

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.64 OF 2015.

Dr. M. V. Ramesh,
Major in Age, Indian National,
M.Sc. Ph.D. Presently residing
at 4, E, Queency Apartment,
Swatantrapath, Vasco-da-Gama
403 802

..... Petitioner.

Versus

1. The Union of India,
Through The Secretary,
Ministry of Earth Sciences,
Having Office at Prithvi Bhavan,
Lodhi Road, New Delhi 110003.
2. The National Centre for Antarctic &
Ocean Research, Through
its Director, having office at Headland
Sada, Vasco-da-Gama, Goa
403804.

..... Respondents.

Mr. H. D. Naik, Advocate for the petitioner.

Mr. S. S. Kantak, Senior Advocate with Mr. P. Talaulikar, Advocate for the respondent no.2.

**Coram:- DIPANKAR DATTA, CJ. &
M. S. SONAK, J.**

Date:- 22nd March, 2021.

ORAL JUDGMENT (PER DIPANKAR DATTA, CJ.)

By an order dated 19.2.2004 of the Administrative Officer of National Centre for Antarctic & Ocean Research (hereinafter "NCAOR", for short), the petitioner was appointed as a Research Associate for the Project "Sea Bed Survey of the EEZ of India by using Multibeam Sonar under the Scheme Swath Bathymetric Survey of EEZ" on a stipend of Rs.11000/-(Rupees eleven thousand only) per month plus HRA as admissible under the Government Rule, subject to the 10 conditions mentioned therein. Conditions 1 and 2 being relevant are set out herein below:

1. *It is not an offer of appointment in NCAOR, temporary or otherwise, it would therefore not confer any right/claim, implicit or explicit, for your consideration for regularization/absorption against any NCAOR Post.*
2. *This appointment will be for a period of one year from the date of joining. Further this contract appointment will not confer on you any claim for permanent employment. This contract appointment may be terminated at any time by one month's notice given by*

either side namely the employee or the employer without assigning any reasons. The appointing authority, however, reserves the right of terminating your services on or before the expiry of the stipulated period of the notice by making payment to you of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof. However, there will not be any concern/responsibility/liability, what so ever of NCAOR on/after completion/ termination of the said Project.

(b) The appointment carries with it the liability to serve in any part of India and you are required to go on ship cruises in the discharge of your official duties.

2. Although the petitioner was initially appointed for a period of one year, he was continued in service by successive orders and as on date this writ petition was presented before this Court, i.e., on 10.1.2015, he had been continuing as such Research Associate.

3. The prayer in this writ petition is for a Writ in the nature of Mandamus commanding the respondents, i.e., Union of India and the NCAOR, to *“regularise services of the Petitioner to the post which the*

Petitioner is entitled in law having put more than 11 years of service; and with effect from March, 2009 by granting all benefits which the Petitioner is entitled in law”.

4. Appearing in support of the writ petition, Mr. H. D. Naik, learned Advocate tendered Office Memorandum dated 15.10.2020 issued by the Administrative Officer of the National Centre for Polar and Ocean Research (hereinafter "NCPOR", for short). He showed to the Court that the Director, NCPOR has accorded his approval for extension of the tenure of the petitioner on contract basis for a period up to 30.9.2022, i.e., the age of superannuation under the Government of India, subject to six monthly review by the concerned Reporting and Reviewing Officers. It was also observed therein that such extension would be subject to the same terms and conditions as stipulated in the letter dated 19.2.2004, referred to above.

5. It is the contention of Mr. Naik that since the petitioner has been continued in service by the NCAOR not only till the date when this writ petition was presented but also till date by the NCPOR, it is evident that the services of the petitioner are still required and there being a perennial need to keep the petitioner in employment, which is clearly established by

reason thereof, coupled with the fact that the petitioner has been continuing in service without intervention of the judiciary, direction ought to be issued to the respondents for regularizing his service.

6. Although we did not call upon Mr. S. S. Kantak, learned Senior Counsel for the respondent no.2 to answer, we have looked into the affidavit-in-reply filed on behalf of the NCAOR.

7. First, a charge of suppression of facts is levelled against the petitioner. According to the respondent no.2, the petitioner had applied for regular appointment on the post of Scientist-D in 2005 and thereafter on 28.6.2011 and 28.5.2012. Further, there was an application dated 28.5.2012 for appointment on the post of Scientist-C. Also, he had applied for appointment as Associate Professor on 7.5.2008 and Reader on 26.5.2010, in certain Universities. The appropriate Selection Committee of the NCAOR had considered the candidature of the petitioner for appointment on the post of Scientist-D/C on merits. However, he was not selected owing to his failure to qualify in the interview. Though the fate of the applications made by the petitioner for appointment as Associate Professor as well as Reader has not been indicated in the reply affidavit, it

stands to reason that he may not have been selected for either of such posts, or else he would not have continued as Research Associate in the NCAOR. It is, thus, the stand of the respondent no.2 that having failed to secure appointment through the regular process of selection, the petitioner has approached this Court for relief by presenting this writ petition seeking relief of regularization which otherwise he is not entitled to under the law.

8. Apart from the charge of suppression, the reply affidavit in fair measure dwells on the aspect of unsatisfactory performance rendered by the petitioner as a Research Associate.

9. It has surprised us that if indeed the petitioner has been rendering unsatisfactory service and was unable to secure appointment through the regular process of selection, why did the NCAOR continued him in service for specified tenures for over a decade till the writ petition was presented, and even thereafter for over half a decade. Be that as it may.

10. In paragraph 19 of the reply affidavit, we find the following pleadings:

“Presently Petitioner in (sic, is) only performing its duty with regard to outreach activities and not as a Research Associate in

the project EEZ. For last several years, petitioner has failed to contribute in any manner to the project EEZ for which he originally came to be appointed.”

11. The reply affidavit concludes with the submissions that the petitioner having been engaged on contract basis as a Research Associate, he does not have any right of substantive appointment or regularization in service.

12. We also had the occasion to look into the rejoinder affidavit of the petitioner. The charge of suppression of material facts has been countered by the petitioner by pleading that since he had prayed for regularization of service, non-selection for the post of Scientist-D/C is not relevant for the purpose of deciding the issue raised in the writ petition. The petitioner also denied that having failed to obtain appointment on a post on merits, he was seeking regularization.

13. Mr. Naik was called upon by us to show us from the rejoinder affidavit, where the petitioner countered the contents of paragraph 19 of the reply affidavit. We are afraid, no such pleading could be brought to our notice. By applying the doctrine of *non-traverse*, we have no other option but to accept the stand of the NCAOR that the petitioner has not been

contributing in the project EEZ for which he originally came to be appointed.

14. Significantly, although the prayer in the writ petition does not refer to the post in respect of which the petitioner seeks regularization, the title of the writ petition reveals that it is on the post of Scientist in the office of the NCAOR that the petitioner has sought for regularization. The contention in the rejoinder affidavit that the petitioner's failure to secure appointment on the post of Scientist-D/C is not a relevant fact is, thus, untenable. We do find the petitioner to have withheld a material fact from the Court. On this ground alone, the writ petition is liable to be dismissed.

15. However, leaving aside the charge of suppression, but having regard to the aforesaid factual narrative too, the right to claim regularization prayed for by the petitioner undoubtedly is not traceable to the contract between the parties. Thus, on the factual score, we do not consider that any case for regularization in service has been set up by the petitioner.

16. Let us now consider as to whether the petitioner has any legal right to maintain this writ petition for claiming regularization.

17. We had called upon Mr. Naik to show whether there existed a sanctioned post of Research Associate, for, law is well settled that in the absence of a sanctioned post, regularization cannot be claimed. We may refer to the decision in *State of Rajasthan Vs. Daya Lal*, reported in *(2011) 2 SCC 429*, in this connection. We record the failure of Mr. Naik to convince us in this behalf. Since the decision of the Supreme Court in *Secretary, State of Karnataka and others Vs. Uma Devi (3) and others*, reported in *(2006) 4 SCC 1*, there has been numerous decisions rendered by the Supreme Court which lay down the law that in exercise of power under Article 226 of the Constitution of India, the High Court cannot issue a Writ of Mandamus and compel the State and its instrumentality/agencies to regularize the services, *inter alia*, of contractual employees. The decision in *Official Liquidator Vs. Dayanand and others*, reported in *(2008) 10 SCC 1*, may be referred to in this connection. In the decision rendered by the Supreme Court in *Accounts Officer (A & I) AP State Road Transport Corporation Vs. P. Chandra Sekhara Rao and others*, reported in *(2006) 7 SCC 488*, it has been held that guidelines for regularizing appointment could not have been made even

in terms of Article 162 of the Constitution of India. In *Surinder Prasad Tiwari Vs Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and others*, reported in (2006) 7 SCC 684, the Court considered the Constitutional scheme that envisages equality of opportunity in public employment and held that in view of the clear and unambiguous scheme, the Courts cannot countenance appointment in public offices which has been made against such scheme and that in the backdrop of the Constitutional philosophy, it would be improper for the Courts to give direction for regularization of services of the person who is working, *inter alia*, as a contractual employee, not having been appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution of India.

18. Much prior to the decision in *Umadevi* (supra), the Supreme Court in its decision in *Director, Institute of Management Development, Uttar Pradesh Vs Pushpa Srivastava (Smt.)*, reported in (1992) 4 SCC 33, ruled that no right to regularization in service can be claimed in the absence of any rule providing for regularization of service after a specified period of service.

19. No rule or instrument having the force of law has been placed by Mr. Naik to persuade us to hold that merely by reason of putting in 17 years of service as a Research Associate, the petitioner is entitled to the relief claimed in the writ petition.

20. Although we find no merits in this writ petition, we wish to remind the NCAOR that contractual appointment for long by a public authority *dehors* the Constitutional scheme of public employment is impermissible and improper. The NCAOR, therefore, ought to desist from continuing employees like the petitioner on contract basis year after year, in future.

21. For the foregoing reasons, the Rule stands discharged. There shall be no order as to costs.

M. S. SONAK, J.

CHIEF JUSTICE

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VINITA VIKAS NAIK
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