

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 865 of 2006
with
Original Application No. 65 of 2007

Wednesday, this the 2nd day of July, 2008

CORAM :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR K S SUGATHAN, ADMINISTRATIVE MEMBER**

1. O.A. No. 865/2006

1. V. Nirmala Kumari,
Non Medical Research Officer,
Human Reproduction Research Centre/ICMR,
SAT Hospital, Medical College,
Thiruvananthapuram.
2. A. Sreekala,
Social Worker,
Human Reproduction Research Centre/ICMR,
SAT Hospital, Medical College,
Thiruvananthapuram.
3. Resmi S. Nair,
Social Worker,
Human Reproduction Research Centre/ICMR,
SAT Hospital, Medical College,
Thiruvananthapuram.
4. B. Kanakamma,
Typist / Clerk,
Human Reproduction Research Centre/ICMR,
SAT Hospital, Medical College,
Thiruvananthapuram.
5. V. Gopalakrishnan Nair,
Driver,
Human Reproduction Research Centre/ICMR,
SAT Hospital, Medical College,
Thiruvananthapuram.

.... Applicants.

(By Advocate Mr. G. Sasidharan Chempazhanthiyil)

v e r s u s

1. The Indian Council of Medical Research,
Represented by its Director General,
Ansari Nagar, New Delhi : 29
2. The Officer-in-charge,
Indian Council of Medical Research,
Human Research Reproduction Centre,
SAT Hospital, Medical College,
Thiruvananthapuram.
3. Union of India, represented by its
*Secretary to Government, Ministry of
Health and Family Welfare, New Delhi.* ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

2. O.A. No. 65/2007

Dr. Sowmini C.V.,
W/o. Dr. Muraleedharan Nair,
Medical Research Officer,
Human Reproduction Research Centre/
Indian Council of medical Research,
SAT Hospital, Medical College,
Thiruvananthapuram. ... Applicant.

(By Advocate Mr. G. Sasidharan Chempazanthiyil)

v e r s u s

1. The Indian Council of Medical Research,
Represented by its Director General,
Ansari Nagar, New Delhi : 29
2. The Officer-in-charge,
Indian Council of Medical Research,
Human Research Reproduction Centre,
SAT Hospital, Medical College,
Thiruvananthapuram.
3. Union of India, represented by its
*Secretary to Government, Ministry of
Health and Family Welfare, New Delhi.* ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The above Original Applications having been heard on 2.7.08, this Tribunal on the same day delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The issue involved in the above two O.As being the same, these are dealt with in this common order.

2. The applicants are working in the Human Reproduction Research Centre and attached to SAT Hospital, Medical College Thiruvananthapuram in various capacities. Annexure A1 series is the appointment orders of the applicants. But these applicants were not duly regularized as many of their counterparts in Chennai Office. Those individuals filed O.A. No. 1332/2000 for regularization of their services and the Tribunal held as under:-

"14. It is clear from the above resolution that recommendations have been made from time to time to make the Human Reproduction Research Centres as a permanent organization within the ICMR. All these applicants were appointed in a scale of pay though it may be different from other organization. The appointments are also not for a fixed period. Though it may be true that they have been appointed in a particular unit and the unit is the organization of the first respondent and they have been working for the last two decades it is understood that these centers are permanent nature. In this connection it is also to be noted that when the Fourth and Fifth Pay Commission's recommendation were implemented the applicants were also given some benefits though not in full. But some of the staff have represented to the first respondent to regularize their services in view of the long period they have been served in the Institute. In the appointment orders it is not stated that these applicants have been appointed in a particular project. The Project is also not come to an end. Under these circumstances, the

decisions relied on by the learned counsel for the respondents may not have any application to the facts of this case.

15.

16. Taking into consideration the facts and circumstances of the case, we dispose of this application with the following direction :

"The fifth respondent is directed to consider the case of the applicants for regularization on the basis of the observation made above and pass final orders within a period of three months from today." "

3. The respondents to the above OA had taken up the matter with the High Court of Judicature at Madras and the High Court has dismissed the writ petition (W.P. No. 25490/2002 and connected matters) and held as under:-

"13. The learned standing counsel for the petitioners vehemently contended that the projects undertaken by the HRRCs under the supervision of ICMR were all adhoc projects and for a limited period subject to be continued on year to year basis if the objectives were not achieved and in case the objectives of the projects were achieved, there would be no need to continue the concerned HRRCs and the staff who were appointed therein would be terminated automatically since the appointment itself is purely on temporary basis which is liable to be terminated at any time and, therefore, when the respondents/employees were admittedly appointed purely on temporary basis and when there were no regular vacancies available in the HRRCs, the regularization of the respondents/employees cannot be considered. We are unable to subscribe the contention of the learned standing counsel for the petitioners. In view of the fact that the HRCCs are in existence for more than 30 years and the staff employed therein also put in service for 12 to 30 years, it can be held that the projects undertaken by the HRRCs are perennial in nature and they cannot be termed as temporary and the persons working therein also cannot be kept as temporary for more than a certain limited period, therefore, such continuance would certainly wipe out the

character of temporary status and confer the permanent status. Further, it is not in dispute that the appointments were not regular appointments. In fact, these respondents/employees though were appointed on temporary, in the course of their continuation, they were given pay and allowances more or less on par with the regular employees, such as, DA, CCA, HRA, 20% benefit of IV Pay Commission, etc. and also revised scales of pay on par with the Central Government and for higher ranks, such as Research Officers, non-practicing allowance was also granted. Therefore, all these factors would enable the respondents/employees to claim for regularization of their services....."

4. The applicants in this OA are similarly situated as in OA No. 1332/2000 of the CAT, Chennai. As such, their claim is that the benefit of the order of the CAT, Madras Bench as upheld by the High Court of Madras, be extended to them.

5. Respondents have contested the O.A. They have further stated that in so far as reliance placed by the applicants on the order of the Hon'ble High Court of Madras is concerned, the respondents have already challenged the said order by way of filing the Special Leave Petition No. 14953-14960 of 2007 titled as Union of India vs Shelvam & Ors., wherein the Hon'ble Supreme Court was pleased to grant the stay of the contempt proceedings while issuing notice in the SLP. (counter in OA No. 65/2007 refers).

6. Counsel for the applicant submitted that admittedly, the case of the applicants is identical to that in the OA No. 1332/2000 of the Madras Bench and hence, an identical order be passed.

7. Counsel for the respondent did not deny the fact that the case of the applicants in these O.As is identical to that of those in the Madras Bench OA referred to above. It has been submitted by the counsel for the respondents that the Apex Court has granted stay in the contempt proceedings in the Chennai case.

8. Arguments were heard and documents perused. The respondents in these O.As are also respondents in OA No. 1332/2000 of the Madras Bench. It has not been denied that the case of the applicants in these O.As is identical to that of the applicants in OA No. 1332/2000 of the Madras Bench. The decision in that case has been challenged before the Apex Court and the Apex Court has granted stay of contempt proceedings. Counsel for the applicant submits that a like order as in Madras case be passed. However, it is felt appropriate that interest of justice would be met if the respondents are directed to consider the case of the applicants in these OA immediately after the decision of the Apex Court in SLP (C) No. 14953-14960 of 2007 is pronounced, and on the same lines as the decision of the Apex Court is applied upon the applicants in OA No. 1332/2000 of the Madras Bench.

9. Accordingly, it is directed that the respondents shall consider the case of the applicants in the same manner as they would do in the case of the applicants in OA No. 1332 of 2000 of the Madras Bench after the Apex Court has decided the Special Leave Petition No. 14953-14960 of 2007.

10. The O.As are disposed of on the above lines. No costs.

(Dated, the 2nd day of July, 2008)

(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER

(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.