

\$~13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1920/2016**

DR. KULBHUSHAN SEHGAL

..... Petitioner

Through: Mr. Pradeep Gupta, Mr. Parinav Gupta, Ms. Mansi Gupta and Ms. Mamta, Advocates.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Ruchir Mishra, Mr. M.K. Tiwari, Mr. Sanjiv Kr. Saxena, Mr. Ramneek Mishra and Mr. Abhishek Rana, Advocates for R-1.
Mr. Tushar Gupta, Advocate for R-3.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **22.01.2020**

Dr. S. Muralidhar, J.:

1. The Petitioner has approached this Court by way of the present petition challenging an order dated 6th February, 2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT'), dismissing his OA No. 659/2014. By the said OA he had sought regularisation in the post of a Scientist in the Indian Council for Medical Research ('ICMR')/ Respondent No. 2 herein, commensurate with his educational qualifications and experience.

2. The background facts are that the Petitioner joined the ICMR as a Statistical Assistant on 1st June, 1998 on *ad hoc* basis. By a letter dated 30th June, 2003 he was appointed as Research Associate by the ICMR for a project titled “Intervention Program on Nutritional Anemia and other Haemoglobinopathies amongst Primitive Tribal population of India”.

3. Three years later on 10th April, 2006, ICMR appointed the Petitioner as Senior Research Fellow. With effect from 11th January, 2010, he was appointed by ICMR as Research Scientist-1 (NM)/Scientist-B.

4. Consequent to the recommendations of the 6th Central Pay Commission (‘CPC), which were implemented in the ICMR with effect from 1st September, 2009, the Petitioner was paid a consolidated salary of Rs.33,000/- with HRA with effect from 1st April, 2012. The case of the Petitioner is that in one capacity or the other, he has continuously worked with the ICMR for more than 15 years between 1998 and 2013.

5. At this stage, it must be mentioned that the Petitioner filed an application in the RTI Cell of the All India Institute of Medical Sciences (‘AIIMS’)/ Respondent No.3 herein. For obtaining the guidelines laid down by AIIMS for regularisation and absorption of project employees. In the reply given to the Petitioner, the names of 18 Scientists-1 and the other staff, initially appointed on projects and later regularised on completion of 15 years of service, were disclosed.

6. On 14th May, 2008, ICMR replied to the Petitioner in response to his letter

dated 10th April, 2008 seeking regularisation according to his qualification that “at present, no post conforming to your qualification existed in the division of BMS (Basic Medical Science)”. It was stated that his candidature would be considered “if any vacancy in the area of statistics suitable to your qualification is allowed to the area of BMS and he applied for the post”. A similar reply was given seven months later on 22nd December, 2008.

7. Reference has also been made to a reply dated 13th February, 2013 to an RTI application filed on 28th January, 2013, by one V Kumar. It was disclosed by the ICMR that “in the headquarters of ICMR, there are 12 posts lying vacant as on date”. In response to the query concerning the “total number of Scientists subject wise”, it is stated therein that “no such information has been maintained”.

8. An Office Memorandum (‘OM’) was issued by ICMR on 29th November, 2013 stating that with effect from 31st December, 2013, the Petitioner’s services would not be required as the project on which he had been working had been completed.

9. Aggrieved by the above OM dated 29th November, 2013, the Petitioner filed OA No. 659/2014 in the CAT. Before the CAT, the Petitioner *inter alia* relied upon the decision of the Supreme Court in ***Dr. V.L. Chandra v. All India Institute of Medical Sciences (1990) 3 SCC 38***, and in particular, para 7 thereof.

10. In response to the notice issued to the ICMR by the CAT, a counter

affidavit was filed by the ICMR, in which it is stated that the order of the Supreme Court in ***Dr. V.L. Chandra (supra)*** would not be applicable since the Petitioner “was a contractual worker in a project which itself is of temporary nature having its limited objective which has to be completed in a time frame.”

11. In response to paras 4.12 to 4.16 of the OA, paras 38 to 43 of the decision of the Supreme Court in ***Secretary, State of Karnataka v. Uma Devi (2006) 4 SCC 1*** were cited by the Respondents. It was not disputed, however, that the Petitioner has worked in the ICMR, first as a Statistical Assistant and then as a Research Scientist continuously from 1st June, 1998 onwards, till the termination of his services, i.e. on 31st December, 2013. In other words, it was not denied that the Petitioner had put in more than 15 continuous years of service. The refrain in the counter affidavit of the ICMR was only that since the Petitioner was appointed on a contractual basis for specific projects, so he was not entitled to regularisation.

12. In the impugned order dated 6th February, 2015, the CAT found the judgment of the Supreme Court in ***Uma Devi (supra)*** to be more relevant to the Petitioner’s case, than the various decisions that learned counsel for the Petitioner had placed reliance on. The CAT was of the view that the letters dated 14th May, 2008 and 22nd December, 2008 would not “generate any right for the reason that the ICMR had made it clear in both letters that the candidature of the applicant would be considered, if any vacancy arises in future and the applicant applies for the post”. All recruitment had to proceed in terms of the Recruitment Rules (‘RRs’) and “no promise had been made”

to the Petitioner that he would be regularized. Accordingly, the Petitioner's OA came to be dismissed.

13. Pursuant to notice issued in the present petition on 11th March 2016, a counter affidavit has been filed on behalf of Respondent No. 3/AIIMS in this Court. However, no counter affidavit has been filed till date on behalf of Respondent No. 2, despite several opportunities, and none has appeared on its behalf today. Accordingly, the Court has proceeded on the basis of the stand taken by it in its counter affidavit in the OA before the CAT.

14. This Court has heard the submissions of Mr. Pradeep Gupta, learned counsel for the Petitioner, Mr. Vibhor Garg for AIIMS and Ms. Ruchi Mishra for learned counsel appearing for Respondent No.1 i.e. the Union of India in the Ministry of Health and Family Welfare.

15. Among the earliest judgments that considered the question of regularizing the service of persons appointed in autonomous institutions like AIIMS and ICMR, is that of the Supreme Court in ***Dr. V.L. Chandra (supra)***. There, the Petitioners stated that AIIMS undertook research projects in conjunction with the World Health Organisation (WHO), the ICMR and other celebrated organisations and that the Petitioners were qualified persons who had been employed to assist in such projects. The Petitioners contended that they worked in AIIMS continuously for more than 12-15 years and that having worked for so long, they had reached a ripe age, where they are no more entitled to enter any Government service or any other suitable public employment.

16. There too, the response of both the Union of India and the AIIMS was to say that the employment was project wise and that “once the project is complete, the job comes to an end”. It was contended that the mere fact that there has been continuous engagement did not change nature of the employment and that “the fortuitous circumstance of continuity does not confer any right to the Petitioners to be continued in employment even if the institute does not have any research project in hand”.

17. The Supreme Court in *Dr. V.L. Chandra (supra)* observed that AIIMS was an autonomous body and was entrusted from time to time with the research projects either by the WHO or by the ICMR and other Government and semi-Government bodies. It also opined as under:

“7...It is appropriate that a scheme should be evolved by the Institute in coordination with the Health Ministry and the Indian Council of Medical Research so that a team of researchers is built up to meet the general requirements of research. It is quite possible that certain projects would require specialised hands and on such occasions a special team could be set up on casual basis by drawing the competent hands from different institutions for a period but to keep up the tempo of research if a team of researchers is built up, it would be convenient for the Institute for purposes of discipline and control as also for efficiency. The Health Ministry must also sponsor continuous research projects in the field of medicine and health and for such purpose several projects should be listed out from time to time and entrusted to the respondent-Institute as also a similar Institute at Chandigarh and to institutes as and when set up elsewhere. This would assist in updating relevant medical information and knowledge, apart from building up a scientific tone and temper for general circulation. We commend that the Institute initiates seriously

action in this regard without delay and we suggest that the Ministry of Health and the Indian Council of Medical Research collaborate with the Institute to work out the same.”

18. In view of the above, it was directed as under:

“8...Respondent 3 – Indian Council of Medical Research has not chosen to appear separately before us in spite of service of notice. Since we have been told that the respondent-Institute has immediately no scope to employ the petitioners excepting the one that we have named above, we direct that the remaining three petitioners in these two petitions should be provided employment either as researchers or in any suitable alternative employment until their inclusion in a team of researchers is considered. The Indian Council of Medical Research shall take appropriate steps to offer adequate employment to the three petitioners within two months hence. If the question of funding becomes necessary, we direct the Ministry of Health to cooperate and place adequate funds at the disposal of the Indian Council of Medical Research.”

19. What emerges from a reading of the above order of the Supreme Court is that for the purposes of regularizing the services of those engaged in projects, the Supreme Court made no distinction between the AIIMS, on the one hand, and ICMR, on the other.

20. As far as this Court is concerned, it visited the question of regularisation of those engaged on projects with the AIIMS in its judgment in *All India Institute of Medical Sciences v. Om Prakash* 2002 (65) DRJ 80 (DB). Writ petitions, initially filed in this Court, were disposed of by the learned Single Judge, directing as under:

“1. Those who have worked on projects for more than 15 years or more should be absorbed immediately.

2. Those who have worked for a fairly long period say for 10 to 12 years should be allowed to complete 15 years and they may be absorbed thereafter in the same manner as above.

3. Those who have served for less than 10 years, but are still continuing on the job should be allowed to continue and should not be replaced by freshers and if the question of funding becomes necessary, the Hon'ble Supreme Court has directed the Ministry of Health to cooperate and place adequate funds at the disposal of the institutions like ICMR as per ***Dr. V.L. Chandra's judgment*** (supra). Apart from the judgment of ***Dr. V.L. Chandra*** (supra), the learned counsel for the petitioners also placed reliance on the short order passed by the Supreme Court of India on 19.12.1996 in ***Anil Chander & Others v. Union of India & Others*** in which their Lordships of the Supreme Court had directed that the petitioners should be absorbed on such posts on regular basis since the petitioners have been working for nearly 12 years and the Court further observed that till they are so absorbed, their services shall not be discontinued."

21. In the appeal by AIIMS against the decision of the learned Single Judge, the Division Bench ('DB') of this Court, after discussing the decisions in ***Dr. V.L. Chandra*** (supra), ***Dr. Arvind Rai v. Union of India*** [decision dated 22nd February, 1995 of the Supreme Court in W.P.(C) 756/1991] and ***Dr. V.P. Chaturvedi v. Union of India (1991) 4 SCC 171***, directed as under:

"1. Researchers, scientists and others who have worked on these projects for more than 15 years should be absorbed in the service within a period of 4 months;

2. Researchers, scientists and others who have worked on these projects for 10 years and more should be allowed to complete 15 years and they be absorbed thereafter on a regular basis.

3. We refrain to give any directions to the Institute regarding

employees who have served for less than 10 years but we expect the Institute to utilize their services in available projects or in the Institute as far as possible while keeping humanitarian angle in view. The fact that these employees have approached the courts for redressal of their grievances should not weigh against them. Perhaps any one placed in their position would have done the same.”

22. The DB further directed as under:

“We would like to make it abundantly clear that these directions are not going to interfere with the discretion of AIIMS to employ researchers for specific projects for a specialised period. These directions are only for these employees who were continued by AIIMS for a very long number of years. In other words, AIIMS required their services on a continuous basis for all these years.”

23. The above order of the DB of this Court was challenged in the Supreme Court in SLP (C) No.19225/2002. Before the Supreme Court, AIIMS filed an affidavit *inter alia* stating that “all project employees who have worked continuously for 15 years and above will be considered for absorption keeping in view the educational qualification, experience and availability of posts.”

24. On the basis of the above, the Supreme Court disposed of the above SLP by an order dated 23rd April 2003, where it was observed as under:

“Affidavit of Dr. P.K. Dave, Director, All India Institute of Medical Sciences tendered in Court is taken on record. Learned counsel appearing for the employees agrees that order in terms of the affidavit be passed. In this view of the matter, impugned judgments and orders passed by the High Court are set aside order in terms of the affidavit. Appeals stand disposed of accordingly. There shall be no order as to costs.”

25. The resultant position was that as far as AIIMS was concerned, all project employees who had continuously worked for 15 years were considered for absorption keeping in view the educational qualification, experience and availability of posts.

26. In 2012, Ms. Shobha Kandpal approached the CAT for a direction to the AIIMS to regularise her in the post of Medical Social Service Officer Grade – II with all consequential benefits. While allowing her OA No.600/2012, by an order dated 3rd September, 2012, the CAT, following the orders in **Dr. V.L. Chandra** (*supra*) and of this Court in **Om Prakash** (*supra*), as further affirmed by the Supreme Court, held that the Applicant before it, i.e. Ms. Shobha Kandpal shall be deemed to have been regularised as MSS Grade – II from the date that a notification is issued inviting applications for 9 posts of MSSO Grade – II with all consequential benefits.

27. The above order of the CAT was challenged by the AIIMS in this Court by filing a Writ Petition (Civil) 278/2013. The writ petition was dismissed by the DB by an order dated 17th January, 2013 where *inter alia* it was observed as under:

“8. Old is gold. A trusted hand is retained on project basis, from project to project; and this explains project related employees taken either on ad hoc or temporary basis continuing to work for years together.”

“9. Notwithstanding the argument being very attractive we find that in April, 2011 All India Institute of Medical Sciences had advertised inviting applications to fill up 9 vacant posts of Medical Social Service Officers Grade-II and the record would reveal that as on today only 8 persons have joined by

responding to the letter offering appointment. For reasons only known to 9th candidate, to whom letter of appointment was issued, the candidate has not joined. Thus, admittedly as of today one post of Medical Social Service Officer Grade-II exists as a permanent vacancy with All India Institute of Medical Sciences.

10. As per law declared by the Supreme Court in the decision reported as the 2006(4) SCALE 197 *Secretary, State of Karnataka vs. Uma Devi & Ors.* it is permissible to direct regularization of ad-hoc/temporary employees who have worked for years together provided a vacant post exists.

11. Keeping in view the special equities in favour of the respondent who has worked with All India Institute of Medical Sciences since the year 1994 and the fact that as of today a vacant post exists, we are not inclined to interfere with the impugned order.

12. The writ petition is dismissed in limine.”

28. As far as the case at hand is concerned, it is clear from the replies filed by ICMR to the applications under the RTI Act that there are 12 vacancies in the various posts of Scientists which remain unfilled. A second undisputed fact is that the Petitioner has been employed with ICMR on a continuous basis for more than 15 years i.e. 1st June, 1998 to 31st December, 2013. Going by the stand taken by AIIMS before the Supreme Court in the SLP filed against the judgment of this Court in *Om Prakash (supra)*, it had been agreed in principle that those who have worked for projects continuously for more than 15 years would be considered for absorption keeping in view their educational qualification and experience and the availability of posts. There is nothing in the counter affidavit of the ICMR

before CAT to indicate that it decided to adopt a policy different from that of AIIMS, on the question of permanently absorbing or regularising project employees. The Court sees no points of distinction between project employees engaged by AIIMS and those engaged by ICMR for research work.

29. Lastly, the decision in *Dr. V.L. Chandra (supra)* has been consistently followed by this Court in the aforementioned decisions, one of which has been affirmed by the Supreme Court in the manner noticed hereinbefore.

30. Consequently, the Court sees no difficulty in allowing the prayer of the Petitioner that his services should be regularised in one of the vacant posts of Scientist available with the ICMR.

31. The impugned order of the CAT dated 6th February, 2015 is accordingly set aside. A direction is issued to ICMR to issue the necessary orders appointing the Petitioner, consistent with his experience and qualifications in an appropriate post of Scientist, which is vacant and available in the ICMR, within a period of eight weeks from today. It is clarified that the period of service between 1st June, 1998 and 31st December, 2013 will be taken into account for the purposes of calculating the pensionary benefits incidental to regular employment. The termination order dated 31st November, 2013 which brings to an end the Petitioner's tenure in the particular project for which he was engaged would not come in the way of the Petitioner being regularised.

32. The petition is allowed in the above terms. It may be noted that costs of Rs.5000/-, which the Court had directed Respondent No. 3 to pay to the Petitioner by its order dated 20th March, 2017, have been handed over by Mr. Tushar Gupta to the Petitioner, who is also present in Court.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 22, 2020

pa

