

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/113/2016

Date of Reserve: 8.7.2019

Date of Order: 29.08.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Miss.Anupama Tripathy, aged about 59 years, Daughter of late Satyabadi Tripathy, At-Satya Nivas, Po-Talamalisahi, PS-Kumbharpada, Dist-Town-Puri - at present working as Social Worker HRRC (ICMR), Department of Obstetrics & Gynaecology, S.C.C.Medical Collge & Hospital, At/PO/PS-Mangalabag, Town & Sist-Cuttack.

...Applicant

By the Advocate(s)-M/s.R.Sikdar
A.Sikdar
Mrs.U.R.Padhi

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Health & Family Welfare, Govt. Of India, New Delhi.
2. Director, National institute for Research in Reproductive Health (NIRRH), Jehangir Merwanji Street, Parel, Mumbai-400 012.
3. Indian Council of Medical Research (ICMR) represented by it's Director General, Ansari Nagar, New Delhi-110 029.
4. Asst.Director General (Administration), I.C.M.R., Ramalingaswami Bhawan, Ansari Nagar, PB-4911, New Delhi-110 029.
5. Hony.Director, HRRC (ICMR), Department of Obstetrics and Gynaecology, S.C.Medical College and Hospital, At/PO/PS-Mangalabag, Dist-Cuttack-753 007.

...Respondents

By the Advocate(s)-Mr.S.Behera
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act,

1985, the applicant has sought for the following reliefs:

- i) To allow the Original Application and notice to show cause to the Respondent No. 1 to 5 as to why the impugned order under Annexure-A/1j shall not be quashed or set aside.

- ii) And thereby to pass an appropriate order directing the Respondent No.3 to consider the applicant's case keeping in view of the ratio of Uma Devi's case and many other cases which has been diluted in case of M.L.Kesari, State of Karnataka with reference to Para-53 of Uma Devi's case.
- iii) And thereby to pass an appropriate order directing the Respondent No.3 to consider the applicant's case keeping in view of the order passed by the Learned Central Administrative Tribunal, Bench Madras in O.A.No.1332/2000 dated 4.12.2001 which has been upheld by the Hon'ble Madras High Court as well as the Hon'ble Supreme Court in Special Leave to Appeal (C) Nos. 18536-18538/2013 vide order dt. 31.7.2014.
- iv) And thereby to pass an appropriate order(s) as may be deemed just and proper in the facts and circumstances of the case and to allow the Original Application.

2. Shorn of unnecessary details, it would suffice to note that the applicant was appointed as a Social Worker vide letter dated 30.12.1986 in the Human Reproductive Research Centre (in short HRRC), ICMR in the Department of Obstetrics & Gynaecology in S.C.Medical College & Hospital, Cuttack. Her grievance for regularization in service having not been considered, the applicant had earlier approached this Tribunal in O.A.No.260/00348/2015. This Tribunal disposed of the said O.A. vide order dated 4.9.2015 as follows:

“3. I have taken into account the facts put forth by the learned counsel for both the sides and perused the records. It appears that applicant's representation dated 17.4.2014 made to Respondent No.3 is still pending consideration, presumably, in view of letter issued from the O/o. Director General, ICMR to the Prof. & HoD, Obstetrics and Gynaecology, SCB Medical College & Hospital, Cuttack for obtaining undertaking of the staff appointed/working under HRRC. Therefore, at this stage, without entering into the merit of the matter, I would direct the

Respondent No.3 to consider the pending representation of the applicant in accordance with the extant rules as well as in keeping with the decisions of the CAT, Madras Bench, Hon'ble High Court of Madras and the Hon'ble Apex Court, as referred to above, and communicate a decision thereon through a reasoned and speaking order to the applicant within a period of three months from the date of receipt of this order'.

3. Complying with the aforesaid direction, a speaking order dated 10.11.2015 (A/1) has been issued by the respondent-authorities, the relevant part of which is extracted hereunder:

1. Facts of the matter are that applicant was appointed as a Social Worker on 30.12.1986 in the HRRC (ICMR) Department of Obstetrics and Gynaecology, S.C.B.Medical College & Hospital, Cuttack.
2. Applicant was appointed by host institute, i.e., S.C.B.Medical College, Cuttack social worker in HRRC on purely temporary basis for a period of one year & she may be continued in the project on yearly basis renewal. She was governed by the rules & regulations of the Host. Institute. ICMR is only funding agency & has no role in appointment of the staff at the Host Institute. As far as the case of twenty employees of the Chennai are concerned they had different service conditions and hence were regularized as per High Court order dated 25.08.2005 issued by Madras High Court.

That the terms of appointment clearly mentioned that the applicant is appointed on purely temporary basis and can be terminated at any time without giving any notice, which was accepted by the Applicant. With respect to the demand of pension and fitment benefit including arrears of pay etc. are concerned, it is stated that these benefits are granted to the regular employees and no to those persons whose appointment is on ad hoc basis and are still temporary. These temporary appointments were in the ad hoc project and that were also temporary. Creation of permanent posts in a temporary project is neither feasible nor desirable. It is further stated that at present there is no scheme or policy to regularize the contractual staff in the ICMR.

In view of the aforesaid facts and circumstances, it is further stated that there is no such proposal at the moment to create permanent post in temporary project or to make a regular appointment to the contractual employees.

The request for regularization, pension, payment of consequential benefits including arrear of pay and fitment of 40% benefit made by the applicant is untenable and is accordingly declined".

4. Aggrieved with this, the applicant has approached this Tribunal in this O.A., praying for the reliefs as already mentioned above.

5. It is the case of the applicant that she was initially appointed as Social Worker vide letter dated 30.12.1986 in HRRC, ICMR in the Department of Obstetrics & Gynaecology in SCB Medical College & Hospital, Cuttack in the scale of Rs.425-640/- and other allowances as per the ICMR (HQ), New Delhi Rules vide A/2 and accordingly, she joined on 05.01.1987. Although she has rendered service continuously for about 29 years without any interruption, her services are not being regularized. The applicant has pointed out that she ranks at Sl.No.20 of all India seniority list of Social Workers in respect of 33 HRRCs in the country. Similarly situated persons had approached the CAT, Madras Bench in O.A.No.1332 of 2000 which was disposed of on 4.12.2001 in the following terms:

"The 5th Respondent is directed to consider the case of the applicant for regularization within a period of 3 weeks".

6. The above decision was challenged before the Hon'ble Madras High Court in W.P.(c) No.25574/2002 wherein the Hon'ble Court held as follows:

"We are of the view that when admittedly the respondents/employees put in service for years together, ranging from 12 to 30 years continuously in HRRCs being run by ICMR without any break on year to year basis and admittedly the concerned HRRCs are in existence for decades together and not for limited period, the respondents/employees are certainly entitled for regularisation of their services".

7. Relying on the above decision of CAT, Madras Bench as confirmed by the Hon'ble Madras High Court, the applicant has claimed that similar order should be passed in this O.A.

8. Opposing the prayer of the applicant, respondents have filed their counter. The respondents while replying to the averments made in Paragraphs-4.3 to 4.11 of the O.A. have stated as follows:

"With reference to Para 4.3 to 4.11 of the application, the contents of the said Paras are denied. It is respectfully submitted that the case before the Madras High Court had its peculiar facts and circumstances which is not analogous to the applicant herein, the order of Hon'ble High Court of Madras was only for 20 individuals who were party to the Writ Petition and has not been extended beyond those 20 persons for whom 20 supernumerary posts have been created. Such creation of supernumerary posts cannot be quoted as precedent and the present applicant cannot allege that his service be regularized on the basis of above supernumerary posts. The applicant has to go through various stages of the process of recruitment as per the selection process of the Government to become a regular and permanent Government servant and mere working in a project which is for a limited period and for limited purpose cannot become a passage to reach and attain the status of a regular and permanent Government employee. Therefore, the applicant cannot stand on identical footing as of the other HRRC staff who filed W.P. before the High Court of Madras".

9. With these submissions the respondents have submitted that the applicant is not entitled to any relief sought for.

10. We have heard the learned counsels for both the sides and perused the records. We have also gone through the rejoinder filed by the applicant as well as the written notes of submission. At the outset, we would like to mention that the respondents have not uttered a single word repudiating the contention made by the applicant at Para-4.7 of the O.A. that her rank on all India seniority list of Social Worker was at Sl.No.20. In the written note of submission, the applicant has further brought to the notice of this Tribunal that the Respondent No.3 (D.G., ICMR) had prepared a seniority list of 2012 in which the services of Social Workers placed at Sl.Nos. 23 (V.B.Santa Kumari), 17 (S.Suganthi), 16 (T.Jamundhi) and 22 (S.K.Kanthimati) have been regularized in pursuance to the decision of CAT, Madras Bench in O.A.No.302/2001 and O.A.No.303/2001. According to applicant, her position in the Seniority being at Sl.No.20, she has not got the similar benefit. Further, it has been pointed out that HRRC staff in other state like, Ahmedbad had approached CAT, Ahmedbad Bench in O.A.Nos.487/2005 and 492/2005 and in pursuance of the orders passed by CAT, Ahmedbad Bench following the decision of CAT, Madras Bench in O.A.No.1332/2000, the services of the applicants therein have been regularized.

11. We have gone through the decision of CAT, Madras Bench in O.A.No.1332 of 2000 and it reveals that the applicants therein had been appointed in the year ranging from 1973 to 1986 on similar terms and conditions as the applicant herein. The findings recorded by CAT, Madras Bench in the said O.A. are reproduced hereunder.

"13. We do not think that any of the decision will have any bearing to the facts of this case is concerned. It is true that the first respondent has established various Human Reproduction Centres at various Medical Colleges. The Schemes has been working for the last two decades is also an admitted fact. Taking into consideration the growth in population, the respondents also have no case that the project is likely to be closed in the near future. In fact, more or less it is admitted that the research work undertaken by various Human Reproduction Research Centres established by the first respondent is perennial in nature. In this connection, it is also worthwhile to note down the minutes of the 76th Annual meeting of the ICMR held on 28.1.1999. One of the point came for consideration was whether the various Human Reproduction Research Centres can be made permanent. Agenda Item No.8 which is relevant for our purpose reads thus:

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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 organisation within the ICMR. All these applicants were appointed in a scale of pay though it may be different from other organisation. 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 has been working for the last two decades, it is understood that these centres are all permanent nature. In this connection it is also be noted that when the Fourth and the Fifth Pay Commissions' recommendations were implemented the applicants were also given some benefits though not in full. But some of the staff have represented to the first respondents to regularise their services in view of the long period they have been served in the Institute. In the appointment order 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".

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12. It is not in dispute that the applicant's position on all India Seniority list was at SI.No.20. It is also not in dispute that by virtue of the orders of the CAT, Madras Bench, the services of persons who are similarly situated and junior to the applicant being placed at SI.Nos. 17 (S.Suganthi), 16 (T.Jamundhi) have been regularized.

13. From the above analysis, we are of the view that the applicant being a similarly situated person as that of the applicants before CAT, Madras Bench (supra), is entitled to similar benefits. In view of this, while quashing the impugned order 10.11.2015 (A/1) we direct respondent no.1 to consider regularization of the applicant herein having regard to what has been discussed above and pass a final order within a period of three months from the date of communication of this order.

14. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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