsel for the petitioners, that the petitioners are entitled to regular pay scales for the entire period of service because they perform the duties and responsibility and obligations like regular scientists of various grades. They were doing identically same functions as the scientists regularly appointed were doing and as such on the principle of equal pay for equal work the petitioners are entitled to get regular scales with all benefits and arrears in this regard. This principle was duly accepted and appropriate directions passed by the Supreme Court in Dr. Ms. O.Z. Hussain Vs. Union of India and others, and other various cases. Further the practice of appointment of employees on ad hoc basis has been deprecated by the Supreme Court.

(29) There is no substance in this submission as well as no such case has been made out and no material to this effect has been placed on the petition. However, it may be noticed that the petitioners have been employed to a project on a consolidated salary for a particular duration and they have not been employed against a regular sanctioned vacancy in a cadre. These have been employed with a view to promote the research work in their respective field against a particular project and, Therefore, their employment cannot be compared with the employment of a corresponding scientists employed against a regular post and there is nothing to show on record that they are discharging the same duties and functions and responsibilities and there is no reasonable classification turn treating them differently. In these circumstances the judgments relied upon by the counsel for the petitioners are wholly inapplicable. Furthermore, at the cost of the repetition it may be stated that the petitioners

were appointed against a project which has come to an end, on a consolidated salary and for a short duration.

(30) In the light of what is discussed above, there is no substance in the writ petition which is dismissed accordingly.

(31) In the circumstances of the case, there is no order as to costs.