

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: **31.01.2017**

Delivered on :: **9.02.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE V.PARTHIBAN**

W.P. No.3505 of 2014

- 1 D.VENGADAPATHY
- 2 S.UMARANI
- 3 T.KUMUTHAVALLI
- 4 J.MAHALAKSHMY
- 5 M.MEERABAI
- 6 S.SUGANTHI
- 7 A.GANESAKARTHIK
- 8 R.USHA
- 9 N.THIRULOGASUNDARY
- 10 N.PANNEER SELVAM
- 11 S.JAYANTHI
- 12 T.ANBUSELVI
- 13 R.INDIRA
- 14 M.JAYALAKSHMI
- 15 J.MOHAMED YUSUF
- 16 S.KOTHAI
- 17 R.ANANTHY
- 18 D.PADMAVATHI
- 19 K.MANIKANDAN

.... petitioners

versus

- 1 The Government of India,
rep. By its Under Secretary, Department of Health,
Ministry of Health & Family Welfare, New Delhi.
- 2 JAWAHARLAL INSTITUTE OF
POSTGRADUATE MEDICAL EDUCATION & RESEARCH
REP. BY ITS DIRECTOR PONDICHERRY
- 3 CENTRAL ADMINISTRATIVE TRIBUNAL
REP. BY THE REGISTRAR Chennai ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the order dated 31.1.2014 passed by the 3rd respondent in O.A. No.1660 of 2013 read with M.A. No.310/00004/2014 quash the same as illegal and consequently direct the respondents to regularize the petitioners as permanent data entry operators from the dates of their initial appointments with all other attendant benefits without outsourcing the work.

For petitioner : Ms.Vaigai, Senior counsel,
for Ms.Anna Mathew

For Respondents : Mr.B.Rabu Manohar, SCGPC, for R-1
Mr.M.T.Arunan, for R-2

ORDER

K.K.SASIDHARAN, J.

This Writ Petition is directed against the order dated 31 January 2014 in O.A.No.1660 of 2013 and M.A.No.310/00004/2014 rejecting the relief claimed by the petitioners to direct Jawaharlal Institute of Postgraduate Medical Education and Research, Puducherry, to absorb them in the post of Data Entry Operators from the dates of their initial appointment in the sanctioned posts, created vide letter dated 12 July 2013

issued by the Ministry of Health and Family Welfare, New Delhi.

The facts :-

Case of the petitioners:-

2. The petitioners were appointed by Jawaharlal Institute of Postgraduate Medical Education and Research, (hereinafter referred to as JIPMER) as Data Entry Operators on contract basis. The contract was renewed periodically with one day break in service. The JIPMER made a proposal for creation of 50 posts of Data Entry Operators. The Ministry of Health and Family Welfare though agreed to the said proposal, directed JIPMER to engage Data Entry Operators by outsourcing. The decision taken by JIPMER pursuant to the direction given by the Ministry of Health and Family Welfare, for outsourcing, made the petitioners to file the original application before the Central Administrative Tribunal for absorption.

Stand taken by JIPMER:-

3. The original application was opposed by JIPMER by filing reply statement. JIPMER contended that Ministry of Health and Family Welfare sanctioned 1281 posts in various cadres. However, there was no order sanctioning the post of Data Entry Operators. The Central Government directed JIPMER to outsource Data Entry Operator services. Since there

were no sanctioned posts, JIPMER pleaded their inability to absorb the services of the petitioners.

The order under challenge:-

4. The Central Administrative Tribunal found that the petitioners were all appointed on contract basis and as such, they are not entitled to be absorbed as Data Entry Operators. The original application was therefore dismissed. Feeling aggrieved, the petitioners are before this Court.

Submissions :-

5. The learned Senior counsel for the petitioners contended that even as per the documents produced by JIPMER, it is clear that services of Data Entry Operators is essential for the conduct of the regular activities of JIPMER. According to the learned Senior counsel, taking into account the need for the appointment of Data Entry Operators, JIPMER made a proposal. Even though the Ministry of Health and Family Welfare sanctioned the posts of Data Entry Operators in all other medical institutes across India, such indulgence was not shown to JIPMER. The Government directed JIPMER to take Data Entry Operators by outsourcing. According to the learned Senior counsel, Cadre Restructure Committee set up by JIPMER submitted a report on 1 December 2016. The Committee recommended creation of 200 posts of Data Entry Operators by direct

recruitment, besides 100 posts of Data Entry Operators Grade B. Since the request for appointment was made taking into account the need felt, the Government should be directed to sanction the posts and the petitioners should be absorbed against 19 posts out of the total posts of 200.

6. The learned Standing counsel for JIPMER justified the order passed by the Tribunal. According to the learned counsel, the petitioners were appointed on contract basis. The contract contains the essential terms of appointment, including the period. There are no sanctioned posts of Data Entry Operators. The petitioners are therefore not entitled for regularization.

Discussion:-

7. The petitioners were all appointed on contract basis. The petitioners 1 to 6 were appointed in 2009. The petitioners 7 to 16 were appointed in 2010. Similarly, petitioners 17 to 19 were appointed in 2011. Their initial appointments were all made by issuing notification in newspapers. The petitioners were subjected to a selection process by JIPMER before offering them appointment on contract basis.

8. The petitioners worked as Data Entry Operators pursuant to the

initial orders of appointment and the subsequent orders renewing contract.

9. The JIPMER made a proposal for sanction of various posts, including posts of Data Entry Operators. The Ministry of Health and Family Welfare sanctioned 1281 posts in various cadres. However, post of Data Entry Operator was not sanctioned. JIPMER was directed to outsource Data Entry Operators services. It was only at that point of time, the petitioners filed the original application before the Central Administrative Tribunal. The petitioners proceeded as if posts were sanctioned by the Central Government. However, the fact remains that no such posts were sanctioned.

10. The JIPMER has come up with a contention that the petitioners have no right for absorption, in view of the factual position that there are no post of Data Entry Operators as on today. However, the question is as to whether the Ministry of Health and Family Welfare was correct in delaying the request made by JIPMER for sanctioning the post of Data Entry Operators.

11. The documents available on record clearly shows that the Union Ministry of Health and Family Welfare Services sanctioned posts of Data

Entry Operators in all other medical institutes functioning across India.

12. The Ministry of Health and Family Welfare vide proceedings dated 6 August 2013, sanctioned 2936 posts in the All India Institute of Medical Sciences, Bhopal. Annexure to the said order contain the sanctioned post of Data Entry Operators in various branches of All India Institute of Medical Sciences. However, the fact remains that the request made by JIPMER for sanctioning the post of Data Entry Operators was negated by the Union Government by communication dated 12 July 2013.

Subsequent events :-

13. The Director, JIPMER, constituted a Cadre Restructure Committee vide proceedings dated 10 September 2016 and 7 October 2016 under the chairmanship of the Medical Superintendent. The Committee had sought suggestions and comments from all the stakeholders, associations and unions. The committee after receiving representations and suggestions, submitted its report to the Director in November 2016. The report contain the details of the existing posts and the need for creation of additional and new posts. The committee recommended for creation of 200 posts of Data Entry Operators to be filled up by direct recruitment. There was a further recommendation to create

100 new posts of Data Entry Operators Grade “B”, to be filled up by promotion. Similarly, the committee recommended sanction of 50 posts of Data Entry Operators “C”; 25 posts of Data Entry Operators Grade D and 12 posts of Data Entry Operators Grade E.

14. The Cadre Restructure Committee justified the creation of posts of Data Entry Operators by making the following observation :-

“Nowadays the old traditional method of typewriting is almost vanished. All the records are being computerized and the establishment of digital era is already started. As a result the need of these electronic based posts is not only the need of time but also for modernization of the Institute of National Importance like JIPMER. For patient care services these cadre will help a lot in recording the data of the patient, lab reports, recording various investigations, and also assisting in the various sections of the administrative wings like Service matters. Accounts, budget of the Institute, pay bills, bill passing purchase matters etc.... A lot of paper work will be reduced with the assistance of these categories and all the data will be digitalized. Hence the creations of the above posts are absolutely necessary for the welfare and smooth function of the Institute.”

15. The report submitted by the Cadre Restructure Committee was uploaded in the website of JIPMER on 1 December 2016. We are informed that the Director, JIPMER, is in the process of forwarding the report to the Ministry of Health and Family Welfare Services, with a request to sanction the required posts.

16. The office memorandum dated 30 May 2014 issued by the Ministry of Personnel and Pension contain the model recruitment rule for the post of Data Entry Operators and the pay scale.

17. The communication send by Ministry of Health, Government of India dated 3 August 2016 shows that the Central Government have sanctioned the post of Data Entry Operators, Data Entry Operators Grade B, Data Entry Operators Grade "C", "D" and "E", taking into account the request made by All India Institute of Medical Sciences, New Delhi.

18. The counter affidavit filed by JIPMER and the documents available on record clearly indicates that JIPMER is in dire need of Data Entry Operators for its day to day functioning. JIPMER, Puducherry, has opened its campus at Karaikkal in the Union Territory of Puducherry recently, and the total seats of MBBS course has also been increased. The

opening of the branch at Karaikal also gives a justification for the creation of the posts of Data Entry Operators. The communication dated 12 July 2013 sent by the Ministry of Health and Family Welfare called upon JIPMER to outsource Data Entry Operators services. The counter affidavit filed by JIPMER proceeds as if such outsourcing would reduce the operational costs. JIPMER is an All India Medical Institute located at Puducherry. The said institution is taking care of the medical needs of the people of Puducherry, Tamil Nadu and two other neighbouring States. The Government of India is in the process of starting such institutions at least one in every state. The Central Government cannot be heard to say that though there is a need for the service of Data Entry Operators, required post would not be sanctioned to JIPMER. The sanctioning of similar posts in All India Institute of Medical Science, New Delhi, assumes significance here. In case, such important services are outsourced, element of “service” would be missing. The petitioners have been working for a considerable period. They should also be in a position to compete with others. It is only in case necessary posts are sanctioned, Data Entry Operators like the petitioners would be in a position to make application for appointment.

19. The Hon'ble Supreme Court in ***Nihal Singh and others vs. State of Punjab and Others, 2013(14) SCC 65***, indicated the need for

creation of posts.

The Supreme Court said :-

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

20. Even though there is an urgent necessity to sanction the posts of Data Entry Operators in JIPMER, it is not possible for this Court to direct the institution to regularize the services of the petitioners. Even if sanctioned posts are available, still the petitioners should undergo the selection process along with others. There is no question of directing regularization in a case of this nature, solely on the ground that the petitioners have been working for a long time. In fact, the petitioners have been working knowing well that their appointments were all contractual, without any assurance of absorption.

21. The Government of India as a model employer must create posts in health sector. The Government must sanction necessary posts for the effective functioning of reputed institutions like JIPMER. The Government should give importance to the health sector taking into account the fact that institutions like JIPMER, cater to the needs of poor people.

22. The need for creation of posts of Data Entry Operators was indicated by JIPMER in 2013 and 2016. Though posts were sanctioned in all other institutions, Ministry of Health and Family Welfare failed to sanction such posts in JIPMER. The report submitted by the Cadre Restructure Committee indicated the dire need to sanction the posts of Data Entry Operators, in larger public interest. We are therefore of the view that the issue requires immediate consideration of the Central Government.

Direction:-

23. The Director, JIPMER, Puducherry, is directed to forward the report of the Cadre Restructure Committee, along with recommendation, to the Ministry of Health and Family Welfare, New Delhi, forthwith, if the same has not been sent so far. The first respondent is directed to consider the report and take a decision with regard to sanctioning the posts of Data

Entry Operators in JIPMER in the light of the decision of the Supreme Court in ***Nihal Singh***. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this order. In case the posts are sanctioned, the petitioners should also be permitted to take part in the selection process. Since the petitioners are now working, status quo with regard to their services as on date shall continue till the disposal of the proposal for sanctioning posts by the Ministry of Health and Family Welfare, New Delhi.

24. The Writ Petition is disposed of with the above direction. No costs. Consequently, M.P.Nos.2 and 3 of 2014 are closed.

(K.K.SASIDHARAN, J.) (V.PARTHIBAN, J.)

9.01.2017

Index: Yes/no
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To

- 1 The Under Secretary,
Dept. of Health Ministry of Health & Family Welfare.
New Delhi.
- 2 The Director,
Jawaharlal Institute of Postgraduate Medical Education & Research
Pudhucherry.

- 3 The Registrar,
Central Administrative Tribunal, Chennai

K.K.SASIDHARAN, J.

and

V.PARTHIBAN, J.

(tar)

P.D. Order

W.P. No.3505 OF 2014

9.2.2017