

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.7.2016

Delivered on : 02.08.2016

CORAM :

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR. JUSTICE P.KALAIYARASAN

W.P.No.26824 of 2015
& M.P.Nos.1 and 2 of 2015

Dr.J.Jeyakannan

.. Petitioner

Vs.

1. The Union of India
rep.by its Secretary
Government of India
Ministry of Health and Family Welfare
Department of Ayush
Ayush Bhawan, B-Block
GPO Complex, INA,
New Delhi 110 023
2. The Director General
Central Council for Research in Siddha
Department of Ayush
Ministry of Health and Family Welfare
Government of India
SCRI Building,
Anna Government Hospital campus
Arumbakkam,
Chennai 600 106

3. The Registrar
Central Administrative Tribunal
Chennai 600 104

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the order passed in O.A.No.310/01183/2014 passed by the Honourable Administrative Member, CAT, Madras Bench dated 25.2.2015 and the order passed in O.A.No.1183/2014 by the Third Member Mr.Justice B.Seshasayana Reddy (Judicial Member), CAT, Madras Bench dated 3.7.2015 and quash the same and consequently direct the respondents to implement the order passed by the Honourable Judicial Member, CAT, Madras bench dated 5.3.2015.

For Petitioners : Mr.R.Viduthalai, senior counsel for
Mr.R.S.Anandan
For Respondents : Mr.G.Rajagopalan,
Additional Solicitor General
assisted by Mr.B.Babu Manohar, SCGPC
for R1 and R2
R3 - Tribunal

ORDER

(Order of the Court was made by A.SELVAM, J.)

This Writ Petition has been filed under Article 226 of the Constitution of India, praying to call for records relating to the order passed in O.A.No.1183 of 2014 by the Central Administrative Tribunal, Madras Bench and quash the same.

2. The petitioner herein along with two more petitioners, as applicants, have filed Original Application No.1183 of 2014 on the file of the Central Administrative Tribunal, Madras Bench, wherein it is stated that the applicants are presently working as Senior Research Fellow (Siddha). The petitioners have crossed 40 years of age. The petitioners are eligible to be absorbed as Research Officers and their service is liable to be regularized as per the recommendation made by Dr.Nitya Anand Review Committee. The respondents 1 and 2, after accepting the report of the said Committee, should act upon the same. But, the respondents 1 and 2 have issued an erroneous advertisement No.1 of 2014. Under such circumstances, Original Application No.1183 of 2014 has been filed.

3. The Central Administrative Tribunal, Madras Bench, after considering the divergent contentions raised on either side, has dismissed the Original Application No.1183 of 2014 by way of passing the impugned order and in order to quash the same, the present writ petition has been filed.

4. The learned senior counsel appearing for the petitioner/applicant has contended with great vehemence to the effect that as per the recommendation of Dr.Nitya Anand Review Committee, certain guidelines have been given, but the respondents 1 and 2, without following it, have erroneously issued the Advertisement No.1 of 2014 and since the petitioner/applicant has been serving as Senior Research Fellow (Siddha), he has to be absorbed in the post of Research Officer, but the respondents 1 and 2 have failed to do it. Under the said circumstances, Original Application No.1183 of 2014 has been filed on the file of the Central Administrative Tribunal, Madras Bench, but the Central Administrative Tribunal, Madras Bench, has erroneously dismissed the same and therefore, the order passed by the Central Administrative Tribunal is liable to be set aside and O.A.No.1183 of 2014 is liable to be allowed.

5. The learned Additional Solicitor General appearing for the respondents 1 and 2 has contended that Dr.Nitya Anand Review Committee has made certain recommendations and those recommendations cannot be termed as Rules and as per Rules, the post of Research Officer has to be filled up as per direct recruitment and the question of transfer or absorption does not arise and the Central Administrative Tribunal, after considering the rival contentions raised on either side, has rightly dismissed the Original Application No.1183 of 2014 and therefore, the order passed by the Central Administrative Tribunal, Madras Bench, does not call for any interference.

6. The learned senior counsel appearing for the petitioner has relied upon the following documents:

(i) In the implementation of Dr.Nitya Anand Review Committee report, the Ministry of Health and Family Welfare as per D.O.No.V.27020/1/2007-Ay.Desk, dated 22.4.2008, has observed as follows:

" Henceforth only those those who proves themselves as SRF's/JRF's shall be given regular appointment as Research Officers and above. Promotion of deserving internal candidates shall be given priority and an in-situ promotion scheme envisaging at least two financial upgradation for every researcher now nearing finalization."

(ii) In the letter dated 16.10.2008, passed by the Ministry of Health and Family Welfare (Department of AYUSH), it is observed as follows:

"After that the posts in these disciplines may also be filled up from the SRF's after exhaustion of redeployment possibilities in the manner already approved for recruitment of Research Officers in AYUSH streams vide this Department letter No.V 27020/1/2007-Ay.Desk (pt) dated 2nd September 2008."

7. The learned senior counsel appearing for the petitioner has also relied upon the decision reported in 2001 (60) DRJ 717 (Om Prakash and other., v. The Director, AIIMS and another), wherein in paragraph Nos.8 to 11, it is observed as follows:

"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 & Ors. Vs. All India Institute of Medical Sciences & Ors., 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

then 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.

8. The main defence taken on the side of the respondents 1 and 2 is that as per Rules, the post of Research Officer (Siddha) has to be filled up 100% by direct recruitment by considering contract candidate and the question of promotion or absorption does not arise.

9. In fact, this Court has perused the relevant Rules, wherein at paragraph No.11, it is mentioned as follows:

"100% by direct recruitment by considering contract candidate"

In paragraph NO.12, it is stated that the case of recruitment by promotion/deputation/transfer, grades from which transfer/promotion/deputation are not applicable.

10. In the instant case, it is an admitted fact that the present petitioner has been serving only as Senior Research Fellow in Siddha and his prayer is to regularize his service and also to absorb him as Research Officer.

11. Even though certain recommendations are available in favour of the petitioner, the conditions for recruitment to the post of

Research Officer are otherwise. It has already been pointed out that as per paragraph No.12 of the Rules, the question of promotion/deputation/transfer does not arise. The post of Research Officer has to be filled up 100% by direct recruitment, considering the contract candidate.

12. It is an admitted fact that the present petitioner and others have been appointed on contractual basis in the post of Senior Research Fellow (Siddha) and their service is terminable at any point of time. But, as per paragraph No.11 of the Recruitment Rules, their application can also be considered. However, the appointment of Research Officer is nothing but direct. It is made clear that even though the petitioner and others have been appointed on contractual basis, independently they can apply for the post of Research Officer, provided if their service conditions are suitable to them. It has already been pointed out in many places that the question of transfer/absorption does not arise to the post of Research Officer. The main relief sought in Original Application No.1183 of 2014 is to absorb the petitioner in the post of Research Officer by way of regularising the service of the petitioner. Since the petitioner has been appointed on contractual basis, his service cannot be regularized, further, as per recruitment Rules, the question of absorption of the petitioner in the post of Research Officer does not arise.

13. The Central Administrative Tribunal, after considering the relevant Rules, has rightly rejected the claim of the petitioner and further the decision referred to supra is totally different from the factual situation available in the present petition. Under the said circumstances, the argument advanced by the learned senior counsel appearing for the petitioner cannot be accepted, whereas the argument advanced by the learned Additional Solicitor General appearing for the respondents 1 and 2 is really having subsisting force and altogether, the present writ petition deserves to be dismissed.

In fine, this Writ Petition is dismissed with cost. The order dated 3.7.2015 passed in Original Application No.1183 of 2014 by the Central Administrative Tribunal, Madras Bench is hereby confirmed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Registrar
Central Administrative Tribunal
Chennai - 600 104

+1 cc to M/s.R.S.Anandan, Advocate,sr.43717

+1 cc to M/s.B.Rabu Manohar, Advocate,sr.43596.

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