

V. L. Chandra and Others

Vs

All India Institute of Medical Sciences and Others

And

S. M. Hamilton

Vs

All India Institute of Medical Sciences

Civil Writ Petition Nos. 999 of 1988 and 1043 of 1989

(M. M. Punchhi, K. Ramaswamy, Ranganath Misra JJ)

22.03.1990

JUDGMENT

RANGANATH MISRA, J. -

1. Both these are applications under Article 32 of the Constitution, the first one by the three petitioners and the second by one. The respondent All India Institute of Medical Sciences has been set up under a Central Act of that name of 1956. Section 13 of the Act provides the objects of the Institute which are -

"(a) to develop patterns of teaching in undergraduate and post graduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions in India; (b) to bring together in one place educational facilities of the highest order for the training or personnel in all important branches of health activity; and (c) to attain self-sufficiency in post-graduate medical education."

2. Section 14 of the Act lays down the functions of the Institute and, inter alia provides in clauses (a) and (b) :

"14. With a view to the promotion of the objects specified under Section 13, the Institute may -

(a) provide for undergraduate and post-graduate teaching in the science of modern medicine and other allied sciences including physical and biological sciences;

(b) provide facilities for research in the various branches of such sciences,"

3. Petitioners have alleged that ever since its inception the Institute has taken up various projects and has made valuable contribution to the updating of medical knowledge and building up coordinated research activity. For the purpose of carrying out such research programme in

conjunction with the World Health Organisation, the Indian Council of Medical Research and other celebrated organisations - both national and international - research projects are undertaken by the Institute by employing researches. For the carrying out of the assignments of research projects the petitioners were employed more than a decade ago and their assertion to the effect that they have continuously worked for more than 10-15 years has not been disputed. Petitioners have also asserted that they have worked to the satisfaction of the authorities and the guides and there is no denial of that fact too. It is the case of the petitioners that by working for such a long period continuously and in different projects under different guides, they have picked up the requisite expertise which would be useful in carrying out any normal research project. Petitioners allege that there is work in the hands of the institute but petitioner's employment excepting in the case of Dr. Jasbir Kaur Dhawan (Kochhar) petitioner 3 in the first writ petition as researchers have now been terminated. They contend that having worked for a long period in the Institute they have reached an age in life where they are no more entitled to enter into government service or any other suitable public employment. While they have gathered the requisite expertise and are useful for the purpose of assisting research programme with the deprivation of their employment and faced with the ban of overage for any public employment they are deprived of the source of sustenance and the nation is deprived of their useful service.

4. The Institute, the Union of India in the Ministry of Health and the Indian Council of Medical Research have responded to the notice on the petition. A common affidavit has been filed purporting to be on behalf of the respondents by the director of the Institute. It has been stated therein that the Institute is assigned projects and the Project Guides pick up researches depending upon suitability. The employment projectwise and once the project is complete, the job comes to an end. The fact that there has been continuous engagement available to the petitioners does not change of employment and the fortuitous circumstances of continuity does not confer any right in the petitioners to be continued in employment even when the Institute does not have any research project in hand. It has been specifically pleaded that the services of the petitioners are not required any longer in the absence of any research project with the Institute where their services would be suitable.

5. The other two respondents being the Union of India and the Indian Council of Medical Research have not filed any counter-affidavit of their own. The Institute and the Union of India appeared through separate advocates at the time of hearing.

6. Mr. Hegde, learned Additional Solicitor General indicated his sympathy to the cause of the petitioners and took an adjournment from the court to explore the possibility of offering a solution to the problem and returned to tell us that although there was a human problem, no solution could be worked out.

7. The Institute set up by statute is intended to carry on research in a continuous way to improve the level of medical knowledge. Under the Act the Institute is an autonomous body though the chairman thereof is no other than the Union Minister of Health. It is true that the Institute is entrusted from time to time with research projects by the World Health Organisation, the Indian Council of Medical research and other government and semi-government bodies. It is appropriate that a scheme should be evolved by the Institute in coordination with the Health Ministry and the Indian Council of Medical research so that a team of researchers is built up to meet the general requirements of research. It is quite possible that certain projects would require specialised hands and on such occasions a special team could be set up on casual basis by drawing the competent hands from different institutions for a period but to keep up the tempo of research if a team of researchers is

built up, it would be convenient for the Institute for purposes of discipline and control as also for efficiency. The Health Ministry must also sponsor continuous research projects in the field of medicine and health and for such purpose several projects should be listed out from time to time and entrusted to the respondent - Institute as also a similar Institute at Chandigarh and to institute as and when set up elsewhere. This would assist in updating relevant medical information and knowledge, apart from building up a scientific tone and temper for general circulation. We commend that the Institute initiates seriously action in this regard without delay and we suggest that the Ministry of Health and the Indian Council of Medical Research collaborate with the Institute to work out the same.

8. Respondent 3 - Indian Council of Medical Research has not chosen to appear separately before us in spite of service of notice. Since we have been told that the respondent-Institute has immediately no scope to employ the petitioners excepting the one that we have named above, we direct that the remaining three petitioners in these two petitions should be provided employment either as researchers or in any suitable alternative employment until their inclusion in a team of researchers is considered. The Indian Council of Medical Research shall take appropriate steps to offer adequate employment to the three petitioners within two months hence. If the question of funding becomes necessary, we direct the Ministry of Health to cooperate and place adequate funds at the disposal of the Indian Council of Medical Research.

9. These two petitions are disposed of with the aforesaid directions and without any order for costs, with liberty to the petitioners to apply with the fond hope that all concerned will appreciate the spirit of the order and implement the direction in the proper way as stipulated.

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