OA.690/91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION No.690 /1991,
2. ORIGINAL APPLICATION NO.691 /1991.

Pronounced, this the 10th day of July 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

1. R.B.Chavan,
Flat No.2,
Chintamani Apartments,
Plot No.43,
Dahanukar Colony,
Kothrud,
Pune - 411 029. ... Applicant in O.A.690/91.

2. S.M.Kodilkar,
Flat No.202,
Sadhana Housing Society,
No.2, Ma lwadi, Hadapsar,
Pune - 411 028. ... Applicant in O.A.691/91.

(By Advocate Shri S.P.Saxena)

V/s.

1. The Director,
National Chemical Laboratory,
Pune - 411 008. ... Respondent in both O.A.690 & 691/91.

(By Advocate Shri K.P.Anilkumar).

ORDER

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two applications filed by two applicants claiming identical reliefs. The respondent has filed reply in both the cases. We have heard the learned counsels appearing on both sides.

2. The applicant R.B.Chavan in O.A. 690/91 was appointed as Temporary Chemist in the Respondent's Labo-ratory w.e.f. 7.12.1984. The applicant's service was initially for six months and then extended from time to time till 31.3.1991. The applicant had actually worked till 12.4.1991. The respondent terminated the service of the applicant w.e.f. 27.3.1991 by a letter dt. 12.4.1991. The applicant's services have been terminated with retrospective effect and further the

applicant's salary is not paid from 1.3.1991 to 12.4.1991. The applicant had continuously worked for 6½ years. The order of termination is illegal and bad in law. No retrenchment notice was given to the applicant. No retrenchment compensation was made as per the provisions of the Industrial Disputes Act. The applicant was entitled to be regularised as per rules. The applicant has suffered monetary loss to the extent of Rs.62,000/-. On these grounds, the applicant has approached this Tribunal praying for quashing of the order of termination as illegal, to direct the respondent to reinstate and regularise the applicant in any existing vacancy and to pay back wages etc. In the alternative, the respondents should be directed to pay Rs.52,000/- with interest as compensation.

In O.A. 691/91, the applicant is S.M.Kodilkar. His plea is also identical to the pleadings in the above case. But here the appointment of the applicant as Temporary Chemist was as per the order dt.3.6.1985 and he joined his duties on 11.6.1985. All other allegations and prayers are same as in Chavan's case, except the compensation claim in this case, which is only Rs.14,000/-.

3. The defence of the respondents in both the cases are common.

4. The defence is that the respondent is not an Industry and therefore, the provisions of Industrial Disputes Act does not ~~arise~~ apply. The appointments of the two applicants were purely temporary and for a particular period which came to an end on 31.3.1991. The applicants were appointed for the Project work on a consolidated pay and was extended from time to time

depending upon the existence of the Project work. As soon as the Project work was over, the applicants services were terminated w.e.f. 27.3.1991. That the services of the applicant cannot be regularised and they cannot be reinstated as per rules. The monetary loss alleged by both the applicants is denied. It is admitted that the applicants' are entitled to salary up to 12.4.1991, but it was not paid since the applicants did not fulfil the formalities of producing No Due Certificate etc. It is therefore prayed that both the applications be dismissed.

5. The learned counsel for the applicants questions the correctness and legality of the order of termination. It was argued that the termination is bad since no sufficient notice was given and further the termination is bad being contrary to Sec. 25F of the Industrial Disputes Act. It was argued that as per the 'Manas' Report, the applicants' had put in more than 6 years and were entitled to be regularised and absorbed in regular posts. It was therefore, argued that both the applicants should be reinstated, absorbed and regularised with backwages, continuity in service and other consequential benefits. The learned counsel for the respondent submitted that the provisions of Industrial Disputes Act are not attracted and respondent is not an Industry. It is submitted that the order of termination was due to expiry of the Project work. It was further submitted that as per the rules of the respondent, the applicants services who were appointed for Project work could not be regularised and hence the applicants are not entitled to any ~~other~~ of the reliefs. The learned counsel

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for the applicants prayed for a direction to the respondents to pay salary for the period from 1.3.1991 to 12.4.1991. This claim has been admitted in the written statement, but the learned counsel for the respondent submitted that the amount was not paid since applicants did not produce the necessary No Due Certificate.

6. In the light of the arguments addressed before us, the points that fall for determination are :

(1) Whether this Court can consider the applicants grievance about the order of termination being in violation of Sec.25F of the Industrial Disputes Act?

(2) Whether, even otherwise, the order of termination is bad and liable to be quashed?

(3) Whether the services ~~of the~~ applicants are entitled to be reinstated and their services can be regularised as per rules?

(4) Whether the applicants are entitled to the arrears of Pay and Allowances for the period from 1.3.1991 to 12.1991?

(5) What Order?

Point No.1 :

7. In our view, this Tribunal can only decide the service disputes of Central Government Servants arising from Service Rules. But the applicant's grievance about violation of provisions of Industrial Disputes Act cannot be agitated before this Tribunal. That is a matter which the applicants will have to agitate before a Labour Court or Industrial Court constituted under the Industrial Disputes Act.

Following the decision of the Apex Court in K.P.Gupta V/s. Controller, Printing & Stationery (JT 1995 (7) S.C. 522) a Division Bench of this

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Tribunal to which one of us was a party (Justice R.G.Vaidyanatha, Vice Chairman) in a Judgment dt. 14.1.1998 in O.A. No.1352/95 and other connected cases (C.Ravindran & Ors. V/s. Union of India & Ors.) held that officials cannot agitate their rights flowing from Industrial Law before this Tribunal and their remedy is to approach the Labour Court or Industrial Court under the Industrial Disputes Act. We are of the same reasoning in this case also. In view of this reasoning, we hold that the applicants cannot agitate their rights, if any, under the Industrial Disputes Act before this Tribunal. Similarly, we hold that this Tribunal cannot even go into the questions of whether the defendant is Industry or not. All these questions are left open. It is open to the applicants to approach the proper forum under the Industrial Disputes Act and agitate their rights according to law and subject of course, to the law of limitation.

Point No.2 :

8. That the applicants were appointed in 1984 or 1985 and their services came to be extended from time to time and the last appointment letter is to extend the service from 1.2.1991 to 31.3.1991. Therefore, the services of the applicants came to an end by efflux of time by 31.3.1991. Even if the order of termination is held to be illegal, the applicants cannot continue in service after 31.3.1991 unless their services are again extended by a fresh order of appointment or they now succeed in this Tribunal, by getting an order that they should have

been absorbed and regularised as per rules. Therefore, strictly speaking the question whether the order of termination is bad is purely academic. Even if it is held to be illegal and quashed, the applicants cannot automatically continue in service after 1.4.1991 unless there is a fresh order of appointment or they succeed in this case by getting their services regularised as per rules. The order of termination says that since the Project work has come to an end, the services of the applicants came to be terminated. Therefore, in our view, the applicants services came to be terminated since the Project work came to an end or otherwise their services came to an end by efflux of time on expiry of 31.3.1991. Therefore, ~~the question of quashing~~ the order of termination cannot be said to be illegal or void.

Point No.3 :

9. Admittedly, the applicants were appointed for a Project work and not as a regular employee under the defendant. The Project work is taken up by the defendant when sponsored by others. The applicants were given a consolidated pay and not with a defenite pay scale as applicable to regular government servants. The The appointment order clearly shows that it is purely a temporary appointment for a short period. In some of the appointment orders it is clearly mentioned that applicants are not employees of the defendant or CSIR, but they are appointed only for Project purposes. The payments are made from the Project fund and not from the regular government money.

10. It may be that the applicants had put in five to six years service continuously. The question is whether they are entitled to be regularised as per rules. The applicants counsel strongly placed reliance on Manas Committee Report and in particular para 5.5.

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The Council of Scientific and Industrial Research (C.I.S.R.) appointed a Committee for giving a report about Merit And Normal Assessment Scheme (MANAS). The Committee no doubt recommended in para 5.5 about the mode of regularisation. The governing Council of C.S.I.R. considered and accepted the Report of the Committee with certain changes. As far as the question of regularisation is concerned, on the basis of the MANAS Committee Report, the Governing Council took a decision as per para 8 in the letter dt. 13.1.1981 addressed by the Under Secretary of C.S.I.R. to the Directors of all Laboratories/Institutes/Research Associations under C.S.I.R. Para 8 in that letter is relevant for our present purpose and it reads as follows :

> "8. The existing persons who have rendered three years continuous service in a scheme should be absorbed either against existing regular vacancies in identical posts or by creating additional posts (by following prescribed procedure) if the work load in the Laboratory/Institute so demands. The supernumerary posts could be created to absorb the staff employed in such projects/ schemes, initially being a one time effort only. The Laboratories/Institutes should not recruit further staff until all such staff is absorbed."

A perusal of the above para shows only existing persons who have completed three years continuous service are entitled to be regularised and absorbed. Therefore, as per the decision of the governing body of C.I.S.R. employees who were in service on 13.1.1981 are entitled to be regularised. Now the applicants in both the cases were in service either from 1984 in one case or 1985 in the other case. Admittedly, they do not come within the expression of "existing employees" mentioned above. Further,

...8.

it is seen from para 8 that it was only a one time concession and not meant for all times to come. Therefore, the applicants who joined the services in 1984 or 1985 cannot claim one time concession given in 1981.

11. It is true that the applicant had served for 5 to 6 years, but that is no ground for this Tribunal to direct that their services should be regularised or absorbed when the rules do not provide for it. We must also bear in mind that the length of ad hoc service cannot be regularised unless the selection or appointment was as per rules. At the time of arguments, we posed questions to both the counsels and elucidated information as to how the selection is made for Project work and the selection is made for regular vacancies in C.S.I.R.

It was stated at the bar that for Project work the selection is made by just publishing an advertisement on the Notice Board inviting applications and an Ad hoc Committee is constituted which contains a representative of the sponsorer of the Project and they will select candidates for temporary posts in the Project.

For the regular appointment under the Defendant or in C.I.S.R. the procedure as per the submissions made at the bar was regarding some vacancies to advertise in Newspapers and for some vacancies to call a list of candidates from the Employment Exchange. Then a regular Selection Committee is formed who will interview the candidates and make appointments. Admittedly, the applicants are not selected as per this regular selection procedure. Therefore, the applicants who came to be appointed by an ad hoc committee by just a Notification on the Notice Board

cannot claim the benefit of candidates who were appointed on regular basis. When the applicants are not appointed on regular basis as per the procedure prescribed by C.S.I.R., the applicants cannot be regularised or absorbed against regular vacancies. Whenever regular vacancies are notified either in the Newspaper or through Employment Exchange the applicants will have to apply and then they will be screened and interviewed by the regular Selection Committee and then question of regular appointment comes.

After having gone through the material records in the relevant case, we do not find that the applicants have made out any case for reinstatement, absorption or regularisation and therefore the question of granting consequential benefits will not arise. However, we make it clear that in future whenever regular vacancies arises and open advertisement is given in Newspaper the applicants can also apply. In such a case, the respondent can give them age relaxation for whatever continuous period the applicants have worked and exemption that may be given as per rules. Then the applicants can be interviewed by Selection Committee and they may be considered for selection particularly having regard to their past experience etc. If, however, any future vacancies occur on the Project side then also the applicants can apply and the respondents may consider their claim for the temporary appointment according to rules.

Point No. 4 :

12. Now it is admitted before us that the applicants are entitled to their salary for the

period from 1.3.1991 to 12.4.1991. The only objection is that the applicants' have not given "No Due Certificate". In our view, an ex-employee cannot produce "No Due Certificate". The concerned Administrative Officer should seek necessary information from the Library and Accounts Branch and Laboratory to find out whether any dues are outstanding from the applicants. If there are any outstanding dues, the same may be deducted while making payments, if there are no outstanding dues like that, then the applicants should be paid whatever amount that is due to them towards salary for the said period.

13. In the result, both the O.As. are allowed partly as follows.

(1) The applicants prayer for reinstatement and regularisation is rejected. However, the applicants claim for work on Project side or for regular vacancy should be considered as per observation made in para 11 above.

(2) The respondents are directed to pay salary due to the applicants from 1.3.1991 to 12.4.1991 subject to observations made in para 12 above, this portion of the order be complied within two months from the date of receipt of this order.

(3) In the circumstances of the case there will be no order as to costs.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.