Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD
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(THIS THE 22nd DAY OF NOV, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)

Original Application No.1399 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

R.K. Vishnoi, S/o Shri Ram Nath Singh Vishnoi, R/o 5/76 Vimal Niwas, Madiya Kathar, District : Agra

..... **Applicant**

By Adv.: Shri Satish Madhyan

Versus

1. Union of India, through Secretary Ministry of Agriculture, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi.

2. Director General,
Indian Council of Agriculturall Research, Krish Bhawan, Dr. Rajendra Prasad Road, New Delhi.

3. Secretary,
Indian Council of Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi.

4. Raja Balwant Singh College,
Agra, through its Principal

..... **Respondents**

By Adv. *Shri B. B. Sirohi*
Shri S. Singh

O R D E R

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

Facts of the case: In the year 1972, Indian Council of agricultural research, (in short ICAR) launched a coordinated scheme

for research of use of saline water in the agriculture during the Fourth Five Year Plan at several centers and Raja Balwant Singh College, Agra was selected under the aforesaid scheme as one of the Centers. The scheme was financed by ICAR. The members of the staff employed under the aforesaid scheme in the College were governed by terms and conditions and the guidelines issued by ICAR. When the scheme came to an end after the seventh Five Year Plan period, the staffing pattern under the eight Five Year Plan period was changed, resulting in the reduction in the number of staff. The project was renamed as All India Coordinated Research Project of Management of Salt affected Soils and Use of Saline Water in Agriculture. Because the re-structuring of the staffing pattern and abolition of certain posts under the scheme, the services of the applicant as a senior Research Assistant (Soils) as well as of the three other persons were terminated vide its letter dated 28.08.1993, Annexure No.7. The applicant and the three others challenged their termination orders vide O.A. No.281 of 1996, which was allowed after quashing the termination orders dated 28.08.1993 by order dated 27.04.2001, Annexure A-8. The ICAR, challenged it by Writ Petition No.41675 of 2001. Meanwhile, the ICAR directed reinstatement of the applicant and three others vide Annexure A-10 order dated 16.08.2002 and Annexure CA-2, order dated 13.11.2002.

2. Following the instructions contained in Office order dated 16.08.2002 and 13.11.2002, the College issued Office order dated 14.11.2002, restoring position of the applicant as Senior Research

Assistant and three others. On 09.01.2003, the Hon'ble High Court vide Annexure A-9 order dated 27.04.2001 quashed the of this Hon'ble Tribunal passed in O.A. No.281 of 1996. Aggrieved by the judgment and order dated 09.01.2003, the applicant and three others filed Petition for Special Leave to Appeal (Civil) No.8674 of 2003. The Hon'ble Supreme Court disposed of the Special Leave Petition as withdrawn on 09.05.2003 because of subsequent development i.e. reinstatement of the applicants. Annexure A-12, refers. The ICAR, however, later on passed a fresh Office order dated 21.07.2003, withdrawing its earlier order dated 16.08.2002 vide Annexure A-10 and order dated 13.11.2002 vide Annexure CA-2.

3. In view of the aforesaid order dated 21.07.2003, the College has passed an order on 31.07.2003, Annexure A-3, withdrawing its earlier order dated 14.11.2002 terminating the services of applicant and three others. The applicant and others moved a modification application before the Hon'ble High Court to modify its earlier judgment and order dated 09.01.2003, enclosing copy of the orders dated 21.07.2003 and 31.07.2003. But the Hon'ble High Court refused to modify its judgment and order dated 09.01.2003 by its order dated 14.11.2003, Annexure A-13. Hence, the impugned orders dated 21.07.2003 and 31.07.2003 are under challenge before this Hon'ble Tribunal.

4. While the above facts are undisputed, respondents have, in their counter raised preliminary objections relating to res-judicata and non joinder of necessary parties and in addition, had stated that the

applicant was employed pursuant to the judgment and order dated 27-04-2001 of this Tribunal passed in OA No. 281 of 1996, which was quashed by the High Court subsequently and the appointment was only for the Tenth Five Year Plan (2002-2007). Now the Tenth Five Year Plan has come to an end in 2007, no further o0rder of appointment can be given.

5. Parties have argued the matter and have also supplemented their arguments through the written submissions.

6. Arguments were heard and written submissions have been scanned through as also the pleadings. As regards preliminary issues, it is appropriate to state that the applicant has challenged that order of 2003 which has not been challenged anytime before. When a new cause of action takes place, the question of *res-judicata* or constructive *res-judicata* does not arise. As such, the preliminary objection is rejected. Again, in so far as non-joinder of parties is concerned, the applicant has with abundant caution impleaded both the Secretary ICAR as also the D.G. ICAR. While the former is the authority which has a right to sue and be sued under the Society's Articles of Association, the remedy is sought from the D.G. and hence, there is no question of non joinder or misjoinder of the parties. The objection in this regard is misconceived.

7. Now coming to the merits of the matter, it is only when the party establishes that his/her vested (constitutional/statutory or

legal) right is hampered by the act of the respondents, that relief is admissible to the aggrieved party. In this case, the issue involved is termination of service. This no doubt involves civil consequences. However, what is to be seen is whether any vested right of the applicant has been hampered by the act of the respondents.

8. A vested right accrues by virtue of certain contingencies. In service matters, no vested right is created in temporary employment (***Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad,(2006) 7 SCC 684,)*** A regular employee, certainly, has certain vested rights.(see ***State of U.P. v. Arun Govil, 1989 Supp (2) SCC 593)*** **:** The Constitution Bench in ***Parshotam Lal Dhingra v. Union of India,1958 SCR 828,*** summarized the extent of right acquired by a regular and temporary employee in the following words:

> ***12.*** *The position may, therefore, be summarised as follows: In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service.*

9. As against the above vested rights of the employee the employer has certain powers or rights in respect of retention of posts. Abolition of post is not an uncommon aspect in any services, and in particular in any project work. Once the work is accomplished, the post is abolished. In that event the employer has no further need of the services of the person employed when the work existed. In this regard, the following decisions, as contained in the judgment of the High Court in Writ Petition No. 41675 of 2001 (supra) are relevant:-

> *"It is well settled that abolition of a post is a management function and an employee cannot have anything to say in this matter vide* ***K. Rajendran v. State of Tamil Nadu AIR 1982 SC 1107. In 1992 (2) SCC 317 Rajendra V. State of Rajasthan*** *the Supreme Court has held that an employee has no right to continue when the post is abolished.*
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> *In* ***1997(2)LLJ 677 Joyachan M. Sebastian V. The Director General and others*** *the Supreme Court has held that on abolition of post, the holder of the post has no right to continue on the post.*
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> *Similarly, in* ***State of Himachal Pradesh V. Ashwani Kumar 1996(1) SCC 773*** *the Supreme Court has observed that when the Project is completed and closed due to non-availability of funds, the employees have to go along with the closed Project. The High Court was not right in giving the direction to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularise their services in the absence of any existing vacancies nor can directions be given to create posts by the Stae to non-existent establishment.*
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> *In* ***1992(2) SCC 317 Rajendra V. State of Rajasthan*** *the Supreme Court has held that when the posts temporarily created for fulfilling the needs of a particular Project or a Scheme limited in its duration comes to an end on account of the need for the Project itself having come to an end either because the Project was fulfilled or had to be abandoned wholly or partially for want of funds, the employer cannot be compelled by a writ of mandamus to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such post though the employer did not have the funds available for the purpose. "*

10. Thus, when the post is abolished, and as a consequence thereof, there is no further need for the services of a person, the service can be terminated and it was exactly this situation that had prevailed earlier. The applicant moved the judicial forum against such termination and on not being successful, S.L.P. before the Apex Court was filed. Subsequently, necessity arising to have the services of the applicant, the applicant was appointed, consequent to which the applicant had withdrawn the S.L.P. pending before the Apex court. If again, a like situation occurs, the same drill of termination of the appointment will have to repeat and what has been done by the respondent is exactly the same. Of course, it may be at the recommendations of the Q.R.T. but ultimately, the decision making authority is the ICAR, which had decided not to continue with certain posts. As such, so far as the action in terminating the services of the applicant is concerned, the respondents are well within their right and we cannot come to a conclusion that any vested right of the employee has been hampered.

11. It is an admitted fact that the applicant's appointment was only on temporary capacity. And it is settled law that temporary service employee does not have any claim for continuing in the post, more so when the post is abolished. In this connection, it is appropriate to refer to the decision of the Apex Court in the case of ***Gurbachan Lal v. Regional Engg. College,(2007) 11 SCC 102*** **wherein the Apex court has held as under:-**

28. In State of H.P. v. Nodha Ram this Court while dealing with the case of a temporary employee appointed on the basis of a project which had been closed down observed as under: [SCC (L&S) pp. 478-79, para 4]

> "*4.* It is seen that *when the project is completed and closed due to non-availability of funds, the employees have to go along with its closure. The High Court was not right in giving the direction to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularise their services in the absence of any existing vacancies nor can directions be given to the State to create posts in a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them despite non-availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is, therefore, set aside.*"
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> (emphasis supplied)

12. The applicant in his written arguments has stated that recently with the retirement of a scientist on 30-06-2009, vacancy so caused exists against which the applicant could be accommodated. From equity point of view, the same does hold good. But, what is to be seen is whether the post of scientist is a promotional post and if so, whether, the same could be filled up by any other method, for, if direction is given to the respondents for such appointment, the same would hamper the rights whatsoever of those who are in the feeder category. **An act of equity towards one person should not be at the cost of any legitimate right of the other.** Even if such an appointment is permissible under the Rules, then again, it has to be analyzed whether the applicant does possess the requisite qualifications etc., prescribed for that post. Thirdly, if the post is to be filled up by direct recruitment to which applicant is entitled to be considered, whether without inviting applications from eligible

candidates if the applicant is accommodated, the same would/would not be violative of the provisions of Article 16 of the Constitution. The accommodation of the applicant against the existing (if at all existing as on date) vacancy of scientist is thus not free from complexity. Nevertheless, if the post is sought to be filled up by direct recruitment, and if the applicant fulfils the requisite qualifications, then the respondents may grant age relaxation to the extent of his services in the respondents' organization and preference may be given to him. The applicant cannot enjoy any pre-emptive right to be considered. He has to be considered along with others with the above age relaxation and taking into service his experience in the very same organization.

13. With the above observations, the O.A. is disposed of. No costs.

(S.N. Shukla)
Member-A

(Dr. K.B.S. Rajan)
Member-J

Sushil