

(2017) 04 CAL CK 0012
In the Calcutta High Court
Case No : 1284 of 2016

The Indian Institute of Technology, Kharagpur	APPELLANT
Vs	
Sanjeeb Kumar Singh & Ors.	RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Citation : (2017) 04 CAL CK 0012

Hon'ble Judges : Debasish Kar Gupta, Md. Mumtaz Khan

Bench : DIVISION BENCH

Advocate : R. N. Majumder, S. Chakraborty, Goutam Chakraborty, Supratim Bhattacharjee, Rabindra Nath Bag, Sudhir Kumar Bhowmik, Manideepa (Paul) Roy, Payel Bag

Final Decision : Dismissed

Judgement

1. These appeals are directed against a common judgment dated May 10, 2016 passed in respect of four writ applications bearing W.P. No.8422 (W) of 2015, W.P. No.21971 (W) 2015, W.P. No.21973 (W) of 2015 and W.P. No.21974 (W) of 2015 involving the same and identical issue.

2. By virtue of the impugned judgment The Indian Institute of Technology, Kharagpur (hereinafter referred to as IIT, Kharagpur) were directed to treat the respondents/writ petitioners in terms of circular dated February 28, 2000 on and from the date of their initial letters of appointment and their respective dates of joining to the posts concerned as also to release their salaries and their emoluments commensurate with their posts from their respective dates of joining. The IIT, Kharagpur was further directed to pay interest to the writ petitioners at the rate of 8% per annum to be calculated on and from the respective dates of joining of the respondents till the ultimate disbursal of the entire salaries and emoluments to them. There was also direction that the respondents would be given all consequential benefits of their services treating them to be in service in the post advertised by circular dated February 28, 2000 on and from the respective date of their joining. The IIT, Kharagpur was also

directed to pay costs assessed at Rs.25,000/- to each of the respondents.

3. In response to advertisement no.IIT/SRIC/R/FIM/11/2000 dated February 15, 2000 all the respondents submitted their respective applications for the post of "Job Assistant" in respect of a temporary research project, namely, Farm Implement & Machinery Prototype Manufacturing Workshop & Feasibility Test Center (FIM) sponsored by ICAR, New Delhi (hereinafter referred to as the said research project), at a consolidated compensation of Rs.3200/- per month. All of them fulfilled the eligibility criteria of passing BA/B.Sc. certificate having at least one year experience in the job as indicated in the aforesaid advertisement. After their selections, agreements dated July 7, 2000 were executed by and between the Sponsored Research & Industrial Consultancy(hereinafter referred to as the SRIC) and the respondents for appointing them on a contract basis to serve in the post of "Job Assistant" in the said research project on the specific terms and conditions contained in the aforesaid agreements as well as general terms and conditions regulated by SRIC on a consolidated compensation of Rs.3500/- per month without extension of any benefit of Dearness Allowance/Additional Dearness Allowance or other allowances. The tenure of their assignment was up to one year with the condition of automatic termination of the above contract on the afternoon of the same day. The tenures of their assignments were subsequently extended from time to time by way of executing similar agreements by and between the SRIC and the respondents.

4. The IIT, Kharagpur invited applications from the eligible staff members of the above institute by an internal circular issued under memo no. R/Circular/01/2015 dated February 27, 2015 for filling up of the posts mentioned therein including the post of Senior Technician/Senior Laboratory Assistant at a monthly Pay Band of Rs.5200-20200/- (PB-1) and Grade Pay (GP) Rs.2800/- and other admissible allowances. The minimum educational qualification and experience for the aforesaid posts was Diploma in Engineering of 3 years duration in appropriate field or B.Sc. or equivalent Degree in appropriate field and after 8 years relevant experience in the Grade Pay Rs.2000/-, amongst others.

5. Immediately, thereafter, the respondents filed their respective writ applications praying for issuing writ in the nature of mandamus commanding the IIT, Kharagpur for regularising the services of the respondents under IIT, Kharagpur on the basis of their 15 years continuous services as project employee in terms of the provisions laid down in the Institutes of Technology Act, 1961, SRIC Rules, Guidelines of ICAR read with the Resolutions taken by the Board of Governors", IIT, Kharagpur. Further prayers were made in the writ applications to issue writ in the nature of prohibition for prohibiting the IIT, Kharagpur from filling up the posts of Senior Technician/Senior Laboratory Assistant in terms of Serial no.10 of Internal Circular no.R/Circular/01/2015 dated February 27, 2015. The above writ applications were disposed of by a common judgment impugned to these appeals.

6. It is submitted by Mr. R.N. Majumder, learned advocate appearing for the appellants that the impugned judgment was passed by the learned Single Judge

ignoring the fact that the respondents were engaged under the SRIC for a project work on considerations of their applications submitted in response to advertisement no. IIT/SRIC/R/FIM/11/2000 dated February 15, 2000 to discharge functions to the post of "Job Assistant" on the basis of respective contracts dated July 7, 2000 executed by and between the SRIC and the respective respondents on a consolidated compensation of Rs.3500/- per month without any benefit towards Dearness Allowances/ Additional Dearness Allowance or any other allowances and their respective tenures of assignments were up to one year terminable automatically on expiry of the aforesaid periods and the aforesaid engagements were extended from time to time by further execution of contracts by and between the SRIC and the respective respondents.

7. According to him, the above engagements of the respondents had no nexus with the internal circular issued under memo no. R/ Circular/01/2015 dated February 27, 2015 by the IIT, Kharagpur inviting applications from the eligible candidates who had worked in various Schemes/Projects on contract basis for a period of one year or more and enlisted Ex-casual labourers of IIT, Kharagpur, who had worked 240 days or more for appointment in the posts of Attendant/ Peon/Cleaner (Sanitary & Sewerage) on a monthly remuneration of Rs.2550-55-2660/--60-3200/-. None of the respondent was eligible to submit application in response to the above internal circular. Nor any one of the respondents submitted application in response thereto. According to him, the learned Single Judge passed the impugned judgment on the erroneous finding that the respondents were appointed upon consideration of their applications submitted in response to the aforesaid internal circular.

8. It is also submitted by him that though reliance was placed on the provisions of Clause 4.2 (9) to Appendix-I to the Rules and Procedures for Sponsored Research Project (as adopted in 79th meeting of the Board of Governors" of the IIT Institute Kharagpur on December 21, 1982), the same was subsequently superseded by rules and regulations for SRIC. According to the provision of Rule 3.2 of the above rules all project appointments would be contractual and on the basis of the consolidated monthly compensation.

9. According to Mr. Majumder, the General Guidelines for the formulation, possessing, scrutiny, sanction, implementation and evaluation of research scheme advanced by the Indian Council of Agricultural Research (paragraph 8) was issued in respect of Scientific Technology and supporting staff who had been on regular pay scale but none of the respondents was engaged on regular pay scale.

10. With regard to the claim of the respondents in terms of Rule 4.1 (8) of Rules and Procedures for sponsored research project it is submitted by him that the same was modified by adopting a resolution (Item no.FC:66-15) the Board of Governors in its 116th meeting dated November 5, 1992 to the effect that the employees of sponsored research scheme would not be considered as institute employees and the provisions under the Act and Statutes of IIT, Kharagpur would

not be applicable to them. Similar submission is made by Mr. Majumder with regard to the claim of the respondents on the basis of the resolution adopted in the meeting of the Board of Governors of IIT, Kharagpur dated September 19, 1983 that the same was superceded by the rules and regulations for SRIC. According to him, order no. B/49/88 dated June 22, 1988 and the resolution adopted by the Board of Governors of IIT, Kharagpur in its 106th meeting were also superceded by the rules mentioned hereinabove.

11. According to Mr. Majumder, the impugned judgment is liable to be quashed and set aside on the aforesaid grounds.

12. It is submitted by Mr. Rabindra Nath Bag, learned advocate appearing for the respondents at the very outset, in his usual fairness, that none of the respondents submitted his application in response to internal circular dated February 28, 2000. All of them submitted applications in response to advertisement no.IIT/SRIC/R/FIM/11/2000 dated February 15, 2000 and it was not in dispute that the respondents submitted their applications for the post of "Job Assistant" in connection with a temporary research project, namely, Farm Implement & Machinery Prototype Manufacturing Workshop & Feasibility Test Center (FIM) sponsored by ICAR, New Delhi, at a consolidated compensation.

13. However, it is submitted by him that in terms of Rule 3.4 of SRIC Rules the tenure of contractual appointment of a project staff would be for the duration of project or three years whichever was less. According to Rule 3.5 the total period of contractual employment with SRIC in two or more projects in no case should exceed five years. Our attention was also drawn towards Rule 3.5 all appointment letters should be issued under signature of Deputy Registrar/ Assistant Registrar (SRIC).

14. Drawing our attentions towards paragraph (iii) of Rules and Procedures for Sponsored Research Project, it is submitted by him that any matters not provided for in the above Rules and Procedures should, until requisite provisions in that behalf were made in the above Rules and Procedures, be dealt with and disposed of, as far as may be, in accordance with the general terms and conditions regulated by the Institutes of Technology Act, 1961 and the Statutes of the Institute as were in force from time to time. Drawing our attentions towards paragraph 7.3.1 of the above Rules and Procedures, it is submitted by him that Components of Research Project Grant was inclusive salaries for research project staff and service, retirement benefits to be extended to those staffs in accordance with the Institute Rules.

15. Drawing our attention towards the provisions of Rule 4.2.9 of the Recruitment Rules and Procedures and Service Condition for Sponsored Research Project Staff, it is submitted by him that when an employee of a project had completed seven continuous years of service (either temporary or on contract or in combination) in one or several projects put together, efforts should be made by the Institute, in accordance with the normal selection procedure. In order to

implement the above it would be necessary to have Confidential Reports (CRs) of such employees for at least three years starting from fourth year of their services, i.e. after completion of three years of continuous service in the project.

16. Our attention has also been drawn towards the provisions of paragraph 8 of General Guideline for the formulation, possessing, scrutiny, sanction, implementation and evaluation of research scheme advanced by the Indian Council of Agricultural Research from its agricultural produces fund to submit that provision of scientific, technical and scientific staff on regular pay scale can be made in the scheme sponsored by the Institute, Universities other than ICAR Institutes provided the host institution/university gives an undertaking that the staff of the scheme would be absorbed by the institution after the termination of scheme. He pointed out that the respondent S.K. Singh in appeal bearing MAT No.1284 of 2016 and N.K. Sharma in appeal bearing MAT No.1283 of 2016 were getting their emoluments on regular pay scale.

17. Drawing our further attention towards the circular no.R/Circular/01/2015 dated February 27, 2015 it is submitted by him that the above circular was issued by the appellant institute to appoint others depriving the respondents from their legally enforceable right for absorption under the appellant institute in accordance with the provisions mentioned hereinabove. Ultimately, it is submitted by him that the learned Single Judge took into consideration the provisions mentioned hereinabove for granting relief to the respondents.

18. It is also submitted by him that though there was erroneous finding on the part of the learned Single Judge that the respondents submitted their applications in response to the invitation of applications of eligible candidates under internal circular issued under memo no. R/ Circular/01/2015 dated February 28, 2000 the findings of the learned Single Judge were based upon the statutory provisions mentioned hereinabove.

19. Reliance is placed by Mr. Bag on the decisions of Dr. Anisur Rahaman Khan vs. Indian Institute of Technology & Ors., reported in 1992 (2) Cal.LT 200, Anand Bihari & Ors. vs. Rajasthan Sate Road Transport Corporation, Jaipur, reported in 1991 (1) SCC 731, Central Inland Water Transport Corporation Ltd. & Anr. vs. Brojo Nath Ganguly & Anr., reported in 1986 (3) SCC 156, Dr. V.L. Chandra vs. All India Institute of Medical Sciences, reported in 1990 (3) SCC 38, Manick Chandra Sarkar & Ors. vs. Sate of West Bengal, reported in 1991 (2) CAL LT (HC) 45, Proshanta Guha and Monorath Pandey vs. Indian Institute of Technology, Kharagpur, reported in 1994 (99) Cal. WN 1160, In Re: Chandan Kumar Bhattacharjee & Ors., reported in 1993 (2) CAL LT (HC) 457, ONGC Field Operators Union & Ors. vs. NGC Ltd. & Ors., reported in 2016 (5) ALT 20, Sudarshan Rajpoot vs. U.P. State Road Transport Corporation, reported in 2015 (2) SCC 317, Amarkant Rai vs. Sate of Bihar & Ors., reported in 2015 Law Suit (SC) 227, ONGC Ltd. vs. Petroleum Coal Labour Union & Ors., reported in 2015 (6) SCC 494 and Durgapur Casual Workers Union & Ors. vs. Food Corporation of India & Ors., reported in 2015 (5) SCC 786, Delhi Transport Corporation vs.

D.T.C. Mazdoor Congress & Ors., reported in 1991 (Supp) 1 SCC 600, an unreported judgment of the Hon"ble Supreme Court in Raj Kumar vs. Director of Education & Ors., an unreported judgment of Hon"ble Supreme Court in State of Punjab & Ors. vs. Jagjit Singh & Ors., and Jayashree Bijwe vs. Union of India & Ors., reported in 51 (1993) DLT 226 in support of his above submissions.

20. We have heard the learned counsels appearing for the respective parties at length and have considered the facts and circumstances of this case on the basis of which the learned Single Judge passed the impugned judgment.

21. It is not in dispute that the first finding of the learned Single Judge that applications had been submitted by the respondents in response to internal circular dated February 28, 2000 was erroneous one. Admittedly, all the respondents submitted their respective applications in response to advertisement no.IIT/SRIC/R/FIM/11/2000 dated February 15, 2000 which was not annexed to the writ petitions filed by the respondents. Consequent thereupon, there was no scope for the learned Single Judge to ascertain the right of the respondents which might have been flowed from the appointments/engagements awarded to the respondents in connection with the above selection process. Assessment of the rights of the respondents were undertaken by the learned Single Judge in the light of the appointments given to the eligible candidates who had participated in the selection process in response to the invitation of applications under internal circular dated February 28, 2000. Admittedly, none of the respondents participated in the selection process by submitting his application in response to the aforesaid circular dated February 28, 2000. The impugned judgment requires our interference on that ground.

22. In order to ascertain the propriety of the finding of the learned Single Judge that the respondents derived legally enforceable right for absorption in the services of the appellant institute the advertisement dated February 15, 2000, in response to which all the respondents were appointed/engaged in a temporary research project is set out below:-

"ADVERTISEMENT NO.IIT/SRIC/R/FIM/11/2000, DATED 15th FEBRUARY 2000

Applications are invited on plain paper for the following assignments in a purely time bound research project undertaken in the Dept of Agricultural & Food Engineering of this institute.

1. Name of the temporary assignment :- Job Assistant ? 3 posts
2. Name of the temporary research project :- Farm Implement & Machinery Prototype Manufacturing Workshop & Feasibility Test Centre (FIM)
3. Name of the sponsoring Agency :- ICAR, New Delhi
4. Consolidated Compensation :- Rs.3200/- per month
5. Qualifications :- BA/B.Sc. in any field of study and having at least one year experience in the job indicated below :

Nature of Job: The job includes mechanical fabrication work including, cutting, welding (arc/gas) sheet metal, drilling etc. required for fabrication and maintenance of agricultural machinery. The candidate must have sufficient knowledge of the crop cultivation and necessary machinery for different field operations. He must be prepared to go to out station places for field survey and be prepared to enter into muddy fields to collect data, analyse and report the same in appropriate forms. The job requires staying in villages sometimes for months for data collection.

Interested eligible persons may apply on plain paper, giving full bio-data along with attested copies testimonials along with a Demand Draft of Rs.50/- drawn in favour of IIT Kharagpur payable at Kharagpur to the undersigned on or before 16th March, 2000.

(D. Gunasekaran)"

23. From the above advertisement it appears to us that applications were invited for temporary assignment in the said research project, on a monthly consolidated compensation of Rs.3200/- per month in the post of Job Assistant. After selection of the respondents in the aforesaid posts, agreements were executed by and between the SRIC of one part and the respondent concerned being the party of the second part of the other part. It was stated that all the aforesaid agreements in no uncertain terms that the party of the second part had been appointed by SRIC on contract basis to serve as Job Assistant in the said research project. It was also stated in the aforesaid agreements that the party of the second part had agreed to serve the job as Job Assistant on the specific terms and conditions contained therein as well as general terms and conditions regulated by SRIC. All the agreements contained that the party of the second part was joining the aforesaid project with full knowledge and understanding that the project was a contract job and the tenure of that assignment was up to one year and that contract would automatically terminate after expiry of the above period. However, similar agreements for the subsequent parties were executed by and between the SRIC and the respective respondents for the subsequent periods also after expiry of each and every one year due to continuation of the said research project beyond the period of one year. Therefore, no legally enforceable right flowed from the aforesaid agreements for absorption of any of the respondent under the appellant institute on regular basis on the strength of any of the aforesaid agreements itself.

24. In view of the above facts and circumstances the respondents cannot claim any benefit on the basis of the principles laid down in the decision of Delhi Transport Corporation (*supra*), unreported judgment of the Apex Court passed in the matter of Raj Kumar vs. Director of Education & Ors. (*supra*), unreported judgment of the Apex Court of State of Punjab vs. Jagjit Singh & Ors. (*supra*) and Joyshree Bijwe vs. Union of India & Anr. (*supra*).

25. Now, in order to ascertain the propriety of the other findings of the learned

Single Judge with regard to the legally enforceable rights of the respondents for their absorption in the regular service of the appellant institute we find that admittedly, Rule 3.4 of the SRIC Rules provided that the tenure of contractual appointment of a project staff would be for the duration of the project or three years whichever was less. Though the respondents continue with their assignment of jobs under the said research project beyond three years, our attention has not been drawn towards any provision of the aforesaid Rules which conferred legally enforceable right on them for absorption under the appellant institute on regular basis.

26. The only relevant provision for absorption of the research project staff like the respondents was Clause (9) of Appendix-I to the Rules and Procedures for sponsored research projects framed by the appellant institute in respect of the Sponsored Research and Consultancy Center. According to the above provision, when an employee of a project had completed seven continuous years of service (either temporary or on contract or in combination) in one or several projects put together, efforts should have been made to the appellant institute to absorb the employment in an appropriate vacancy in the institute, in accordance with the normal selection procedure. But the aforesaid Rules and Procedures were superceded subsequently by Rules and Regulations for Sponsored Research and Industrial Consultancy (SRIC).

27. It further appears from the minutes of 116th meeting of the Board of Governors held on November 5, 1992 that a resolution bearing Item No.FC:66-15 was adopted to the effect that the employees of Sponsored Research Scheme would not be considered as Institute employees and provisions under the Act and Statutes of the appellant institute would not be applicable to them. Therefore, the finding of the learned Single Judge with regard to the legally enforceable right of the respondents for their absorption under the appellant institute on regular basis in terms of the Act and Statutes of the appellant institute suffered from infirmity and liable to be set aside.

28. In view of the distinguishable facts and circumstances as discussed hereinabove the decisions of Dr. Anisur Rahaman Khan (supra), Anand Bihari & Ors. (supra), Central Inland Water Transport Corporation Ltd. & Anr. (supra) and Dr. V.L. Chandra (supra) do not help the respondents for their absorptions under the IIT.

29. With regard to the next submission of Mr. Bag that though the learned Single Judge erroneously took into consideration the internal circular dated February 28, 2000 for adjudication of the aforesaid legally enforceable rights of the respondents, it had no adverse effect on the findings of the learned Single Judge on the claims of the respondents on merit, the above circular is quoted below:-

"INDIAN INSTITUTE OF TECHNOLOGY

KHARAGPUR

Circular No.R/Cir.2/2000 dated 28th February, 2000

Applications are invited from the eligible candidates who have worked in various Schemes/Projects on contract basis for a period of one year or more and the enlisted Ex-casual labourers of the Institute who have worked for 240 days or more for the following positions at this Institute.

Post : Attendant/Peon/Cleaner (Sanitary & Sewerage)

Pay Scale : Rs.2550-55-2660/-60-3200/-

Qualifications & Experience: Class VIII Pass with preferably one year of relevant experience.

The applications on plain paper with full details of educational qualifications, experience etc. along with a cross IPO of Rs.10/- as application fee (non refundable) payable to IIT Kharagpur at Kharagpur Technology Post Office (SC/ST candidates are exempted from paying any application fee) may be submitted to the Asstt. Registrar (Recruitment), IIT Kharagpur-721302 latest by 25.03.2000.

(M.N. Gupta)

Registrar"

30. It appears from the above circular that applications were invited from eligible candidates who had worked in various scheme/projects on contract basis for a period of one year or more and the enlisted Ex-casual labourers of institute who had worked 240 days or more for the posts of Attendant/Peon/Cleaner (Sanitary & Sewerage) at a pay scale of Rs.2500- 3200/- possessing Class-VIII pass educational qualification preferably one year experience. No material is made available on records from which it is evident that any of the respondents served in any of the above posts for the period mentioned therein and/or possessed one year of relevant experience. That apart, neither any of the respondents was eligible for submitting application in response to the above circular nor any of them submitted application in response thereto. Therefore, the finding of the learned Single Judge taking into consideration and erroneous fact that the respondents were selected on the basis of their applications which had been submitted in response to the above circular was not sustainable in law.

31. In the decisions of Proshanta Guha and Monorath Pandey (supra), Chandan Kumar Bhattacharjee & Ors. (supra), ONGC Field Operators Union & Ors. (supra) and Sudarshan Rajpoot (supra) the general principles of law have been discussed but in view of the admitted fact that the engagement of the respondents were not under the IIT directly and more so those were in respect of the said project on contract basis which were not temporary in nature, the above decisions do not help the case of the petitioners. For the same reason the decisions of Amarkant Rai (supra), ONGC Ltd. (supra) and Durgapur Casual Workers Union & Ors. (supra) have no bearing on the case in our hand in view of the distinguishable

features as discussed hereinabove.

32. In view of the observations and discussions made hereinabove these appeals are allowed quashing and setting aside the judgments impugned to these appeals and the writ applications are also dismissed.

33. There will be, however, no order as to costs.

34. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, on priority basis.