CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(4)

O.A. NO. 438/1997

This the 31st day of MARCH, 1997.

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN (J)

HON'BLE SHRI S. P. BISWAS, MEMBER (A)

1. Dr. D. S. Rana S/O B. S. Rana,
Research Associate, IARI
(Division of Soil Science &
Agriculture Chemistry),
Pusa, New Delhi.

2. K. P. Singh S/O Mahender Singh,
Research Associate, IARI
(Division of Genetics),
Pusa, New Delhi.

3. Dr. Jasbir Kaur W/O T. S. Madan,
Research Associate, IARI
(Division of Genetics),
Pusa, New Delhi.

4. Km. Kavits D/O Azad Singh,
Research Associate, IARI,
Regional Station, Karnal,
Haryana.

5. Dr. Aditya Sharma S/O Dr. R. K. Sharma,
Research Associate, IARI
(Division of Genetics),
Pusa, New Delhi.

6. Shrinivas Giri S/O Om Prakash Giri,
Research Associate, IARI
(Division of Genetics),
Pusa, New Delhi. ... Applicants

( By Shri Vijay Pandita, Advocate )

-Versus-

1. Union of India through
Director General & Secretary,
Department of Agricultural Research &
Education, Ministry of Agriculture,
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi.

2. Secretary,
Ministry of Agriculture,
Government of India,
Krishi Bhawan,
New Delhi-110001.

3. Director,
Indian Agricultural Research Institute,
Pusa, New Delhi-110012.

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4. Director (Per.),
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi-110001. ... Respondents

( By Shri Vijay Chaudhary, Advocate )

O R D E R

Dr. Jose P. Verghese -

History is being repeated after about 25 years. P. K. Ramachandra Iyer vs. Union of India, 1984 (2) SCC 141 decided by the Supreme Court in the year 1983 has noticed the plight of the scientists of ICAR and other allied institutions which had resulted in a few instances of suicides by the scientists. Today, before us are six scientists almost similarly placed in danger of being thrown out stating that they had been employees of the respondents only under a contract for a specific scheme and that the said scheme and the contract is coming to an end and after ten years they are back in the arena looking for job.

The applicants are six Scientists initially appointed against various projects and admittedly those projects are said to be coming to an end by 31st March 1997 and the applicants have moved this OA seeking a direction to the respondents that they shall be restrained from terminating the services of the applicants since no notice has been given to them and as such they have violated the principles of natural justice. They are also seeking a direction from this Court that the respondents may create supernumerary posts or adjust them against the available vacancies and regularise them as they have been regularising similarly placed contract Scientists appointed

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initially against a scheme. They also seek a direction restraining the respondents from appointing them further on adhoc arrangement since the respondents themselves are basically a research institute and the research personnel appointed by the said institute shall not be discriminated against inter se some on regular basis and others against a scheme and under a contract. It was also submitted on behalf of the applicants that the respondent organistion is not a statutory body and the pleasure principle contained in Article 310 of the Constitution of India is not applicable to the respondents and the rules by which the respondents have regularised and appointed other scientists are not statutory in nature and the appointments by way of contract against a scheme are as well under administrative orders such as those relating to the regular appointments of the scientists. The applicants also argue that even though the respondents have adopted the rules of the Central Government on a 'mutatis mutandis' basis, as such, such rules are not necessarily statutory and the entire orders passed by the respondents are administrative in nature and are liable to be scrutinised by this court under its judicial powers.

The applicants also relied upon the judgment of the Supreme Court given in Gopal Krishna Sharma & Ors. vs. State of Rajasthan & Ors. vide Writ Petition Nos. 16309-16376 of 1989 and Writ Petition No. 563 of 1989, Yamuna Shankar Sharma vs. State of Rajasthan & Anr. Ahmadi, J. (as he then was), on behalf of the Bench consisting of himself, M. M. Punchhi, J. and

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K. Ramaswamy, J., had directed the respondents to give a consolidated salary to the research associates to be worked out by placing them on a basic salary of Rs.700-1600 and grant them monetary benefits applicable to a regular employee drawing a basic pay of Rs.700 per month, and these research associates to belong to the cadre of research assistants and their salary be worked out against the pay scale of Rs.700-1600 even though they will not be equated with the cadre of lecturers/assistant professors in status and salary. The benefit of the revised consolidated salary was to be available to them from the date of their appointment as research associates and it was also directed in the said case that the benefit of their order will be available to all research assistants/associates even if they had not joined the said cases as parties. The court also observed that their order may cast a heavy financial burden on the university but it was stated that could not be a ground to deny the employees what is due to them in law, and as such, the payment of intererst was a question left to the authorities to decide, not the liability to pay intererst but rather the mode of payment only. The court also observed that in the normal circumstances they would have left it to the authorities to consider the feasibility of preparing a scheme whereunder such research associates can be absorbed in the regular cadre of research assistants as and when vacancies arose. Since the educational requirements, the process of selection and the job charts are almost identical, such a scheme can be of mutual benefit to the employees as well as the

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university, the employees getting security of tenure and university getting experienced hands, and the court expected the university to examine the feasibility of preparing such a scheme at an early date.

The respondents on the other hand filed a short reply stating that the Hon'ble Supreme Court in another recent decision has held that the Supreme Court could not expect the Tribunal to give a direction to the employer to search out such schemes/projects providing re-employment to the applicants from time to time. The order in question was arising out of a Civil Appeal No. 17664 of 1994 and was delivered by Ahmadi, CJI, in a Division Bench along with Sujata V. Manohar, J., and the said decision was dated December 12, 1994. It was stated in the said decision, "It is difficult to comprehend how the Tribunal could expect the employer to search out some scheme/project for providing re-employment to the applicant from time to time as and when a scheme/project comes to an end and not to terminate his service. The direction is that on the completion of one scheme/project the employer should find out some other scheme/project and absorb him there on the same emoluments, etc. treating him as continuing in service. We find it difficult to uphold such an order..." The respondents, on the basis of this decision, stated that this Tribunal has no power whatsoever to entertain this petition and grant any relief to the petitioners.

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The respondents also submitted that there were about 54 projects wherein research personnel have been appointed belonging to different disciplines under the respondent institute. It was also stated that there were 84 institutes affiliated to the respondent organistion, i.e., ICAR, and if every research associate seeks directions for his permanent employment, it would create problems for the Agricultural Scientists Recruitment Board (ASRB). It was also stated that these rersearch associates should stand in queue before the ASRB who conducts selection on merits as and when the vacancies arise. The respondents also denied that the action of the respondents is violative of principles of natural justice and the policy of the respondents is discriminatory as alleged by the applicants, as the petitioners do not hve any right whatsoever.

The respondents finally stated that the applicants cannot be absorbed or regularised or made permanent unless they compete in open competition and are selected through ASRB with other incumbents.

We have given anxious thought to the rival contentions on both sides and the decisions of the Supreme Court cited by either side. The applicants have brought to our notice that on 27.12.1996, the respondents have been awarded and are in the process of initiating various projects for which rupees 905 million have been set apart for various projects the details of which are also in the paperbook. The applicants also pointed out to us that even though

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they have been appointed against a scheme under a contract, the guidelines issued in such cases have been violated by the respondents. One such guideline is at page 39 of the paperbook and the same is dated 15.2.1993. The said guideline indicates that the schemes against which the research associates are appointed, occasionally get extended and it requires that the project coordinators whose tenure does not depend upon a scheme or a contract, are to report at least six months in advance from the scheduled date of expiry of the scheme and they were also to report that in the event the research associates concerned are to be absorbed, these intimations are to be sent to the administrative office as well as to the Planning Section, thirty days prior to the expiry of the said scheme. The contention of the learned counsel for the applicants is that under the guidelines, the project coordinators are required to intimate the parent body whether the concerned research personnel could be absorbed and the said intimation should reach the headquarters, thirty days prior to the expiry of the concerned scheme. It was pointed out to us and it has been so pleaded that on two occasions the respondents have regularised and absorbed in accordance with these guidelines a number of research associates, the details of which are given in the application. According to the applicants, the non-submission of the report to the headquarters by the project coordinators indicating the feasibility of absorption in accordance with the guidelines prescribed is discriminatory vis-a-vis those who have been absorbed in accordance with the same guidelines.

The cardinal question to be decided in this application, therefore, is whether the applicants have any right whatsoever in the facts and circumstances. The next question that follows the first one is whether this Tribunal has the power to give any relief in the circumstances of the case.

As stated above, the respondents are not a statutory body, nor are the rules by which the personnel, namely, the scientists are recruited under any statutory rules, nor are those rules made under Article 309. The respondents have only adopted the rules governing the civil servants on a 'mutatis mutandis' basis. As such, the defence of the respondents that they have absorbed or regularised or recruited some of the scientists under statutory rules, and others under contracts, are not correct in law for the reason that neither the respondents are created under a statute nor the rules have force of statutory rules; they are all in the nature of administrative orders. Both the so called rules under which recruitment, absorption or regularisation that has taken place as well those under which the contract of employment entered into, as far as the applicants are concerned, have been achieved are not rules made under proviso to Article 309 of the Constitution of India. This question has been considered in Jacob vs. Kerala Water Authority, (1991) 1 SCC 28, wherein Section 64 of the Kerala Water Supply and Sewerage Act, 1986 conferred rule making power on the State Government, while Section 65 empowered the Water

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Authority to make regularions with the previous approval of the Government. Neither under Section 64 nor under Section 65 of the said Act, the rules or regulations were framed by the State Government or by the Water Authority. On the other hand, by a resolution passed by the Kerala Water Authority, the rules of the Subordinate Service Rules, 1958 framed by the State Government under the proviso to Article 309 of the Constitution of India were made applicable to the employees of the corporation. The question considered by the Supreme Court in this case was whether those statutory rules continued to have statutory force in their application to the employees of the corporation. Holding that the rules did not continue to have statutory force in their application to the corporation, Ahmadi, J., observed :

> "Since these rules were framed in exercise of power conferred by the proviso to Art. 309 of the Constitution they are undoubtedly statutory in character but counsel was right in his contention that they do not retain that character in their application to the staff-members of the Authority since they have been adopted by the Authority under a resolution. These rules would undoubtedly be statutory in character in their application to the members of the Kerala Subordinate Services for whom they were enacted but when any other authority adopts them by a resolution for regulating the services of its staff, the rules do not continue to remain statutory in their application to the staff of that authority. They are like any other administrative rules which do not have statutory force."

Thus it is obvious that the rules under which the scientists have been recruited, absorbed or regularised are not statutory rules. They are nothing

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but administrative orders and the respondents could not have discriminated some of the similarly placed research associates who have been absorbed or regularised under the said administrative orders and are refusing to consider the applicants for similar absorption/regularisation. Moreover, if at all the applicants are to be terminated and their services to be ended uncermoniously, again, that would be an order adversely affecting the services of the applicants who have as much security of tenure as any of their colleagues have and as such the respondents are bound to consider them before dispensing with their services. This would follow also that the respondents cannot violate the principles of natural justice since such disposal of the applicants would have adverse consequences on the vested right the applicants have and the respondents cannot be allowed to terminate their services without notice and that would be in violation of the principles of natural justice

Since the applicants are taken into service by an agency of the Government which are admittedly a 'State' within the meaning of Article 12, the respondents are bound by the dictates of Article 14 and has a bounden duty to act fairly in favour of the applicants. The appointment and termination of the services of the applicants, therefore, is another exercise of public power and the cardinal component of the rule of law notion is negation of arbitrariness in exercise of public power. If the powers exercised are in violation of the principles of natural justice and for extraneous purposes and in case the said exercise

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becomes contrary to the purpose for which they are originally intended for, in all such instances, the exercise of power would be not only ultra vires but also arbitrary. It has been held in a number of cases that even in matters involving a contract at the instance of a public body, the Supreme Court has increasingly insisted that the ambit of fair play is not reduced in view of the dominating position of the State over the individual and the groups. In this case, the defence of the respondents is that the applicants knew very well when they accepted the contract to be engaged during the duration of the scheme alone; the applicants submit that they had no other option but to accept. But we are of the view that it will not absolve the respondents from their duty to fair play in action and they are duty bound to observe the principles of natural justice, and their exercise of power through contracts will have to be categorised as unconscionable contracts.

In the absence of statutory rules and in the absence of the fact that the orders under which the applicants and all other scientists in ICAR are employed, are administrative orders, the principles laid down in the case of Bangalore Water Supply & Sewage Board vs. A. Rajappa, (1978) 2 SCC 213 that wherever there is a relationship of employer-employee, there is also an implied principle of security of tenure involved, and an employee in such circumstances cannot be unceremoniously terminated without complying with the principles of natural justice.

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That being so, our first question is answered in affirmative to the extent that the applicants have the correlating rights arising out of the duty of the respondents to act fairly, namely, not to discriminate the applicants from their colleagues. The applicants have also a vested right from a model employer, namely, "State" within the meaning of Article 12, that before the services are terminated, they are entitled to notice, if not, the respondents are likely to violate the principles of natural justice.

That takes us to the next question whether this Tribunal has the power to entertain such applications and grant reliefs.

The power of this Tribunal to entertain such applications has now been reiterated beyond any doubt by a recent seven-judge Bench of the Hon'ble Supreme Court in L. Chandra Kumar vs. Union of India & Ors. (Civil Appeal No. 481 of 1989). The decision was rendered on 18.3.1997 and the unanimous decision was handed down by Ahmadi, CJI, as he then was.

The Supreme Court in the said case has decided once and for all, the power of the constitutional courts for judicial review to be one of the basic features of the Constitution. To quote ;

> "...We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High

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Courts and the Supreme Court ~~to~~ test the constitutional validity of legislations can never be ousted or excluded."

The Supreme Court while deciding judicial review to be one of the basis features of the constitution, also has held that there is no constitutional prohibition against the tribunals performing a "supplemental" role to the High Court or the Supreme Court in this respect. According to the Court, such a situation is contemplated with the constitutional scheme and the said fact is evident when we analyse clause (3) of Article 32 of the Constitution of India whereby the Parliament has been empowered by law to empower any other court to exercise within the local limits of its jurisdiction, all or any of the powers exercisable by the Supreme Court under clause (2). Thus, this Tribunal as a supplement to the power of judicial review exercised by the Supreme Court and the High Court, can also perform the same function of judicial review, as conferred by the Constitution to the Supreme Court or the High Court, but confined to service matters only.

The Supreme Court further elaborated the power of the Tribunal and stated that the Tribunal can adjudicate upon matters where the 'vires' of the legislation is questioned. It was also stated that to hold that the tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they are constituted and

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the tribunals are now permitted to deal with the cases which involve an interpretation of Articles 14, 15 and 16 of the Constitution. To quote :

> "...It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted...."

The said decision also is significant to note that it has restored the power of the Hign Court under Article 226 and 227 of the Constitution. The ambit of the power of the High Court under Article 227, to exercise power of superintendence over tribunals is today a settled law. While indicating what High Courts could not do under Article 227, in **Babhutmal vs. Laxmibai, (1975) 1 SCC 858**, Bhagwati, J, as he then was, laid down the correct proposition of law regarding the ambit and scope of the supervisory jurisdiction of the High Court under Article 227. To quote :

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> "It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate court or tribunal. Its function is limited to seeing that the subordinate court tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it....If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari, it should follow a fortiorari that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal."

Even if the supervisory power under Article 227 is vested in High Court, it in any manner does not limit the power of the Tribunal to grant reliefs to the applicants in these and similar circumstances. The Hon'ble Supreme Court has now in unequivocal terms have not only reiterated but also raised the status of this Tribunal when it states, "The Tribunals are competent to hear matters where the vires of statutory provisions are questioned." It continues, "Their function in this respect is only supplementary and.... Tribunals will consequently also have the power to test the vires of subordinate legislations and rules." However, this power of the tribunals will be subject to one important exception, namely, the inability of the tribunals to deal with the legislation that created the same tribunal. Otherwise the tribunals are competent to hear matters where the vires of statutory provisions are questioned and the said vires can be tested against the fundamental rights contained in the Constitution of India, namely, Articles 14, 15

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and 16. The Court has further added that the tribunals will, however, continue to act as only the courts of first instance in respect of the areas of law for which they have been constituted. That is to say, the concerned litigants will not be able to go directly to the High Court where they question the vires of statutory legislations.

Thus, L. Chandra Kumar's case (supra) has permitted the Tribunal to deal with the vires of the legislation and test them against the fundamental rights as well, and also has empowered the Tribunals to deal with questions affecting the area concerned by the Tribunal, even to interpret the fundamental rights contained in Articles 14, 15 and 16 of the Constitution of India. It goes without saying that when this Tribunal reviews the orders of the administrative authorities, it enters upon the area of administrative law and when it enters into an area of vires of the legislation as well as interpretation of Articles 14, 15 and 16 of the Constitution, even though it is limited to a particular area, namely, service law, the Tribunal is dealing with constitutional law, and as such, we do not hesitate to consider now the Tribunal as a constitutional court to the extent that it will now decide the vires of the legislation vis-a-vis the fundamental rights as well as the interpretation of certain fundamental rights to the limited extent it would cover the area for which it is created.

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That should sufficiently answer the second question, as to the extent of power as on today the tribunals can handle. Apart from the fact now it has been raised to the peddals of the constitutional court, even though in the limited sense, this Tribunal will continue to review the actions of the administrative authorities arising under the ordinary law. It will continue to review the statutory administrative actions within the meaning of 'law' under Article 13 (2) of the Constitution of India and it would be declared ultra vires both to the statute as well as against Part-III of the Constitution in appropriate cases. The Tribunal's power to review non-statutory actions of the administration is also intact, not under the doctrine of "ultra vires" but under its power of declaration to be void if it contradicts Part-III of the Constitution. It will continue to review administrative policies of non-statutory instructions if it operates as discriminatory so as to violate Article 14. It will also continue to review if the impugned orders are quasi judicial and the same are challenged on the ground of violation of principles of natural justice.

Thus, we are of the view that this Tribunal has ample powers granted under the statute when an application is moved under Section 19 of the Administrative Tribunals Act, 1985, to give full justice and this has now been reiterated and interpreted as narrated above by the Supreme Court in L. Chandra Kumar's case (supra).

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The following conclusions emerge out of the above findings:

(1) The appointment of the applicants under the so called scheme in accordance with a contract, does not permit the respondents who have a duty to act fairly as a model employer, to terminate the services of applicants without giving an opportunity to the applicants to show cause why they should not be terminated. As such, the applicants are entitled to notice.

(2) The applicants are also entitled to consideration against available vacancies both for continuation of the service in another scheme or if vacancies arise, for absorption or regularisation. The services of the applicants cannot be done away with without considering them against all the three possibilities stated above.

(3) We do not propose to pass a restraint order against the respondents to continue services of the applicants, nor to compel them to continue to pay until suitable scheme is made available to absorb/regularise except for a reasonable period of notice. We would like to leave it to the respondents who are expected to be a model employer and who are also expected not to act arbitrarily to exercise the power available to them as a public authority in the right manner and in the light of this judgment. At the same time, it goes without saying that absence of a

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restraint order does not negate all the rights the applicants are entitled to. The respondents shall consider them for appropriate placement including appointment against a scheme or consideration for absorption or regularisation within two months from today, taking into consideration the past service the applicants have rendered and also granting relaxation of age, which are otherwise normally applicable to such situation, and we must make it clear, that they shall not be made to stand in queue along with the fresh entrants and make them compete as equals among unequals.

With these directions, this Original Application is disposed of. No order as to costs.

( S. P. ~~Biswas~~ )
Member(A)

( Dr. Jose P. Verghese )
Vice Chairman(J)

/as/