

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. Nos. :

Date of decision: 4.12.1992

1. OA-1881/92
2. OA-1882/92, and
3. OA-1909/92

1. Dr. A.K. Kapoor & Anr.) Applicants
2. Mr. Pappan, M.S. & Ors.)
3. Dr. (Mrs.) Shipra Dutta)
and Others

Versus

Union of India & Others Respondents

For the Applicants Shri R. Venkataramani, Advocate

For the Respondents Shri P.H. Ramchandani, Sr. Counsel

For I.C.M.R. Shri A.K. Sikri, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

As common questions of law have been raised in these applications, it is proposed to deal with them in a common judgement. There are 16 applicants before us, who have worked in the I.C.M.R. Centre for Laboratory Studies in Streptococcal Diseases in the Department of Microbiology, Lady Hardinge Medical College, New Delhi. They have worked for periods ranging from five years to

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9. 18 years. The applicants have held several posts such as Senior Research Officer down to Safai Karamchari. They are aggrieved by the impugned order dated 18.6.92, whereby the Government of India have decided to terminate their services pursuant to the decision to terminate the Project in which they have worked.

2. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. The respondents have contended in the counter-affidavit that the Indian Council of Medical Research (I.C.M.R.) is the necessary and main party to the dispute because all the applicant were appointed by the I.C.M.R. for the Project in question. This Tribunal has no jurisdiction over ICMR as no notification has been issued under Section 14(2) of the Administrative Tribunals Act, 1985, extending the jurisdiction of this Tribunal to the employees of the ICMR. However, when the case was heard finally at the admission stage, Shri A.K. Sikri, Advocate, appeared on behalf of the I.C.M.R. and explained the stand of ICMR in the present litigation.

3. In a sense, we are not starting with a clean slate in this case. There had been rounds of litigation in the Supreme Court in which the Union of India in the Ministry of Health and Family Welfare as well as the ICMR had been

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arrayed as respondents. The Supreme Court had also passed several orders in the course of the proceedings before it and immediately before filing of the present application before the Tribunal, the applicants had filed Writ Petition (Civil) No.489/92 in the Supreme Court, which was dismissed by it in limine on 16.7.1992. The present application was filed in the Tribunal on 21.7.1992. The applicants have mentioned this fact in their application, but have contended that the issues raised in the present application are not the same as they had raised in the Supreme Court. As against this, the Union of India, in their counter-affidavit as well as the learned counsel for the I.C.M.R., have vehemently argued that the present application is not maintainable and that it is barred by the doctrine of res judicata or constructive res judicata.

4. Another preliminary objection raised by the Union of India is that the applicants are not employees of the Government and had been appointed by the I.C.M.R. I.C.M.R. not being amenable to the jurisdiction of this Tribunal, the applicants cannot seek any relief by filing the present application. Shri A.K. Sikri, the learned counsel for the I.C.M.R., however, refuted this contention and has taken the stand that the applicants would not be treated as the

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employees of the I.C.M.R.

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5. On careful consideration of the rival contentions, we are of the opinion that the doctrine of res judicata or constructive res judicata will not be applicable to the instant case. The issues adjudicated by the Supreme Court related to the winding up of the project, leading to termination of the services of the applicants. The issue whether the surplus employees are the liability of the Government of India or the I.C.M.R. was not agitated earlier. What is really in issue before us is how to deal with the employees who have worked in connection with the project which has been wound up by the Government of India, thereby rendering them surplus. In other words, the grievance ventilated in the present application relates to the post-termination issues which were not brought into focus in the litigation before the Supreme Court. In this view of the matter, the Tribunal had passed an interim order on 22.7.92, directing the respondents not to terminate the services of the applicants. The interim order has been continued thereafter till the case was finally heard on 25.11.1992 and orders reserved on the main application. During the hearing of the case, the learned counsel for both the parties mentioned before us that the applicants have not been paid their salary from July, 1992 onwards.

6. We have carefully gone through the records of the case and have considered the rival contentions. We have also considered the plethora of case law cited before us

Case law relied upon by the learned counsel for Applicants:
AIR 1961 SC 1457; 1985 (3) SLR 138; 1987 (1) SCC 5; 1980(4) SCC 162; 1991 Suppl.(1) SCC 600; 1978 (3) SCC 119; 1981(2) SCC 263; 1977 (3) SCC 592; 1980 (4) SCC 1; 1970 (2) SCC 248; 1990 (3) SCC 223; 1991 (1) SCC 212; 1981 (1) SCC 568; 1979 (1) SCC 572; 1986 (2) SCC 679; 1992 (6) JT 259.

by both the parties.

7. In order to appreciate the issues involved, we may briefly refer to the facts of the case and the history of the litigation in the Supreme Court.

8. The applicants are working in the Department of Microbiology, Lady Hardinge Medical College, New Delhi in a project sponsored by the ICMR. The National Streptococcal Diseases Reference Laboratory (SDRI) was established in the Department of Microbiology of the said College in 1974. In 1984, the I.C.M.R. recognised SDRL as an advanced Centre for laboratory studies in streptococcal diseases for a period of five years. The letter of the ICMR dated 16.11.1989 states that "As per the terms and conditions of the Centre, the Institute is to absorb the staff and take over the work of the Centre".

9. The I.C.M.R. established another advanced Centre for Research in rheumatic fever and rheumatic heart disease in July, 1984. Thus, two Wings of the advanced Centre were set up, one at Lady Hardinge Medical College and the other at All India Institute of Medical Sciences (AIIMS).

10. The applicants filed Writ Petition No. 602/90 (Dr. A.K. Kapoor & Others Vs. Union of India & Others) in the Supreme Court. ^{By} its order dated 1.11.1990, the

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Supreme Court directed that the Union of India shall continue to fund this research project until there is appropriate review at the end of the financial year 1990-91 to ascertain whether this programme should further be continued and if so, at what place. With these observations, the Supreme Court disposed of, for the time being, the writ petition with liberty to the applicants to apply independently if they were further aggrieved.

11. Thereafter, on 20.11.1991, the Supreme Court disposed of a batch of writ petitions, including Writ Petition No. 602/90 (Writ Petition No. 917/90 and connected matters - Dr. V.P. Chaturvedi and Others Vs. Union of India and Others). The Supreme Court observed that "So far as the projects in the Patel ^{Chest} Institute and the Lady Hardinge Hospital are concerned, at one stage we had observed that the projects may continue upto 1992. We find that the said projects are still continuing and in view of that, we have said that they may be continued till they are terminated on a fresh assessment that such research is no more useful and the Health Ministry, keeping its scheme in view, will consider whether research projects should be continued in the two institutes as such, or should

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be taken over elsewhere to be worked out". The Supreme Court further observed that "Mr. Raju Ramachandran wanted us to indicate that the liability to fund the I.C.M.R. would come to an end by March, 1992 and unless Union of India in the Ministry of Health sanctions funds by earmarking them for the particular purpose to be routed through I.C.M.R., it may be difficult for the ICMR to keep on funding. We have taken notice of this submission".

12. In compliance with the directions of the Supreme Court, an Expert Committee was constituted to assess the research work done for the project by the Institute of Lady Hardinge Medical College. The Expert Committee which met on 20.1.1992, made the following recommendations:-

"In view of the important service that this Laboratory has been providing, the Committee recommends that it should be continued at LHMC, New Delhi with the objectives stated above.

As the ICMR has already funded this reference Laboratory for 18 years and research objectives having been achieved, the Committee suggests that it should be taken over by the LHMC/Government of India w.e.f. 1.4.1992."

13. Thereafter, on a consideration of the report of the Expert Committee and the views of the Directorate General

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15 of Health Services and the Director General, ICMR, the Government of India, by their letter dated 5/9.6.1992, intimated the ICMR that the projects in question may be terminated with immediate effect. It is stated in para.2 of the said letter as follows:-

"Taking into consideration the views expressed by the ICMR that the research objectives of both the Centres have been achieved, and that of the Directorate General of Health Services that these are not productive units and they are, therefore, not expected to undertake production for supply of re-agents, it has been decided that the said two projects may be terminated with immediate effect".

14. With regard to the payment of salary, etc., the aforesaid letter stated as follows:-

"Payment of salaries, etc., to the staff/officers engaged under these projects may be made in accordance with the terms and conditions of their appointment and action taken report sent to this Ministry at a very early date".

15. The impugned order dated 18.6.1992 was passed thereafter by the ICMR conveying the decision of the Government to terminate the project with immediate effect. The applicants challenged this in Writ Petition No.489/92 in the Supreme Court which was dismissed in limine.

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16. On a perusal of the records placed before us, we are of the opinion that the applicants who had worked in the project, were the employees of the Lady Hardinge Medical College. The respondents had relied upon the language used in the offers of appointment issued to the applicants in which the reference has been made to the project in question and the ICMR in various clauses. For instance, it has been stipulated in clause (iii) that the Council reserves the right to terminate the services of the employees. In Clause (iv), it has been stated that benefits of the Council's Contributory Provident Fund are allowed subject to rules in force. Clause (ix) states that the service rendered outside the Council will not count for the purpose of leave, etc. Clause (xi) states that the employee will not be permitted to apply for appointment elsewhere before completing one-year service under the Council. Clause (xii) states, inter alia, that appropriate permission of the Council is to be obtained for publication of the papers, etc. The offer of appointment has been signed by the Professor of Microbiology and Officer in-charge, ICMR/WHO Streptococcal Diseases Reference Laboratory, Microbiology Department, Lady Hardinge Medical Hospital, New Delhi. Shri A.K. Sikri, appearing for the ICMR, however, contended that according to the terms and

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17. conditions of the grant made to the project concerned, "the staff employed on the research scheme will not be treated as employees of the Council and the deployment of such staff at the time of completion or termination of the project, will not be the concern/responsibility of the Council. They will be subjected to the administrative control of the institution and will be appointed generally in accordance with the normal recruitment rules and procedures of the Institute.

17. With regard to the ICMR Centres of Advanced Research, the ICMR has stipulated that the financial assistance would be given subject to certain conditions including the following:-

- (i) The host institution must undertake to provide the necessary basic facilities for carrying out medical research for a period of at least five years. The host institutions are expected to take over the Centres from the Council after the stipulated period when the Council support has been withdrawn.
- (ii) The Head of the Centre of Advanced Research may appoint Research Associates, Senior Research Fellows and Junior Research Fellows provided they fulfil the qualifications and experience prescribed by the Council for

equivalent scientific staff. They would also be paid stipended as permissible under the rules of the Council. Their appointment would be done in accordance with the rules of the institutions where the Centres are located. They would not be treated as the Council's employees.

18. It would, thus, be seen that the applicants who have worked in the ICMR Project at the Lady Hardinge Medical College, were not the employees of the ICMR and they were the employees of the Lady Hardinge Medical College.

19. As the Supreme Court has, by its order dated 16.7.1992, dismissed the Writ Petition No.489/92 in which the applicants had challenged the winding up of the Project in question, we are bound by the said decision. The only further question that remains to be adjudicated is as to what would be the legal status of the applicants who have worked under the Project for periods ranging from five years to 18 years.

20. The Expert Committee constituted for the purpose of assessing the work done by the Project in which the applicants had worked, has categorically stated that "the progress reports of the Reference Laboratory had achieved

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its research objectives and had done commendable service by providing re-agents to their Laboratory and holding training programmes" (emphasis added). The question before us is whether the applicants who have done such a commendable service, can be given marching orders on the closing down of the Project. In a catena of decisions, the Supreme Court has stated that persons who have worked for long periods in casual or ad hoc service, should be regularised in suitable posts commensurate with the qualifications and experience of the persons concerned. In the instant case, the learned counsel for the applicants furnished a list of institutions where the applicants could be adjusted. Apart from the Lady Hardinge Medical College, which was the Centre of the Project in question, the other bodies which have been mentioned are, ICMR, AIIMS, Institute of Pathology, Cytology Research Centre, Malaria Research Centre, the National Institute of Communicable Diseases, Department of Bio-Technology, Patel Chest Institute, C.S.I.R., Defence Research & Development Institute, National Institute of Health & Family Welfare, and Vaccine Institute, Gurgaon.

21. In this context, reference may be made to the redeployment of surplus staff in the Central Civil Services

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and Posts (Supplementary) Rules, 1989, made by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution (Vide notification dated 31.3.1989, reproduced in 1989 (2) SLJ, Journal Section, pages 22-30). The said rules envisage appointment of surplus employees against vacancies in Central Civil Services. The scheme applies to cases of abolition or winding up of an organisation of the Central Government. Every employee rendered surplus has to be transferred to the Surplus Staff Establishment and he will be entitled to continue to receive pay and allowances in his previous scale till he is relieved either to join another post or retirement, resignation, etc., whichever is earlier. The question of termination of the services of a surplus employee arises only when he wilfully fails to join the post offered to him by way of alternative placement. The scheme envisages that, as far as possible, a surplus employee shall, subject to his suitability, be redeployed in a post carrying a pay-scale matching his current pay.

22. The learned counsel for the respondents submitted that in case the applicants before us are to be treated as surplus staff, it may have far-reaching implications as similar employees who have worked in projects which have been wound up, would claim similar benefits. As

against this, the learned counsel for the applicants stated that the applicants have worked for long periods in the project and had the legitimate expectation of being absorbed in suitable posts commensurate with their qualifications and experience and in the event of winding up of the project, it is the responsibility of the Government of India to treat them as surplus staff for redeployment elsewhere.

23. There is a human element involved in the instant case. The applicants have become over-aged for any other Government job and it will cause great hardship to them in case they are not given the alternative placement in appropriate posts in the Central Government under the existing scheme for deployment of surplus staff, or in accordance with any appropriate scheme to be prepared by the Union of India. Till this is done, we order and direct that the applicants should be paid the pay and allowances from 1st July, 1992 onwards by the Ministry of Health & Family Welfare. The learned counsel for the applicants stated that the applicants have continued to work in the Centre at the Lady Hardinge Medical College pursuant to the interim order passed by the Tribunal. The learned counsel for the respondents also stated that the respondents have complied with the interim order passed

by us.

24. The application is disposed of on the above lines at the admission stage itself. There will be no order as to costs.

or let a copy of this order be placed in all the case files.

(B.N. Dhoundiyal) 4/12/92
Administrative Member

(P.K. Kartha) 4/12/92
Vice-Chairman (Judl.)

Planted True copy

Rm adham

4/12/92

RECEIVED
4/12/92
SECRETARY TO THE COURT
CHANDIGARH