

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA**

OA Nos. 350/00894/2014

350/00895/2014

MA 350/00391/2014

350/00896/2014

350/00897/2014

350/00941/2014

350/00942/2014

350/00927/2014

350/00928/2014

350/00929/2014

Reserved on : 01/04/2016

Pronounced on : 04.2014

2.5.2016

**PRESENT:**

**THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER**

**THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER**

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1. OA 350/00894/2014 CHUNI DUTTA -Vs-UIO&Ors (HEALTH & F W)
2. OA 350/00895/2014 SUMITRA NAG-Vs-UIO&Ors (HEALTH & F W)
3. MA 350/00391/2015 APURBA KR MUKHERJEE-Vs-UIO&Ors (HEALTH & F W)  
OA 350/00896/2014
4. OA 350/00897/2014 DEBI CHOUDHURY (NEE BHOWAL) -Vs-UIO&Ors (HEALTH & F W)
5. OA 350/00941/2014 NEMAI DAS-Vs-UIO&Ors (HEALTH & F W)
6. OA 350/00942/2014 DILIP KR BANERJEE-Vs-UIO&Ors (HEALTH & F W)
7. OA.350/00927/2014 AMIT KR CHAKRABORTY-Vs-UIO&Ors (HEALTH & F W)
8. OA.350/00928/2014 BIDYUT GANGULY-Vs-UIO&Ors (HEALTH & F W)
9. OA.350/00929/2014 DR. CHHABI CHAUDHURY (BOSE) -Vs-UIO&Ors (HEALTH & F W)

For the Applicants : Mr. A. Chakraborty and Ms. T. Das, Counsel

For the Respondents : Mr. A P DEB & MS. J Saha, Counsel

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## ORDER

MS. JAYA DAS GUPTA, AM

The above ten cases were heard together. As the question of facts and law involved in these cases are common a common order is passed which would govern all these cases *mutatis mutandis*.

2. It is the case of the applicants that they all are/were working in Extra Mural Research Project of Human Reproduction Research Centre (in short HRRC) under the Indian Council of Medical Research (in short ICMR) at Eden Ward of Medical College Hospital, Kolkata. The details of their date of appointment, the duties discharging by them and the date of filing of the OA are given as under:

Sl. No.	O.A. Nos.	Names of Applicant	Working as	Date of appointment	Status/position as on the date of filing of OA	Date of filing this OA
1	894/2014	Mr.Chuni Dutta	Driver	08/09/1987	Working	09/07/2014
2	895/2014	Dr.Sumitra Nag	Research Assistant	16/06/1987	Working	09/07/2014
3	MA 391/2015 896/2014	Mr.Apurba Kumar Mukherjee	Lower Division Clerk	02/05/1982	Working	09/07/2014
4	897/2014	Smt. Debi Chowdhury (Nee Bhawal)	Social Worker	02/04/1984	Working	09/07/2014
5	941/2014	Mr. Nimai Das	Driver	28/05/1994	Working	09/07/2014
6	942/2014	Mr.Dillip Kumar Banerjee	Lower Division Clerk	31/07/1982	Working	09/07/2014
7	927/2014	Dr.Amit Chakraborty	Research Officer (Medical)	04/04/1994	Working	09/07/2014
8	928/2014	Mr.Bidyut Ganguli	Social Worker	08/09/1981	Attained the age of superannuation on 31/01/2014	09/07/2014 (filed the OA within six months of retirement)
9	929/2014	Dr. Chabi Chowdhury	Research Officer	15/05/2000	Working	09/07/2014

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From the above, it is clear that the applicants may be classified in two groups viz; the applicants who have filed the cases before they attained the age of 60 years and the applicant namely Mr. Bidyut Ganguly, in OA Nos. 928 of 2014 who has filed his case within six months after attaining the age of 60 years. The applicants other than in OA No. 928 of 2014, have prayed for the following reliefs:

"(a) An order to issue directing the respondent to absorb the applicants in the post of Driver/Social Worker, Research Assistant, Lower Division Clerk with effect from the date of initial appointment and to grant all consequential benefits;

(b) Costs and incidentals;

(c) Such further order/orders and/or direction/directions as your Lordships deem fit and proper."

The applicant, namely Mr. Bidyut Ganguly, in OA Nos. 928 of 2014 has prayed for the following reliefs:

"(a) An order to issue directing the Respondent to grant pension and pensionary benefits treating the applicant as a regular employee with effect from the date of initial appointment;

(b) Costs and incidentals;

(c) Such further order/orders and/or direction/directions as Your Lordships deem fit and proper."

3. It is the contention of the applicants, in unison, that all of them were regularly selected against the advertisement published from time to time by the Respondents. They were appointed on temporary

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basis and continuing since then and performing the duties except Shri Bidyut Ganguly. They made several representations for their regularisation which did not yield any result. It has been stated that Research programme is being organised at different centres of HRRC for which financial assistance is being provided by the ICMR to the local hospitals. However, the project under which they were appointed had been merged with the core activities of different research unit under the control of the ICMR. Their further submission is that some of the similarly circumstanced employees filed OA Nos. 370/2000 and 303/2001 before the Madras Bench of the Tribunal praying for a direction to the Respondent- Department to regularize their services which was disposed of with certain direction. Against the said order the Respondent-Department filed a Writ Petition before the Hon'ble High Court of Madras. It is the case of the applicants that the employees who filed the above OAs were regularised from the date of their initial engagement but as the present applicants were not parties to the said OAs, they were not granted the benefit of the regularization. As the applicants are all similarly situated employees like those applicants in OAs before the Madras Bench of the Tribunal, and, therefore, they should not be discriminated in the matter of regularization. Further placing reliance on the decision of this Bench rendered in OA No. 350/01298/2013 (Dr. Arunangshu Chakraborty and Others Vs. Union of India and Others), the learned counsel for the applicants submitted that as the applicants in all these OAs being similar to the applicant in OA

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No. 1298 of 2013 and the said OA having been allowed, the applicants in the instant OAs are entitled to the relief claimed by them.

4. On the other hand, in a bid to torpedo and pulverize the aforesaid arguments, the learned counsel for the respondents submitted that as per the direction of the Hon'ble Supreme Court in Uma Devi's case the benefit of regularization cannot be extended to the applicants. It has been submitted that a similar case came up for consideration before the Principal Bench of the Tribunal in OA No. 659 of 201. The Principal Bench of the Tribunal vide order dated 06.02.2015 rejected the prayer of the applicants. It has also been contended that the benefit of regularization was awarded by the Hon'ble High Court of Madras only to the 20 individuals who were parties to the Writ Petition and, as such, the said benefit of regularization cannot be extended beyond those 20 persons. For the above reasons, the learned counsel appearing for the Respondents have prayed for the dismissal of these OAs.

5. Heard both. Consulted the records.

6. The records would speak that as there was no promotional avenues and no regularisation of the services of the employees of different HRRC units were accorded, some of the employees filed litigation in different Courts and Tribunals. One of the important litigations which has been taken note is filed by employees of HRRC, Obstetrics and Gynaecology, Agmore, Chennai. Thereafter, the similarly situated persons filed different O.As before the Madras Bench

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of this Tribunal. The Tribunal vide its order dated 4.12.2001 decided the matter after considering several authorities by following order :

"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 regularisation on the basis of the observation made above and pass final orders within a period of three months from today."

7. Such orders of the Tribunal were challenged before the Madras High Court in different Writ Petitions including WPC No.25577/2002. The Hon'ble High Court after considering in detail the facts and law passed the following order on 25.08.2006:

"Having considered the rival contentions of both sides, the Tribunal allowed the Original Applications directing the petitioners to frame a scheme and prepare a list for absorption of persons like respondents/employees. It is stated that since the Project under which the respondents/employees were appointed temporarily has been merged with core activities of a different research unit which is under the control of the ICMR, they came to be terminated from service. It is not in dispute that the ICMR is having other different research units, viz., 31 HRRCs in its control and taking into consideration of length of service put in by the respondents/employees, the Tribunal has rightly held that the respondents/employees can be absorbed in any of the its research units though they were terminated from service in one unit. Therefore, in view of such a conclusion reached by the Tribunal, we do not want to differ from the view taken by the Tribunal.

Accordingly, these Writ Petitions are dismissed. No costs."

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8. The order of Madras High Court dated 25.8.2006 was challenged before the Hon'ble Apex Court but the SLP was dismissed with following order :

"Heard learned counsel for the parties.  
In the facts and circumstances of the case, we are not inclined to interfere with the impugned order.  
The special leave petitions are, accordingly, dismissed."

9. When the above order was not complied with, Contempt Petition was filed before the Hon'ble High Court of Madras. In the contempt petition learned Solicitor General representing the respondents placed the appointment letters after regularisation of services of the applicants of the Writ Petition and the Court further directed to grant the pension under the same pension scheme which was applicable at the time of their appointment and not that of New Pension Scheme which was subsequently launched. The relevant para of this order passed in Contempt Petition on 01.08.2012 is re-produced

"When these petitions came up for consideration today, learned Assistant Solicitor General representing the respondent placed an order passed by the respondent in compliance of the common order of this court dated 25.8.2006 passed in W.P. Nos. 25492, 25574 and 25575 of 2002, regularising the services of Dr. Shyamala, who was superannuated on 31.8.2004, from the initial date of her appointment, i.e. 15.12.1998. It is further stated that she is deemed to have been appointed to the post of Research Officer in the ICMR in the pay scale held by her on 31.8.2004 in the HRRC project.

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With regard to payment of pensionary benefits, it is stated that she will be governed by the new restructured defined contribution pension system as per provision contained in the Ministry of Finance, Department of Economic Affairs (ECB & PR Division), Notification No.5/7/2003-ECB & PR dated 22.12.2003 effective from 01.01.2004 to which Mr Vijay Narayanan, learned Senior Counsel opposed as it is against the interest of the petitioner. He submitted that since the services of the petitioner Dr. Shyamala were regularised from 15.12.1986, the respondent should have applied the pensionary scheme prevailing at that time instead of applying new scheme introduced with effect from 01.01.2004, which is detrimental to the interest of the petitioner.

Considering the facts and circumstances of the case, we consider it appropriate that the petitioner is entitled to the pension scheme which was available at the time of her initial appointment. Accordingly, accepting the submission of the learned Senior Counsel appearing for the petitioner, the clause with regard to grant of pensionary benefits as per the new restructured defined contribution pension system is set aside and since the petitioner is to be granted pensionary benefits which was prevailing as on the date of her initial appointment, i.e., 15.12.1986, the respondent is directed to calculate the pensionary benefits for the retired employees as per the old scheme and arrange for payment within a period of four weeks from the date of receipt of a copy of this order.

Even in respect of serving employees, we consider it appropriate to delete condition No. IV and direct the respondent to consider their cases on par with Dr. Shyamala Balasubramanian and other retired employees. Accordingly, condition No. IV stands deleted in respect of all the petitioners and the respondent is directed to follow old pension scheme for all the petitioners.

This Contempt Petition is closed with the above observations."

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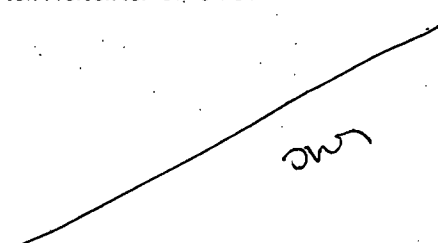
10. The Gujrat High Court at Ahmedabad, after taking the views of the Madras High Court into consideration, which was affirmed by the Hon'ble Apex Court, dismissed all the petitions filed by respondents ICMR and similar benefits were granted to the employees serving in HRRC at Gujarat. The Lucknow Bench of this Tribunal also regularised the services of the employees of HRRC Project in U.P in pursuance of the order passed by Madras Bench of this Tribunal which was affirmed by the Madras High Court as well as by the Apex Court.

11. It is the contention of the applicants that In spite of the above favourable orders, the present applicants were deprived of the benefits of regularisation.

12. It is noticed that the factual matrix noted above came up for consideration before this Bench of the Tribunal in OA No. 1298/2013 (Dr. Arunangshu Chakraborty and Others (supra) and after taking note of the aforesaid facts and law, the said OA was disposed of by this Tribunal on 03.02.2016. The relevant portion of the order is quoted hereunder for ready reference:

"3. Heard learned counsel for the parties and perused the records. The only question for consideration is as to whether the applicants of this case who are admittedly similarly situated persons to the litigants of Madras Bench are entitled to get the benefit of the judgment of Madras Bench, which was affirmed by the Hon'ble High Court and Apex Court ?

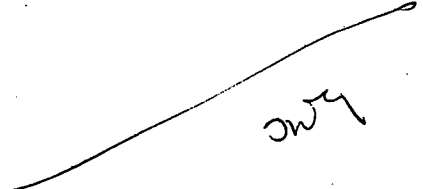
An attempt has been made to draw a distinction in the changed scenario after pronouncement of the judgment in State of Karnataka & Ors. Vs. Uma Devi & Ors. (2006) 4 SCC 1.



The Division Bench of the Apex Court held in a case of U.P. State Electricity Board vs. Pooran Chandra Pandey and Ors, reported in (2007) 11 SCC 92 has observed that the law propounded in Uma Devi's case supra cannot be applied to the cases where regularisation is being sought on the basis of parity. In other words when the Tribunal has already issued direction to the respondents to consider regularisation of similarly situated persons and in pursuance of the direction similarly situated persons were regularised then there is no reason to reject the claim of the applicants of this case on the basis of Uma Devi's case supra especially when the Hon'ble Supreme Court in Maharaj Krishan Bhatt & Another vs State of Jammu & Kashmir & Ors., reported in (2008) 9 SCC 24 has held as under :

"22. There can be no two opinions about the legal proposition as submitted by the learned counsel for the State. But in the case on hand, in our opinion, there was no illegality on the part of the learned Single Judge in allowing Writ petition No. 519 of 1997 instituted by Abdul Rashid Rather and in issuing necessary directions. Since the action was legal and in consonance with law, the Division Bench confirmed it and this Court did not think it proper to interfere with the said order and dismissed Special Leave Petition. To us, in the circumstances, the learned Single Judge was wholly right and fully justified in following the judgment and order in Writ Petition No. 519 of 1987 in the case of present writ petitioners also.

23. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State Authorities ought to have gracefully accepted the decision by granting similar benefits to present writ-petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed Letters Patent Appeal by affirming the order of the Single Judge. The Letters Patent Appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in



furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored.

24. For the foregoing reasons, the present appeals deserve to be allowed and are accordingly allowed. The judgment passed by the Division Bench in Letters Patent Appeal as well as Review Petition are set aside and the order passed by the learned Single Judge in SWP No. 3735 of 1997 is restored. The appellants are held entitled to all the reliefs which had been granted to Abdul Rashid Rather in pursuance of the judgment and order dated September 24, 1998 in SWP No. 519 of 1987. The respondent-State of Jammu & Kashmir will grant all the benefits as have been granted to Abdul Rashid Rather within a period of three months from today.

25. On the facts and in the circumstances, the appeals are allowed with costs."

The conclusion arrived by the Hon'ble Apex Court in the above case leaves no room to doubt that the judgment of the CAT, Madras Bench which has been affirmed by the Madras High Court and the Hon'ble Apex Court the order of Madras Bench has attained finality. The same was found to be legal and in accordance with law. The same has also been implemented by the respondents. The ICMR is working throughout the country and research job is being conducted under supervision of HRRC in different States under a common scheme. So the benefit of the judgment cannot be denied to persons similarly situated in the same department. Hence the benefit of the same shall be made available to non applicants of that case if they are similarly situated though they may have not the party to that litigation and subsequently asked for same benefit.

4. Moreover, the benefit which has ought to have been given, should be given to all non applicants and it cannot be denied by the respondents on the ground that they have not applied to the same benefits.

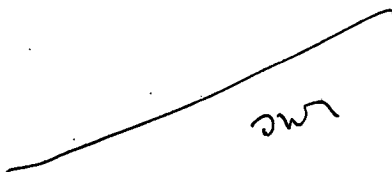
5. Therefore, the application stands allowed. The respondents are directed to regularise the service of the applicants in terms of the order passed by Madras Bench of this Tribunal and affirmed by Madras High Court against which the SLP has been dismissed, within a period of 2

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months from the date of communication of this order. No order as to costs."

13. On going through the factual matrix and the order of this Tribunal in the case in the case of Dr. Arunangshu Chakraborty & Others (supra), we do not find any major distinguishing feature so as to differ from the view already taken in the said earlier order in so far as the applicants in the present cases are concerned. Hence by applying the law of precedent as held by the Hon'ble Apex Court in the case of **S.I. Rooplal & Others v. Lt. Governor through Chief Secretary, Delhi** [JT 1999 (9) SC 597], these OAs are disposed of with the following directions:

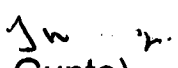
- (i) The Respondents, upon receipt of a certified copy of this order, shall consider the case of each of the Applicants with reference to the order passed by the Madras Bench of this Tribunal and affirmed by Madras High Court against which the SLP has been dismissed and with reference to the order dated 3.2.2016 passed by this Tribunal in OA No. 1298/2013 in the case of Dr. Arunangshu Chakraborty and Others (supra) and in the event, upon such consideration, it is found that the applicants stand on similar footing then grant them the benefits of <sup>100%</sup> regularization and consequential service and financial benefits. The decision thereof be intimated to each of the applicants in a reasoned order within an period of 04(four) months from the date of




receipt of a certified copy of this order. If favourable order is extended to the applicants, the applicant in OA No. 928 of 2014 shall be given the pensionary benefit as per law within a further period of 03 (three) months from the date of the said order.

14. In view of the above the MA (arising out of OA No. 896 of 2014) filed by the applicant seeking a direction to release the salary of the applicant therein for the period from March, 2015 till date does not survive and the said MA is accordingly disposed of.

15. There shall be no order as to costs.

  
(Jaya Das Gupta)  
Member (Admn.)

  
(Justice V.C. Gupta)  
Member (Judicial)