SUPREME COURT OF INDIA

I.C.M.R.& Ors.

Vs

K.Rajyalakshmi

C.A.No.4349 of 2006

(S.B.Sinha and Markandeya Katju,JJ.)

17.01.2007

JUDGMENT

S.B.Sinha, J.

1. Appellant No.1 - Indian Council of Medical Research ("ICMR") is a society registered under the Societies Registration Act. It is engaged in research activities in the field of medicine. It carries out various research activities through various schemes/projects. One of such projects is called 'National Nutrition Monitoring Bureau'. The said project was carried out in the States of Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, Maharashtra, Madhya Pradesh, Orissa, West Bengal and U.P.

2. For the aforementioned purpose, the Central Government admittedly grants grant-in-aid on year to year basis.

3. Respondent herein was appointed by reason of an offer of appointment dated 1.4.1975. The terms of appointment demonstrates that the same was also on year to year basis. The post was also on year to year basis as the grant-in-aid of the Central Government in relation to the said project was on that basis. However, the project continued for a long time for one reason or the other. Respondent prayed for requlariseation of her services, but the same having been rejected, she approached High Court of Madras seeking for a direction to the respondents to regularise her services with retrospective effect from such date as it deemed fit and proper. The said writ petition was ultimately transferred to Central Administrative Tribunal, Madras, in view of a notification issued by the Central Government under the Administrative Tribunals Act, 1985.

4. The Tribunal noticed that although a decision was taken that the project should be made a permanent one and its activities should be expanded, but no such order was passed. It was in the aforementioned backdrop, the Tribunal opined that the services of the respondent herein should be directed to be regularised. It was so directed from the date of filing of the wit petition i.e. on 25.2.1998.

5. The appellants herein preferred a writ petition thereagainst before the High Court of Judicature at Madras. The respondent also filed a writ petition questioning that part of the order whereby regularisation was directed to be made w.e.f. the date of filing of the writ petition and not from the date of her initial appointment. Both the writ petitions were heard together. By reason of the impugned judgment dated 10.2.2005 the High Court, while allowing the writ petition of the respondent, dismissed the writ petition of the appellants herein and directed that the services of the respondent should be regularised from the date of her initial appointment i.e. 1.4.1975.6. It has been accepted at the Bar that the respondent has since retired on 31.5.2004 on reaching the age of superannuation of 58.

7. The submission of Mr. Raju Ramachandran, learned senior counsel appearing on behalf of the appellants is that in view of the fact that the project was an adhoc one as also in terms of the offer of appointment made to the respondent, her services could not have been directed to be regularised.

8. Mr. V. Prakash, learned senior counsel appearing on behalf of the respondent, on the other hand, would submit that the Tribunal granted the relief of regularisation of the services of respondent, inter alia having regard to the fact that there could have been no reason for not making the project a permanent one. Our attention was drawn to the findings of the learned Tribunal to the effect, which has also been noticed herein by us, that a decision has been taken by the concerned authorities to make the project a permanent one. On the said premise it was submitted that the doctrine of fairness demands that the direction issued by the Tribunal and upheld by the High court should be directed to be implemented.

9. Before the Tribunal, the Union of India was not impleaded as a party respondent. No prayer, thus, in our opinion, could have been made for a direction to the Union of India to make the project a permanent one. The question, therefore, which was required to be taken into consideration by the Tribunal was as to whether despite the fact that a long number of years have passed, the services of the respondent could have been directed to be regularised despite the fact that her appointment was on a purely adhoc basis a temporary post.

10. It has not been denied or disputed that the project being on an yearly basis, post could not have been sanctioned on a regular basis. Having regard to the fact that the appellant herein was bound to implement the project of the Central Government in terms of the grant-in-aid scheme, it could not have taken a decision on its own for making the project a permanent one. In absence of Union of India, therefore, in our opinion, the Tribunal and consequently the High Court committed a manifest error in entertaining the question as to whether the project should have been made a permanent one or not.11. Keeping in view the fact that the project could not have been directed to be made a permanent one at the instance of the appellant, the question of invoking the doctrine of fairness, in our opinion, did not arise. In service jurisprudence, it is well known, that creation or sanction of a post is essentially an executive function.

12. We are, therefore, of the opinion that it is not a fit case where the impugned direction

could have been issued by the Tribunal and consequently by the High Court. The impugned judgment, therefore, cannot be sustained and it is set aside accordingly.

13. However, we direct that any amount paid to the respondent by the appellant herein shall not be recovered. This direction we are passing in exercise of our jurisdiction under Article 142 of the Constitution of India.

The appeal is allowed. No costs.