

Ashu, Noida and Others Vs. Union of India (Represented by Secretary to Government of India, New Delhi and Others

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Court : Central Administrative Tribunal Principal Bench New Delhi

Decided On : May-28-2014

Judge : The Honourable Mr. G. George Paracken, Member (J) & the Honourable Mr. Shekhar Agarwal, Member (a)

Appeal No. : OA-3394 of 2013, OA-3501 of 2013, OA-3692 of 2013, MA-2578 of 2013, MA-2671 of 2013, OA-3395 of 2013, OA-3503 of 2013, OA-3891 of 2013, MA-2577 of 2013, MA-2954 of 2013, OA-3396 of 2013, OA-3545 of 2013, MA-2576 of 2013, MA-2702 of 2013, MA-3239 of 2013, 4. OA-3499 of 2013, OA-3691 of 2013, MA-2672 of 2013

Appellant : Ashu, Noida and Others

Respondent : Union of India (Represented by Secretary to Government of India, New Delhi and Others

Judgement :

Shekhar Agarwal, Member (A).

All these O.As are identical and hence are being disposed of by this common order. For the sake of convenience, facts of OA-3396/2013 are being discussed. This has been filed seeking the following relief:-

(i). Call for records leading to Office Memorandum 21/13 (Ref: HRD/R/02 dated 06.08.2013 annexed herein as ANNEXURE A1; and quash and aside ANNEXURE-A1 as being arbitrary, illegal and violative of Articles, 14,16,19 and 21 of the Constitution.

Call for records leading to Letter No. 1(2)/2013-HR dated 10.09.2013 and e-mail communication dated 24.10.2013 annexed herein as ANNEXURE-A7; and quash and aside ANNEXURE-A7 as being arbitrary, illegal and violative of Articles, 14, 16, 19 and 21 of the Constitution.

Direct the Second and Third Respondents to extend the contracts of the Applicants on the expiry of their present contracts on the strength of the annual performance reports.

Direct the Second and Third Respondents to consider the case of the Applicants for regularization in accordance with Clause 18.1.4 or Clause 18.1.5 of the Bye laws of the Society.

2. Brief facts of the case are that the applicants who are employees of Centre for Development of Advanced Computing (CDAC), Noida were recruited on different dates between January, 2005 and July, 2006 to the post of Scientific Officer in the pay scale of Rs.6500-10500 on contract for three years. Subsequently, they were promoted to the pay scale of Rs. 9300-34800 with grade pay of Rs.5400 and appointed as Technical Officer. According to the applicants the appointment was to be on contract for five years or co-terminus with the project on which the applicants were deployed. The applicants are now aggrieved by the impugned order dated 06.08.2013 laying down review of employees on grade based contract. According to the applicants as per this Memorandum the renewal period of the contract has been reduced to a maximum of three years and may be as short as one year. The applicants have also stated that the respondents have completely ignored their own bye laws and service rules while passing the aforesaid order.

3. The respondents have filed their reply in which they have opposed the averments of the applicants and have stated that the applicants were appointed

under Clause 18.1.8 of the Bye Laws and were on project based contract. There was, therefore, no requirement of renewal of their contract for a period of five years.

4. We have heard both sides and have perused the material on record.

4.1. It is seen that identical issued was agitated before Ernakulam Bench of this Tribunal through OAs No. 950/2012, 949/2012, 964/2012 and 990/2012. These OAs were filed by CDAC employees appointed as Staff Scientist with the respondents. These OAs were decided by a common judgment on 05.09.2013, the operative part of which reads as follows:-

14. Arguments were heard and documents perused. The notification having reflected that the appointment is one of contract basis and the same is for different grades as contained in the advertisement, vide Annexure R-1, the term 'grade based contract' cannot be faulted with. For, the respondents have classified the contract one as the aforesaid Grade Based Contract and the other as Project based contract as is evident from clause 18.1.2 and 18.1.8 of Annexure A-8. Thus, use of the term Grade Based Contract is perfectly in tune with the advertisement as well as the stipulated Rules.

15. Clause 18.1.2 of Annexure A-8, read with clause 1(f) of Annexure A-2 would mean that where there is a renewal, the same shall not be less than for a period of five years at a time and such a renewal is permissible till one attains the age of superannuation. In the instant case, there is nothing wrong in subjecting the applicants to performance appraisal test or interview but what is to be seen is whether the authorities are vested with the powers to truncate the period of renewal. The stipulated rules at Annexure A-8 do not permit so. Thus, once an individual is found not unfit, his tenure should be extended at the pace of five years at a time. From this point of view, the respondents have gone wrong in first of all putting a ceiling of only three years even for the best candidate and reducing the same to two years six months for others who have been adjudged below 'extraordinary'. Thus, Annexure A-12 is liable to be struck down in so far as it reduced the renewal period below five years. Consequently, orders issued in pursuance of the said Annexure A-12 and the interview conducted, vide Annexure

A-16 etc., are all illegal and are to be quashed in so far as they stipulated the period of renewal for less than 5 years.

16. As regards the claim of regular appointment in terms of Clause 18.1.5.2, the said terms are of discretionary character and the applicants have not acquired any right to insist that they should be appointed on regular basis under the said clause. However, if the appointment on regular basis by way of direct recruitment takes place for the said post, the same would not be in accordance with the stipulated rules, since direct recruitment could be resorted to only in respect of higher posts as contained in clause 18.1.3.

17. In view of the above, these OAs are partly allowed. It is declared that the truncation of the renewal period as contained in Annexure A-12 is illegal and consequently, Annexure A-12 is quashed to that extent. Consequential orders of renewal are also to be deemed quashed in so far as they stipulate the span of renewal for a period below five years. It is also declared that those whose term has been extended in pursuance of the performance appraisal, would have a full tenure of five years from the date of expiry of the initial period of five years' contract, vide Annexure A-2 offer. It is also declared that the respondents in their own discretion consider the case of the applicants for regularization.

5. In our view, the facts and issues involved in these O.As are similar to the OAs decided by the Ernakulam Bench of this Tribunal. Hence, they are squarely covered by the judgment dated 05.09.2013. Accordingly, we dispose of these O.As by directing the respondents to give the same benefits to the applicants of these O.As as were granted to the applicants of OAs No. 950/2012, 949/2012, 964/2012 and 990/2012 by order dated 05.09.2013 of the Ernakulam Bench of this Tribunal. No costs.

6. Registry is directed to place a copy of this order in each of the case file.

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