

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2018

CORAM

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.713 of 2017

N.S.Gowri Ganesh

.. Petitioner

Vs.

1. The Union of India
rep. by its Secretary to Government
Department of Information Technology
Ministry of Communication and
Information Technology
Electronics Niketan
3, Lodhi Road
New Delhi - 110 003.
2. The Director General
Centre for Development of Advance Computing
Pune University Campus
Ganesh Khind Campus
Ganesh Khind, Pune - 411 007.
3. The Director
Centre for Development of Advance Computing
'Tidel Park', 8th Floor
D Block (North & South)
4, Rajiv Gandhi Salai, Taramani
Chennai - 600 113.
4. The Registrar
Central Administrative Tribunal
Chennai - 600 104.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the records relating to order dated 12.3.2015 in O.A.No.1884 of 2014 and common order dated 24.8.2016 in M.A.No.127 of 2016

and R.A.No.15 of 2015 and quash the same and allow the original application.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.Giridhar and Sai

For Respondents : Mr.K.Makesh, ACGSC
for 1st respondent

M/s.Menon, Karthik Mukundan
and Neelakantan
for respondents 2 and 3

ORDER

(Made by the Hon'ble Chief Justice)

This writ petition is preferred by the petitioner against the order dated 12.3.2015 of the Central Administrative Tribunal, Madras Bench, Chennai in Original Application No.310/01884/2014, by which the Original Application came to be dismissed, and the order dated 24.8.2017 passed by the Tribunal dismissing Review Application No.15 of 2015 and M.A.No.127 of 2016 filed by the petitioner.

2. In the Original Application, the petitioner had sought a direction to respondents 1 to 3 to absorb/ regularize him with all consequential benefits in the post of Member Technical Staff/Senior Engineer. The petitioner sought this on the basis of the Phase-II Mapping Review on 7.1.2000 held as per Bye-Law, wherein the petitioner's merit was assessed and he obtained 8.2 Average Rating, and according to him, the average of last three years ratings in ACR was specified to be at least 7.5 as per Mapping of Members against sanctioned post and cut-off being fixed at 7.5 points. Thus, according to the petitioner, his case should have been considered favourably when he was assessed and assigned 8.2 points. It was the further case of the petitioner that unless his entry is through back door, which was not so in his case, the consequential right of absorption/regularization was nothing but automatic.

3. According to the petitioner, there were five vacancies in the respondent department and the same were to be filled up on the basis of the marks obtained in the assessment of ACRs by the Review Committee constituted for the purpose. According to the petitioner, it was on this basis that all other Centres such

as Hyderabad, Delhi, etc., had recommended regular positions for its employees who obtained Grades over 7.5. According to the petitioner, though he had obtained Grade of 8.2, his claim for regularization was not considered.

4. A few brief facts relating to this case are as under:

The petitioner was offered appointment vide letter dated 28.11.2005 as Member Technical Staff in Grade E-II on contract basis for a period of three years, including a probation period of one year, in the Centre for Development of Advanced Computing (C-DAC), a Scientific Society of the Department of Information Technology, Ministry of Communication and Information Technology, Government of India. He joined C-DAC, Chennai, on 20.1.2006.

5. According to the petitioner, his period of probation was treated as satisfactorily completed on 19.1.2007 and he was allowed to continue on contract for the remaining period of contract vide letter dated 22.3.2007. The period of contract was due to expire on 19.1.2009. The term of appointment of the petitioner on contract was extended vide letter dated 23.2.2009 on the existing terms and conditions for a period not exceeding six months from 20.1.2009, that is up to 19.7.2009 or until further orders, whichever is earlier. Thereafter, the petitioner was offered a new contract appointment in the same grade for a period up to 31.12.2010. Thus, the validity period of the said contract was to expire on 31.12.2010.

6. Initially, at the Centre, there was no sanctioned post. Appointments were made based on project requirements, on contract basis co-terminus with the project duration. A few sanctioned posts were made available in C-DAC, Chennai, after a notification to that effect was issued in October, 2008 with limited posts being sanctioned for each C-DAC Centre. The process of mapping manpower to the sanctioned posts started from July, 2009 as per the guidelines dated 30.10.2008. In Phase-I, Members who joined prior to 31.12.1998 were considered as deemed to be permanent. In Phase-II, Members who joined during the period from 1.1.1999 to 30.9.2006 were considered for Mapping in four sections, that is Regular (R), Continuing Contract (CC), Contract (C) and Project Engineers (PE). The Mapping was not automatic, but based on assessment by a duly constituted Committee.

7. The assessment for Phase-II Mapping by the Review Committee was conducted on 7.1.2010, wherein the Committee comprising Eight Members, including an External Member, did not find the petitioner fit for Mapping under Phase-II/regular appointment and did not recommend his case. This Committee of Eight Members, consisted of Five Members who were Heads of

various Centres of C-DAC; One Member who was an External Member, and Two Members who were HR Executives from the Corporate Office of C-DAC.

8. As the contract of the petitioner was expiring on 31.12.2010, the petitioner was asked to appear before the Review Committee. This was in view of the C-DAC Bye-Laws, which stipulate that the contract shall be renewed for further periods based on satisfactory performance review. The terms and conditions, inter alia, included the following:

"11.1. Your appointment will be governed by the Rules and Regulations, Bye-laws, Service Rules of the Centre and such other Administrative Orders and Service and Policy Guidelines of the Centre as may be in force and made applicable to you from time to time.

11.2. The offer of appointment does not imply renewal of the contract automatically, which shall be dependant on your performance during the tenure of your contract and the requirement of the job."

9. The Review Committee met on 7.1.2011 but did not find any satisfactory improvement in the technical performance of the petitioner and, accordingly, a communication was addressed to the petitioner by the third respondent on 7.2.2011 indicating the view of the Review Committee and giving three more months time from the date of expiry of the earlier contract, that is up to 31.3.2011, to improve his performance, failing which the contract would come to an end.

10. Thereafter, the Review Committee conducted a review of the petitioner's performance on 28.6.2011, which assessed the performance of the petitioner and placed its recommendation in a sealed cover. This was because in the meanwhile the petitioner had moved this Court by filing W.P.No.15043 of 2011 and obtained an order of interim injunction. However, the petitioner sought withdrawal of the writ petition with liberty to challenge the communication dated 29.9.2009 before the Tribunal.

11. The second respondent thereafter opened the sealed cover of the petitioner with regard to the recommendations made by the Review Committee on 28.6.2011 for the purpose of extension of the contractual appointment of the petitioner. It was found that the Review Committee had not found the petitioner fit for continuation on contract basis. In the meanwhile, the petitioner approached the Tribunal by preferring the present Original Application. The Tribunal passed an interim order on 11.12.2014 directing respondents 1 to 3 to maintain status-quo with regard to the service of the petitioner as on that date until further orders.

12. According to respondents 1 to 3, the terms of appointment of the petitioner vide letter dated 28.11.2005 clearly stipulated that his appointment was only on contractual basis, which was subject to review. When the petitioner joined C-DAC, Chennai, there was no sanctioned post and all the appointments were made on contract basis. Insofar as petitioner is concerned, his appointment was based on "project specific requirements" with specific deliverables and time-line on contract basis.

13. According to the respondents 1 to 3, the contention of the petitioner that his selection satisfied all the statutory requirements for a regular appointment is not tenable. It was clear that subsequent extensions/continuation of contract were based on the terms and conditions of the original contract and, hence, the contention of the petitioner that his continuance was with reference to a sanctioned post is not correct.

14. According to respondents 1 to 3, the initial contract explicitly prescribed the period of contract with the proviso of declaring the probation of such appointee with such period of contract. The contention that on completion of probation, regularization would automatically follow was totally incorrect. Likewise, the contention that because the petitioner got grading of 8.2, he is entitled to regularization is also not tenable.

15. According to respondents 1 to 3, the petitioner had acknowledged the terms and conditions of appointment which explicitly stated that he was appointed strictly on contractual basis. The terms and conditions of the contract, which were accepted and acknowledged by the petitioner at the time of initial appointment and in subsequent extensions/renewals, make it crystal clear that there was no assurance or promise made by the respondents for regularization. The only limited right which accrued to the petitioner was his right to be "considered" for regular appointment in accordance with Bye-Law 18.5.1.3(d) read with letter dated 29.9.2009. The Mapping process comprised three phases, that is, Phase-I, Phase-II and Phase-III. The reviews were held on 28.1.2009, 13.8.2009, 7.1.2011 and 24.6.2011. There was no implied automatic renewal of contract and it was dependent on performance during the tenure of contract. In the last review conducted on 24.6.2011, wherein the petitioner's case was not recommended, the Review Committee specifically stated "non-renewal of concluded contract".

16. The facts relating to this case show that the petitioner's merits have not been assessed as 8.2 by the Review Committee as averred by the petitioner. The grading of 8.2 of the petitioner is average ACR Grading for the previous three

years. The contention of the learned Senior Counsel for the petitioner that because the petitioner secured grading of 8.2, he would have to be regularized automatically is not correct. Once the eligibility condition of average grading of 7.5 for previous three years is satisfied, as per the Mapping Scheme dated 29.9.2008, the person concerned will be considered by the Review Committee by an interview for adjudging his merit and ability. This is also clear from the internal note of the Director General dated 29.9.2009, which was, in fact, relied upon by the learned Senior Counsel for the petitioner.

17. The learned Senior Counsel appearing for the petitioner submitted that in view of Clauses (1) and (2), if the petitioner got more grading than 7.5, he had to be regularized. However, on a reading of Clauses (1) and (2), we do not find this contention to be correct. Clauses (1) and (2) read as under:

- "1. A screening committee will check that the recruitment was according to the rules and the average of the last three years ratings in ACRs to be at least 7.5.
2. If the above conditions are satisfied they will be screened in as Regular or Continuing Contract employees depending on the vacancies. The screening Committee will consist of:
 - a) Centre Head.
 - b) Senior member in PB4 from different C-DAC Centre
 - c) An external member."

18. Clause (1) makes it clear that the average grading of the ACRs for the last three years should be at least 7.5. Once that criteria is satisfied, then Clause (2) would apply, which states that if Clause (1) is satisfied, a person will be screened in as Regular or Continuing Contract employee depending on vacancies. Thus, it is seen that once the criteria of grade of 7.5 is met, the person would have to again appear before a Screening Committee, which would assess his merit. Besides the average ACR grading of 7.5, all other relevant aspects will have to be considered in the interview, including the Work Reports, Presentation to the Review Committee, etc.

19. From page (148) of the Additional Typed Set-I, it is seen that five persons were uniformly assessed and the petitioner was not recommended for Mapping. It is pertinent to note that there is no allegation of mala fides or bias against any of the Members of the Review Committee which reviewed the merits and ability of the petitioner. As stated earlier, the Review Committee consisted of Eight Members. Thus, it is seen that the assessment was done by an Expert Body having Eight Members, who came to the conclusion that the contract of the

petitioner should not be renewed.

20. It was contended by the learned counsel for the petitioner that the petitioner had obtained a Grading of 8.2, hence, the petitioner should have been regularized/absorbed. He pointed out that in Hyderabad Centre there were two candidates, that is Mrs.Simi Paruchuri and Mrs.G.Chandrakala, who got average grading of ACR of 6.9 (lesser grade than the petitioner) and 8.2 (same grade as the petitioner) respectively, and they have been recommended by the Review Committee. He further pointed out that at the Delhi Centre, one Ms.Sonu Gupta, who got grading of 7.91 in the ACRs, has been recommended, and therefore, the petitioner who got grading of 8.2 ought to have been recommended.

21. However, it is an admitted fact that in Chennai no other candidate who was recommended got a Grading less than 8.2. It is seen that the Mapping process took place in each of the C-DAC Centres separately. The case of respondents 1 to 3 before the Tribunal was that no person in C-DAC, Chennai, who was recommended for Mapping, obtained lesser average ACR grading than the petitioner, and comparison with other C-DAC Centres at Hyderabad and Delhi would not be relevant as the Mapping process was undertaken in each centre separately for filling up sanctioned post in respective centres from eligible personnel working in the respective centres. The assessment for Mapping was purely on the basis of the comparative merit of the petitioner vis-a-vis other candidates in C-DAC, Chennai Centre, and the same could not be compared with the candidates in the other centres like Hyderabad and Delhi. We find this contention to be correct.

22. We may again reiterate that the appointment of the petitioner was on contract basis and so also were his subsequent renewals/extensions. It was specified in the offer of appointment that renewal of contract was not automatic, but dependent on the petitioner's performance during the tenure of contract and the requirement of the job. The petitioner's performance was not found up to the mark, hence, his case was not recommended by the Committee.

23. In Director, Institute of Management Development, UP., v. Smt.Pushpa Srivastava, AIR 1992 SC 2070 : (1992) 4 SCC 33, the Supreme Court held that where the appointment is contractual and by efflux of time the appointment comes to an end, the person would have no right to continue in the post. It was further held that when the appointment was purely on adhoc and on a contractual basis for a limited period, the right to remain in the post comes to an end upon expiry of the contractual period. While coming to the aforesaid conclusion, the Supreme

Court also considered the ratio of the decision in the case of Jacob M.Puthuparambil and others, etc. v. Kerala Water Authority and others, etc., (1991) 1 SCC 28 : 1990 (6) SLR 54 (SC). It was categorically held in the said case that where appointment is contractual and comes to an end by efflux of time, the appointment itself comes to an end and the person so appointed would have no right to continue in the said post. In the said case, the plea that the services of the employees were continued from time to time on adhoc basis for more than a year and, therefore, the persons concerned should be entitled to regularization was negated by the Supreme Court.

24. In Arundhati Ajit Pargaonkar (Dr) v. State of Maharashtra, 1994 Supp (3) SCC 380, it was held by the Supreme Court that a person who is appointed on purely temporary basis against a permanent post and even continuing in the said post for nine years without any break, cannot be ordered to be regularized in service even on the ground of eligibility and continuous working in the said post for nine years, as such an order would amount to over-reaching the law and the requirement of rules of selection through Commission cannot be substituted by humane considerations.

25. The Supreme Court in S.M. Nilajkar v. Telecom District Manager, (2003) 4 SCC 27, held as under:

"11. the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase projects or schemes were to become a liability on the employer State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting in onerous obligations entailed upon it by extended application of the labour laws. Sub-clause (bb) in the definition of retrenchment was introduced to take care of such like situations by the Industrial Disputes (Amendment) Act, 1984."

26. As stated earlier, it was specified in the offer of

appointment of the petitioner that renewal of contract was not automatic, but dependent on the petitioner's performance during the tenure of the contract and the requirement of the job. After the petitioner secured grading of 8.2, which was an average of ACRs of three years, the petitioner was put up before the Screening Committee, which after interviewing him did not find him worthy of recommendation.

27. In view of the facts and circumstances of the case and the law enunciated in the decisions, supra, in our view, the Tribunal was right in holding that it was not possible to issue a direction to the respondents to regularize the petitioner's contract appointment.

For the foregoing reasons, the writ petition is dismissed. No costs. Consequently, W.M.P.No.760 of 2017 is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government
Union of India
Department of Information Technology
Ministry of Communication and
Information Technology
Electronics Niketan
3, Lodhi Road
New Delhi - 110 003.
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Chennai - 600 113.

4. The Registrar
Central Administrative Tribunal
Chennai - 600 104.

+1cc to Mr.S.Makesh, Advocate, S.R.No.60525

+1cc to Mr.Menon, Advocate, S.R.No.61419

+1cc to Mr.Giridhar & Sai, Advocate, S.R.No.60732

W.P.No.713 of 2017

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