

फैक्स नो. एकरा / PABX : 26588990, 26508707, 26589336
26589873, 26589414, 26589745
FAX : 011 26588662, 011 26859791, 011 26589258

तार/GRAM: विज्ञान/SCIENTIFIC
web site : www.icmr.nic.in फ़ैक्स /
E mail : icmrhqds@sansad.nic.in



भारतीय आयुर्विज्ञान अनुसंधान परिषद
INDIAN COUNCIL OF MEDICAL RESEARCH
स्वास्थ्य अनुसंधान विभाग (स्वास्थ्य एवं परिवार कल्याण मंत्रालय)
DEPARTMENT OF HEALTH RESEARCH (MINISTRY OF HEALTH & FAMILY WELFARE)

वी. रामलिंगस्वामी भवन, अन्सारी नगर, पोस्ट बॉक्स 4911, नई दिल्ली-110 029
V.RAMALINGASWAMI BHAWAN, ANSARI NAGAR, POST BOX-4911, NEW DELHI-110029

No.16/49/2015-Admn.II
To

Dated: 7.5.2015

All the Directors/Directors-in-Charge of
ICMR Institutes/Centres.

Subject:- Order passed by the Hon'ble Central Administrative Tribunal, Principal
Bench, New Delhi in O.A. No.659/2014 filed by Dr.Kulbhushan Sehgal Vs.
UOI & Ors -

Sir/Madam,

I am directed to enclose a copy of letter No.C.30011/15/2014-HR dated 23.3.2015 along with a copy of order passed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi. While defending such cases claiming regularization of services, order of the Hon'ble Tribunal may be cited in Affidavits to be filed.

Yours faithfully

(Bharat Bhushan)
Administrative Officer
For Director General

MOST URGENT
COURT CASE

No. C-30011/15/2014-45
Government of India
Ministry of Health and Family Welfare
(Department of Health Research)

2nd Floor, IRCS Building
New Delhi-110001
Dated 23.03.2015

To, ✓
The Director General
Indian Council of Medical Research
Ansari Nagar, New Delhi-110029

Kind attention:- Sr. D.D.G. (Admn.), ICMR

Sub:- O.A. No. 659/2014 (Dr. Kulbhushan Sehgal -Vs- UOI & others) disposed/dismissed by the Hon'ble
CAT, Principal Bench, at New Delhi-reg.

Ref.:- ICMR Letter No. 104/Legal Cell/2014 dated 02.03.2015 (enclosed). → L.No. 17

Sir,

I am directed to invite your attention to the above referred letter and to say that copy of the order passed by the Hon'ble Tribunal in the above mentioned case has been received in this Department from ICMR.

While dismissing the O.A., the Hon'ble Tribunal was pleased to rely upon the Uma Devi's case wherein the Constitutional Bench of the Hon'ble Supreme Court has laid down the law of the land to deal with such issues claiming regularization of temporary/ad-hoc services. Long devoted continuous temporary/ad-hoc services do not create a right for claiming regularization of such services.

Under the circumstances, ICMR is requested to circulate copy of the above mentioned order to all its Institutes so that, while defending such cases claiming regularization of services, order of the Hon'ble Tribunal may be cited in Affidavits to be filed.

Enclosed:- As above.

Sr. DDG (A), ICMR OFFICE
DIARY NO. 982
DATE: 23.3.15

Yours faithfully,

(R. K. Ahluwalia)

Under Secretary to Government of India
Tel. Ph. 23736090

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 659/2014

New Delhi this the ^{6th} day of February, 2015

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Dr. Kulbhushan Sehgal
S/o Late Shri J.R. Sehgal
R/o A 118, Sector 2, 60 Sq.Mt. Plot
Pocket OO, Rohini,
New Delhi-110085

... Applicant

(Through Shri Deepak Verma, Advocate)

Versus

Union of India through:

1. The Secretary to the Govt. of India,
Ministry of Health & F.W.
Dept. of Health Research,
Nirman Bhawan,
New Delhi-110001
2. The Director General
Indian Council of Medical Research (ICMR)
Ansari Nagar,
New Delhi-110029
3. The Director,
All India Institute of Medical Sciences (AIIMS)
Ansari Nagar,
New Delhi-110029

... Respondents

(Through Shri R.N. Singh and Shri Veer Vijay Singh for Shri
Mehmood Pracha, Advocates)

ORDER

Mr. P.K. Basu, Member (A)

The applicant joined the Indian Council of Medical Research
(ICMR) as Statistical Assistant on 1.06.1998 on *ad hoc* basis.

Thereafter, he was appointed as Research Associate vide ICMR letter dated 30.06.2003 for a project "Intervention Programme on Nutritional Anemia and other Haemoglobinopathies Amongst Primitive Tribal Population of India." The applicant was appointed as Senior Research Fellow by letter dated 10.04.2006. With effect from 15.01.2010, he was appointed as Research Scientist-I (NM)/ Scientist 'B'. Consequent to the VI CPC recommendations implemented in ICMR with effect from 1.09.2009, the applicant was paid consolidated salary of Rs.33,000/- + HRA effective from 1.04.2012. In past about 15 years he worked in the capacity of a Scientist on several ICMR projects from time to time. The applicant has been requesting the respondents from time to time for regularization against a post commensurate to his qualifications and experience. He has even stated that on account of working in ICMR on various projects continuously for many years, he has become overage to apply for posts outside. The respondents issued a letter dated 14.05.2008 in which he was informed that at present no post conforming to his qualifications existed in the division of BMS and that they would consider his candidature, if any vacancy in the area of statistics suitable to his qualifications is allotted to the Division of BMS and the applicant applies for the post. Similar letter dated 22.12.2008 was also issued by the ICMR to the applicant few months later.

2. The respondents invited applications to the post of Scientist 'C' (Statistics) in 2013. The essential qualification was Masters Degree

in Statistics with desirable qualification of Doctorate in the said subject, which qualification the applicant possessed. According to the applicant, one time age relaxation was also permissible in ICMR but his grievance is that despite this, he was not regularized against the said post. The applicant, however, was served with a termination order dated 29.11.2013 with effect from 31.12.2013 on the ground that the project on which the applicant was working was to terminate on 31.12.2013. The applicant is aggrieved by this order and has hence filed this OA.

3. The applicant's case is that in OA 600/2012, this Tribunal vide order dated 3.09.2012 directed the respondent-AIIMS to regularize the services of the applicant in that case, who was appointed on *ad hoc* basis in a project of AIIMS as Social Worker. The Tribunal based its order on the judgment of the Hon'ble Supreme Court in **V.L. Chandra Kumar and others Vs. All India Institute of Medical Sciences and others**, (1990) 3 SCC 38. It is stated that the AIIMS has, in fact, issued guidelines for regularization of project employees who have worked for 15 years and above granting age relaxation etc. and these guidelines included not only the posts of Scientists but also of Lab. Technician, Stenographer, Data Entry Operator, Driver etc.

4. The learned counsel for the applicant argued that since AIIMS and ICMR are within the same Ministry of Health & Family Welfare, they should follow the same policy and resort to measure of regularization for those who have been continuing for more than 15

years, such as the applicant. It is also argued that the principles of natural justice require that before termination of service, at least a show cause should have been issued. In support of his case, the applicant has relied on the following judgments:

(i) **Jacob M. Puthuparambil and others Vs. Kerala**

Water Authority and others, AIR 1990 SC 2228 where

it was held that:

“Employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered 'age barred' for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Art. 41 of the Constitution. Therefore, Rule 9(a)(i) if interpreted consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job should not be thrown out but their services should be regularised as far as possible.”

(ii) State of Gujarat and ors. Vs. PWD Employees Union and ors. Etc., 2013 (8) SCALE 579. Para 23 of the judgment reads as follows:

“23. The decisions in Uma Devi (supra) and A. Umarani (supra) were regarding the question concerning regularization of employees entered by back door method or those who were illegally appointed encouraging a political set up, in violation of Article 14 and 16 of the Constitution of India. We are of the opinion that both the aforesaid decisions are not applicable in the present case i.e. to the members of the respondent-Employees Union for the following reasons:

(i) The Secretary, Forest and Environment Department of the State of Gujarat by his order dated 3rd May, 2008 held that initially the entry of the daily wagers do not suffer from any illegality or irregularity but is in consonance with the provisions of Minimum Wages Act. Therefore, the question of regularization by removing procedural defects does not arise.

(ii) The Gujarat High Court by its judgment dated 29th October, 2010 passed in SCA No.8647 of 2008 while noticing the aforesaid stand taken by the State also held that the nature of work described in the order dated 3rd May, 2008 shows that the daily wage-workers are engaged in the work which is perennial in nature.

(iii) The case of A.Uma Rani (supra) related to regularization of services of irregular appointees. In the said case this Court held that when appointments are made in contravention of mandatory provisions of the Act and statutory rules framed therein and in ignorance of essential qualifications, the same would be illegal and cannot be regularized by the State.”

Finally, the Hon'ble Supreme Court directed the respondents as follows:

25. As per scheme contained in Resolution dated 17th October, 1988 all the daily wage workers were not entitled for regularization or permanency in the services. As per the said Resolution the daily wagers are entitled to the following benefits:

xxxx xxxx xxxx xxxx

(iv) Daily wagers and semi skilled workers who has service of more than 15 years will be considered as permanent worker and such semi skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi skilled who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly.”

(iii) **S.M. Hamilton Vs. All India Institute of Medical Sciences**, CWP No.1043/1989. The Hon'ble Supreme Court held as follows in the cited case:

“Termination of service – Ad hoc appointments from one project to another continuing for long – Termination on projects drying up – If justified – Researchers of research projects of AIIMS – After carrying out research activities in different projects of AIIMS continuously for more than 10-15 years, their services discontinued on ground of absence of further projects – Denial of employment giving rise to human problem of deprivation of source of sustenance as with the advancement in age they becoming disintitiled to jobs in government or public sector undertakings – Evolving a scheme for building up a team of researchers in coordination with Health Ministry commended – AIIMS directed to provide employment to the

aggrieved persons either as researchers or provide employment to the aggrieved persons either as researchers or in any suitable employment until their inclusion in the team is considered.”

- (iv) **M.P. Oil Extraction and another Vs. State of M.P. and others**, (1997) 7 SCC 592. This was cited by the learned counsel for the applicant on the question of legitimate expectation. It was argued that having continued the applicant for 15 years and issuing letters dated 14.05.2008 and 22.12.2008, the respondents had created a legitimate expectation that he would be regularized some day.
- (v) **B.S. Mohanty & ors. Vs. Union of India & ors.**, O.A. 4151/2013 decided by the Principal Bench of the Central Administrative Tribunal. In this case, the Tribunal held that “similarly placed persons be treated similarly and not otherwise merely because some one has gone to Court and obtained different orders.” It was thus argued that if AIIMS had given the benefit of regularization, the applicant being similarly placed and working in the sister organization of the same ministry, his service should also be regularized.

The applicant also produced the order dated 1.01.2015 issued by the National Institute of Nutrition (NIN) under the ICMR, which indicates that one *ad hoc* project employee namely G.Y. Anitha, holding the post of LDC, was regularized.

5. On the question of vacancy, the applicant has produced letter dated 22.12.2014 issued by the ICMR to the applicant in reply to his RTI application in which it is made clear that for the post of Scientist 'C' mentioned above, the following three were recommended:

- (a) Mr. Ram Manohar Mishra
- (b) Ms. Lucky Singh
- (c) Mr. Narendra Kumar Tiwari

It is stated that none of the above three joined the post and the post is lying vacant.

6. The learned counsel for the respondents' primarily argued that the applicant has not been able to demonstrate that the respondents have infringed any statutory provision or policy. As an *ad hoc* employee, the applicant had no right to be regularized and no enforceable right of his has been infringed and hence, there lies no cause of action. It is stated that it has been laid down time and again by the Hon'ble Supreme Court and other higher Courts that employment under the government can only be through the process of statutory Recruitment Rules (RRs). In this regard, the following judgments were cited by the learned counsel :

(A) Surendra Prasad Tewari Vs. UP Rajya Krishi

Utpadan Mandi Parishad & Ors., 2006 (7) SCC 684

- (B) **Post Master General, Calcutta Vs. Tuto Das**, 2007 (5)
SCC 317
- (C) **Indian Drug and Pharmaceutical Ltd. Vs. Workmen,
Indian Drug and Pharmaceutical Ltd.**, JT (2006) (10)
SC 216
- (D) **State of M.P. & ors. Vs. Lalit Verma**, AIR 2007 SC
528
- (E) **Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh
& ors.**, 2007 (6) SC 207
- (F) **NHRC & anr. Vs. Sheenu Saxena & ors.**, WP (C)
No.1268/2012 decided by the Hon'ble High Court of
Delhi
- (G) **Ekta Shakti Foundation Vs. GNCTD**, AIR 2006 SC
2609

which reiterated the principle laid down in **Secretary, State of Karnataka Vs. Uma Devi (3) & ors.**, 2006 (4) SCC 1 that absorption, regularization of adhoc employees appointed/ recruited and continued for long in public employment dehors the constitutional scheme of public employment is impermissible. It was held that such employees have no right of regularization in public employment.

7. Our attention was also drawn to **Ekta Shakti Foundation (supra)** in which the Hon'ble Supreme Court held that the scope of judicial enquiry is confined to question whether action taken is against statute, fundamental rights or constitutional provisions and that the Court is

not an appellate authority and in judicial review, scope is limited. The Hon'ble Supreme Court also held that equality under Article 14 cannot be applied to legitimize an illegal action, thus countering the argument of the applicant that just because one LDC has been regularized in NIN, the applicant should also be regularized. Learned counsel for the respondents further drew our attention to para 10 of the judgment of the Hon'ble High Court in NHRC Vs. Sheenu Saxena (supra) in which the Hon'ble Court has dealt elaborately on the judgment of the Hon'ble Supreme Court in Uma Devi (supra) and also touched upon the doctrine of legitimate expectation. We quote below the relevant portion of the judgment:

“10. In Secretary, State of Karnataka and Others, v. Uma Devi and Others: (2006) 4 SCC 1, a Constitution Bench of the Supreme Court, while considering absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees who had been in service for quite some time, inter alia, recognized the power of the State and its instrumentalities to employ persons in posts which are temporary on daily wages as additional hands or taking them in, without following the required procedure to discharge the duties in respect of the posts that are sanctioned and required to be filled in terms of the relevant procedure and noted that there was nothing in Constitution which prohibits such engagements. The Court was of the view that a total embargo on such employments is not possible, given the exigencies of administration, and if imposed would only mean that some people who at least get employment temporarily, contractually or casually would not be getting even that employment, when securing of such employment brings at least some succour to them. The Court observed that innumerable citizens of our vast country are in search of employment; one is not compelled to accept a casual or temporary employment if he is not inclined to go in for such an employment and it is in that context that one has to proceed on the basis that the employment was

accepted fully knowing the nature and the consequences flowing from it. As regards the argument that since the employee had been working for some time in the post, it will not be just to discontinue him even though he was aware of the nature of the employment, the Court felt that if accepted, this argument would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of the constitutionality and equality of opportunity enshrined under Article 14 of the Constitution.

Dealing with the doctrine of legitimate expectation advanced by the employees, the Court observed that when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature and he cannot invoke the theory of legitimate expectation for being confirmed in the post, where appointment could be made only by following a proper procedure for selection. The Court felt that the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees and it cannot be held that the State had held out any promise while engaging these persons either to continue them where they were or to make them permanent. The Court noted that the State cannot constitutionally make such a promise.

It was also noted by the Court that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. The Court also held that such employees cannot claim a right to be treated at par with those who are regularly employed. The Court also rejected the contention that right to life protected by Article 21 of the Constitution would include the right to employment since acceptance of such a plea would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment.”

8. We have heard the learned counsel for the parties, gone through the records of the case and the judgments cited.

9. It is clear that the ratio decided by the Hon'ble Supreme Court in Uma Devi (supra) applies in case of such claims of regularization of *ad hoc* employees appointed against some project and this Tribunal is bound by the law settled by the Hon'ble Supreme Court in this regard. This is a judgment of the Constitution Bench of the Supreme Court as opposed to Jacob M. Puthuparambil (supra), PWD Employees Union (supra) or S.M. Hamilton (supra), which are Single/ Division Bench judgments. Hence, Uma Devi (supra) will prevail and we cannot direct the respondents to regularize the services of the applicant against a suitable post. The letters dated 14.05.2008 and 22.12.2008 cited by the applicant do not generate any right for the reason that ICMR had made it clear in both the letters that the candidature of the applicant would be considered, if any vacancy arises in future and the applicant applies for the post. It was obvious that the recruitment shall be as per the statutory RRs and no promise had been made to him that he would be regularized. As explained in the judgment in Sheenu Saxena (supra) the doctrine of legitimate expectation would not apply in this case. Further, this also cannot be taken as a ground by the applicant to stake his claim for regularization that AIIMS has come out with some guidelines for project employees who have worked for 15 years, which comes under the same ministry.

ICMR is an independent organization which cannot be forced to

follow whatever decision AIIMS has taken, right or wrong. Similarly, Ekta Shakti Foundation (supra) restrains us from applying the principle of equality (Article 14) citing the AIIMS example or the example of the LDC in NIN.

10. In view of above discussion, the OA is found to be devoid of merit and is accordingly dismissed. No costs.

(Raj Vin Sharma)
Member (J)

(P.K. Basu)
Member (A)

/dkm/

11/2/2015
#