

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION No. 170/01693/2018

TODAY, THIS THE 12th DAY OF DECEMBER, 2019

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri G.K.Kumarswamy
S/o Late Kalaiah
Aged about 33 years
Working as Ear Mould Technician
Department of Audiology
All India Institute of Speech and Hearing
Namishim Campus, Manasa Gangothri
Mysuru-570 006.
Residing at
Gajalagodu Village and Post
Arkalgud Taluk
Hassan District-573102.

...Applicant

(By Advocate Sri. Ranganatha S Jois)

Vs.

1. The Union of India
Rep by its Secretary

Ministry of Health &

Family Welfare

New Delhi-110 001.
2. The All India Institute of Speech & Hearing

Rep by its Director

Nimishim Campus

Manasa Gangothri

Mysuru-570 006.

3. The Chief Administrative Officer

All India Institute of Speech & Hearing

Nimishim Campus

Manasa Gangothri

Mysuru-570 006.

...Respondents

(By Advocate Shri H.R.Sreedhara)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant's case is that he was appointed to the post of Ear Mould Technician vide order dtd.30.9.2011(Annexure-A1) on contract basis in AIISH, Mysore. He was continuing in the said post from time to time by getting fresh order of appointment from the year 2012 to 2017 and the last order having been issued on 4.6.2018 for a period of 3 months(Annexures-A4 to A10), he reported on 14.6.2018(Annexure-A11). The applicant has now been issued with the impugned order dtd.5.9.2018(Annexure-A12) by the 3rd respondent relieving him from the post on the ground that his contract period has come to an end. Then the applicant submitted a representation dtd.11.9.2018 requesting that his services may be continued as he has already put in nearly 7 years of service as on the date of last contract appointment. He submits that he has sufficient experience and has participated in various workshops and gained experience in the institute. The clinical practise certificate issued to the applicant is enclosed at Annexure-A13. The applicant belongs to SC category (Annexure-A14) and he has the required qualification viz., Diploma in Hearing, Language and Speech(Annexure-A2) which is the required qualification for the post. He has also duly registered himself after completion of the said course and was issued with

certificate under Section 19 of the Rehabilitation Council of India(Annexure-A3). In addition to the basic qualification, he has completed BA degree from Karnataka State Open University in the year 2012(Annexure-A15) and he has attended several workshops in Ear Mould Technical. The applicant submits that without considering his request for continuation in service, the 2nd respondent has issued a notification No.6/2018(Annexure-A16) to fill up the very same post by calling for applications through online dtd.3.8.2018 published in the Employment News. The initial appointment of the applicant though on contract was legal and cannot be termed as irregular. He is entitled for continuation in service having regard to the experience and qualification and can be reconsidered for the regular appointment to the said post after giving due weightage and age relaxation. Though the post is meant for unreserved category, the applicant being an SC candidate cannot be prevented from participating in the general category for the said post. Though he submitted application through online to the said post as a formality, the notification does not provide any age relaxation or weightage for the service he rendered which itself makes the notification defective, hence, the said notification is clearly violative of Articles 14 & 16(1) of Constitution. The judgment in *Umadevi's* case does provide for age relaxation and weightage. Being aggrieved by the action of the respondents, the applicant has filed the present OA seeking the following relief:

- i. Call for relevant records relating to the impugned order bearing No.SH/PL/CC-03/2018-19 Annexure-A12 dated 5.9.2018 seeking to relieve the applicant and drastic termination of the applicant as violative Articles 14 & 16(1) of the Constitution of India*
- ii. Call for records relating to the advertisement No.6/2018 vide Annexure-A16 and declare the non providing of age relaxation and weightage for the experience and service rendered as clearly violative of 14 & 16(1) of the Constitution of India and the judgment in Umadevi's case and subsequent decision.*
- iii. Issue a consequential writ or order or direction to the respondents to continue the applicant as Ear Mould Technician and consider his case*

for regular appointment to the said post after due weightage to his experience and service rendered and also relaxing the age as he was serving in the institute for all these years and to pass appropriate suitable orders to meet the ends of justice.

iv. Issue any other consequential directions or orders as this Hon'ble Tribunal deems fit in the facts and circumstances of the case.

2. The respondents, on the other hand, have submitted in their reply statement that the applicant was engaged on contract basis as Ear Mould Technician in the All India Institute of Speech and Hearing(AIISH), Mysuru on consolidated salary and his services were extended periodically with break. He joined the Institute after having accepted the terms and conditions of contract appointment. The terms of contract appointment are clear and unambiguous wherein it is stipulated that he does not have any claim or right for regular appointment. One of the terms of the contract is very clear which indicates that he has no right or claim for regular employment and that his appointment on contract is purely temporary. Having accepted these conditions, making a claim for regularization at later stage amounts to breach of contract by the applicant. The present claim of the applicant for age relaxation in the category of SC is not tenable as the post that has been advertised is not reserved for SC category and any relaxation in age admissible to SC category is not applicable when the person applies for the post under general category as per the Govt. of India order vide OM dtd.1.7.1998(Annexure-R1 & R2). The provision regarding age relaxation of persons engaged on contract is produced at Annexure-R3. The applicant as on the date of application did not hold any position in the Institute as he was relieved on 6.9.2018 and therefore he is not entitled to any relief. It is not correct to say that he was appointed against sanctioned post. There is no sanctioned post against which his services could be regularised and the judgment in *Umadevi's* case is very clear that if the person is appointed against a sanctioned post and continued

for long period then only the question of regularization comes. He was only appointed on contract basis which was tenable for the duration that was indicated in the order appointing him on contract. The process of selection for a regular post and for a contract post is totally different and the applicant was not selected by following the process of selection prescribed in the Govt. of India and DoP&T guidelines with regard to age, reservation policy, advertisement and other selection process. Mere declaration by the applicant that he is fully qualified because he has attended workshops cannot be a reason for considering him for the post. The similar applications viz., OA.No.282-286/2018, 447/2018 & 458/2017(Annexures-R4 to R6 respectively) filed before this Tribunal seeking for regularisation of contract employment were dismissed. Hence, the applicant is not entitled to any relief as the post advertised had prescribed essential qualification and age limit as per the Recruitment Rules of the Institute and no age relaxation is permissible to him as per the rules of the organisation. The applicant himself stated that he is over aged and does not fulfil the eligibility criteria prescribed for the post of Ear Mould Technician in terms of age. The claim of the applicant that he has completed 6 years of service is not acceptable since service in a post has to be against a sanctioned post and should be a continuous one. When the applicant has been appointed for a specific duration and has been issued fresh contract every time adding up several contracts, his submission that he has completed several years of service is not acceptable. Every time he was provided fresh offer of contract and he accepted it. He had several opportunities to seek job elsewhere and the Institute never stopped him from seeking a job. The institute has already got instructions from the Ministry not to resort to continue engagement on contract after proposal of the Institute for upgradation of posts is approved. Continuing the persons on contract when the Institute does not

require their services will only drain the exchequer and therefore the Institute cannot afford to make ungainful expenditure by retaining persons when their services are not required. And therefore, the OA is liable to be dismissed.

3. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The applicant was appointed to the post of Ear Mould Technician in the respondent institution on a contract basis initially for a period of 12 months in 2011 and the said contract was extended till the year 2018 with breaks in between. In each letter of appointment, it is clearly specified that it is on contract basis and is purely temporary and could be terminated at any time with one month's notice. The contract letters also specifically stated that this offer does not confer any right or title to claim permanent appointment at the respondent institution. The respondents would claim that all these factors were known to the applicant and he had taken up the appointment only subject to the acceptance of these conditions. The applicant would state that he was appointed on a contract basis subsequent to a notification and conduct of interview etc. However, the fact remains that his appointment was on a contractual basis. Even though the respondents would claim that he was not appointed to any sanctioned post, as seen at Annexure-A16, it is clear that the post to which the applicant was appointed was apparently a sanctioned post. However, it is being filled up on a regular basis vide Annexure-A16. As has been held by this Tribunal in several cases as cited by the respondents, the applicant having been appointed on a contract basis will not have any rights to claim appointment to a regularly sanctioned post which is to be filled up after following a due process. As contended by the respondents, age relaxation etc., also cannot be given since his was not an irregular appointment in a sanctioned post to which the applicant was

selected after following a recruitment process with due consideration for reservation etc. Therefore, we are unable to agree with the contentions of the applicant.

4. The OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER(J)

/ps/

Annexures referred to by the applicant in OA.No.170/01693/2018:

Annexure-A1: Copy of the letter of appointment to the post of Ear Mould Technician
dtd.30.9.2011

Annexure-A2: Copy of the diploma certificate

Annexure-A3: Copy of the certificate issued under Section 19 of the Rehabilitation
Council of India

Annexure-A4: Copy of the letter of appointment to the post of Ear Mould Technician
dtd.15.10.2012

Annexure-A5: Copy of the letter of appointment to the post of Ear Mould Technician
dtd.19.9.2013

Annexure-A6: Copy of the letter of appointment to the post of Ear Mould Technician
dtd.22.8.2014

Annexure-A7: Copy of the letter of appointment to the post of Ear Mould Technician
dtd.27.7.2015

Annexure-A8: Copy of the letter of appointment to the post of Ear Mould Technician
dtd.30.6.2016

Annexure-A9: Copy of the letter of appointment to the post of Ear Mould Technician
dtd.2.6.2017

Annexure-A10: Copy of the letter of appointment to the post of Ear Mould Technician

dtd.4.6.2018

Annexure-A11: Copy of the communication made by the 3rd respondent about the applicant's reporting to duty

Annexure-A12: Copy of the relieving order issued by the 3rd respondent in respect of the applicant

Annexure-A13: Copy of clinical practice certificate

Annexure-A14: Copy of the caste certificate issued by the competent authority

Annexure-A15: Copy of the convocation certificate issued by the Karnataka State Open University for having completed degree in BA

Annexure-A16: Copy of the notification published in Employment News dtd.3.8.2018

Advt. No.6/2018

Annexures with reply statement:

Annexure-R1: Copy of Govt. of India order dtd.1.7.1998

Annexure-R2: Copy of Govt. of India order dtd.5.6.2018

Annexure-R3: Copy of the order dtd.6.9.2018

Annexure-R4: Copy of the order in OA.No.282-286/2018 dtd.15.11.2018

Annexure-R5: Copy of the order in OA.No.447/2018 dtd.15.11.2018

Annexure-R6: Copy of the order in OA.No.458/2017 dtd.17.9.2018
