

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2017

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE V. PARTHIBAN

Writ Petition No.7597 of 2015

S.Padmanaban

... Petitioner

Versus

1. Union of India
Represented by
The Secretary to Government
Ministry of Health & Family Welfare
New Delhi-1.
2. Indian Council of Medical Research
Represented by its
Director General
Ansari Nagar, New Delhi-110 029.
3. The Officer Incharge
Indian Council for Medical Research
Human Reproduction Research Centre
Department of Obstetrics & Gynecology
Govt. Kilpauk Medical Hospital
Chennai - 600 010.
4. Union of India
Rep. by its
Secretary to Government
Ministry of Finance,
North Block, New Delhi - 110 001.
5. The Registrar
Central Administrative Tribunal
Chennai Bench, Chennai-104.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 5th Respondent in its order dated 26.08.2014 made in O.A.No.1457 of 2012 and quash the same and consequently allow the Original Application filed by the Petitioner as prayed for.

For Petitioner : M/s.Menon, Karthik, Munkundan
For Respondents 1 & 4 : Mr.T.L.Thirumalaisamy
SCGSC
For Respondents 2 & 3 : Mr.M.T.Arunan
R 5 : Tribunal

ORDER

(Order of the Court was delivered by V.PARTHIBAN,J.)

The Writ Petition is filed against the order passed by the Central Administrative Tribunal, Madras Bench in O.A.No.1457 of 2012 dated 26.08.2014 filed by the petitioner herein, disposing of the Original Application, as contained in paragraph-24 of the impugned judgment, which is extracted below:-

"24. The Applicant is said to have been working continuously for 25 years in HRRC Project. There may be several others like the Applicant, who did not get the benefit when 20 supernumerary posts were created to accommodate only the applicants/respondents in O.A.No.1332 of 2000 etc., / W.P.Nos. 25490 to 25493 and 25574 to 25577 of 2002 in the Hon'ble Madras High Court. However, absorption of the Applicant and others similarly situated in regular posts may take considerable time with only 30% of the direct recruitment vacancies in future being earmarked for the HRRC staff. The Respondents should accordingly consider earmarking 2/3rd, if not 100% of the direct recruit vacancies for the HRRC staff, till all those who have put in more than 10 years of service in that capacity get adjusted in regular posts, and take further action accordingly."

2. The petitioner approached the learned Tribunal seeking the following reliefs:-

"To set aside Order No.5/10/18/83-RHM dated 25.10.2012, issued by the 2nd respondent and consequently to direct the respondents to regularise the service of the applicant from the date of his initial appointment with all consequential benefits as was one in the case of applicants in O.A.No.1332 of 2000 and in

accordance with the orders dated 25.08.2006 of the Hon'ble High Court of Madras in W.P.No.25490 of 2002 and batch. "

3. The facts and issues, which gave raise to the filing of the Original Application and the present Writ Petition, are stated hereunder:-

(i) The petitioner was appointed as a Research Officer (Demographic Non-Medical) in Indian Council of Medical Research (herein after referred to as ICMR) on 09.07.1987 and ever since his appointment, he had been continuously working till date. The petitioner has also completed his probation satisfactorily and rendered service without any blemish. Although the petitioner has been appointed and continuously working, his service was not regularised. Some of the similarly placed persons, whose services were also not regularised, have approached the Central Administrative Tribunal in O.A.No.1332 of 2000 praying for regularisation of their services. The Tribunal vide order dated 04.12.2001 disposed of the Original Application directing the Competent Authority to consider the case of the applicants therein for regularisation on the basis of the observation made in the order. The Tribunal has passed a detailed order while observing in favour of the relief being granted to those applicants, who are similarly placed like the petitioner herein.

(ii) The petitioner herein has also approached the Tribunal in O.A.No.349 of 2002 with the similar prayer and the said application was disposed of by order dated 09.04.2002 directing the petitioner herein to submit his representation and the Competent Authority was directed to pass final orders in terms of the order passed in O.A.No.1332 of 2000 and the case of the petitioner herein may also be considered along with them. That order has become final and no Appeal was filed. As far as O.A.No.1332 of 2000, the official respondents filed W.P.No.25490 of 2002 assailing the final direction passed by the Tribunal directing consideration of request for regularisation of those applicants in the said Original Application. This Court vide order dated 25.08.2006 dismissed the Writ Petition. While dismissing the Writ Petition, this Court has passed a very detailed order holding that the employees were entitled to be regularised / absorbed and as such, no interference was called for. As against the order passed by this Court, a Special Leave Petition was filed before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India dismissed the SLP (Civil) No.14953 - 14960 of 2007 vide order dated 26.10.2009. The petitioner herein, who was also similarly placed like the applicants in O.A.No.1332 of 2000, approached the Hon'ble Supreme Court of India, for his impleadment, as he was also covered by the issues, which were the subject matter before the

Hon'ble Supreme Court of India. That Interlocutory Application for impleadment was allowed by order dated 31.08.2009.

(iii) After dismissal of the Special Leave Petitions by the Hon'ble Supreme Court, finally, by proceedings dated 31.01.2011, 20 Supernumerary Posts were created and all the applicants in O.A.No.1332 of 2000 were accommodated, but were regularised from the date of their initial appointment. However, the case of the applicant was not considered along with those applicants in the matter of regularisation. Therefore, the applicant filed Contempt Application No.20 of 2008 before the learned Tribunal. However, the same was withdrawn subsequently, as according to the applicant, oral assurance were given by the ICMR i.e., the case of the applicant to be considered in favour of him. However, when the representation was made by the petitioner herein on 28.08.2012, the same came to be rejected on 25.10.2012 stating that he had not impleaded himself before the Hon'ble High Court when the order was passed in respect of O.A.No.1332 of 2000 in W.P.Nos.25490 of 2002 batch and his case will be considered as per the scheme formulated. The said rejection order was impugned in the Original Application.

(iv) While the matter stood thus, few other similarly placed persons have also got the benefit of regularisation and that benefit of regularisation was protected and confirmed by the order passed by this Court dated 19.03.2012 in W.P.No.22669 of 2011. This Court has also passed similar order on the lines of the orders passed in W.P.No.25490 of 2002. In these circumstances, the petitioner herein filed Original Application before the Tribunal seeking the relief as extracted supra. The prayer of the petitioner was sought to be resisted by the official respondents stating that the petitioner herein was appointed in a Project on an adhoc basis and the appointment was only on contractual capacity and the terms and conditions of employment of said job are different from the terms and conditions as offered to the other petitioners and it was clearly stipulated in the order of appointment that the individual will continue only till the duration of the Project.

(v) After taking note of the submissions of the parties, the learned Tribunal disposed of the Original Application on 26.08.2014 with the direction as contained in paragraph-24, which is extracted supra. As against the said direction, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner strenuously contended that the direction passed by the Tribunal is incorrect in lieu of the earlier developments, which took place after passing of the order in O.A.No.1332 of 2000 and the

order passed in O.A.No.349 of 2002 filed by the same petitioner herein. As stated earlier, the direction passed in O.A.No.349 of 2002 dated 09.04.2002 by the Tribunal had become final and the direction being that the claim of the petitioner ought to have been considered along with the applicants in O.A.No.1332 of 2000. Once the applicants in O.A.No.1332 of 2000 had been considered and regularised from the date of their initial appointment, the petitioner herein is automatically entitled to the same protection and the relief and in such extent, the Tribunal's direction to consider the case of the petitioner in future would not be in order. The learned counsel also drew our attention to various orders passed by the official respondents implementing several directions passed by the Tribunal of different benches by way of additional typed set of documents. It appears from these documents that several orders came to be issued implementing the direction of the Tribunal on various dates from 2013 to 2015 and all the appointments, according to the learned counsel appearing for the petitioner, had been given effect to from the date of their original appointment. That being the case, denial of such benefit to the petitioner alone will be per se discriminating, unreasonable and violative of principles of Constitution of India.

5. On the contrary, the learned counsel appearing for the official respondents is not in a position to show how the case of the petitioner alone is different from others and why the petitioner alone singled out from the benefit of grant of regularisation when the same is given to all other similarly placed persons. The rejection order, which is impugned in the Original Application, that the petitioner did not implead himself in W.P.No.25490 of 2002 and therefore, not entitled to the relief, was totally misconceived and unsustainable in law. There was no necessity for the petitioner herein to get himself impleaded in the Writ Petition in view of the direction obtained by him on 09.04.2002 in O.A.No.349 of 2002, which direction had become final, admittedly.

6. Since the claim of the petitioner herein is covered in his favour in all fours, We do not think that the direction passed by the Tribunal as contained in paragraph-24, which is extracted supra, can be sustained as that would mean that the petitioner would be treated differently from others, although he is also identical and similarly placed like other employees, who have been bestowed with the benefit of regularisation from the date of their initial appointment. Such a course would do violence to Article 14 of the Constitution of India, which is constitutionally impermissible. Although the direction passed by the learned Tribunal does not take away the right of the petitioner to have his services regularised yet, the same does not place him on par with the other similarly placed persons,

whose services have already been regularised. In such view of the matter, We do not consider the direction passed by the learned Tribunal as one which could be confirmed.

7. In the above said circumstances, considering all the aspects and the materials on record, We deem it fit to allow the Writ Petition by directing the Competent Authority, the official respondent to regularise the service of the petitioner with effect from the date of his original appointment with all consequential attendant benefits, as given to other similarly placed employees in O.A.No.1332 of 2000 etc.,. This exercise shall be completed within a period of three months from the date of receipt of copy of this order.

8. In the result, the Writ Petition is allowed and the order passed by the Tribunal is modified to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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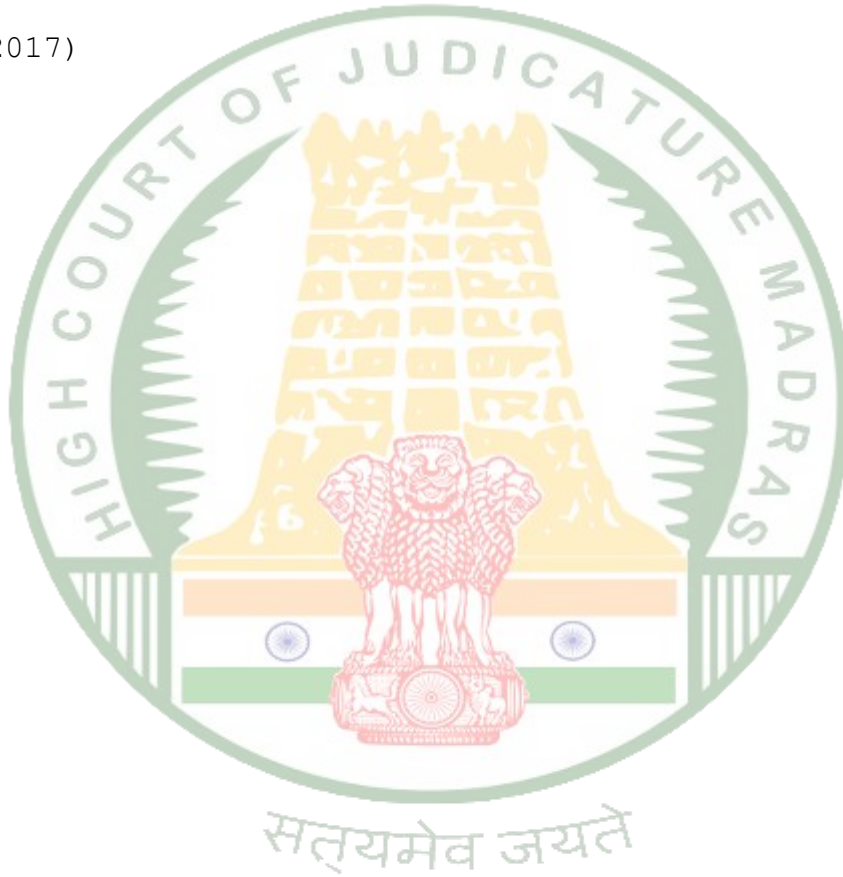
1. The Secretary to Government
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5. The Registrar
Central Administrative Tribunal
Chennai Bench, Chennai-104.

+1cc to Mr.M.T.Arunan, Advocate, S.R.No.9490
+1cc to M/s.Menon, Karthik, Munkundan, Advocate, S.R.No.7569
+1cc to Mr.T.L.Thirumalaisamy, Advocate/CGSC, S.R.No.9304

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SV(CO)
CA(20/02/2017)



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