

PETITIONER:
C.S.I.R. & OTHERS

Vs.

RESPONDENT:
DR. AJAY KUMAR JAIN

DATE OF JUDGMENT: 31/03/2000

BENCH:
D.P.Wadhwa, Ruma Pal

JUDGMENT:

D.P. WADHWA, J.

The appellants are aggrieved by the judgment dated May 24, 1994 of the Central Administrative Tribunal (Lucknow Bench) ('CAT' for short). The respondent, a Scientist, had filed Original Application (OA No. 788 of 1993) seeking various reliefs. His petition was allowed by the CAT giving the following directions: -

"Accordingly, we hereby quash the Office Memorandum dated 8.9.93 (Annexure 11 to the petition). As regards Office Memorandum dated 5.6.92 we hold that the respondents are not bound to accept the recommendations of the Selection Committee as regards fixing the consolidated salary of the petitioner as Rs.3400/- and we deem it just and proper to direct and do hereby direct that the consolidated salary payable to the petitioner shall be nothing less than Rs.3737/- which the petitioner was getting as a Pool Officer. The respondents are further directed to pay to the petitioner accordingly the entire arrears of salary for the period commencing from 1.8.91 till his re-engagement as Fellow Scientist and to continue to pay the revised pay scale as shown in the table of the scale issued by the CSIR vide its Office Memorandum dated 3.8.92 (Annexure R-11 to the rejoinder). The respondents are also directed to put the petitioner on duty as scientist Fellow as if the petitioner was not turned out on the basis of time limit and to regularise the services of the petitioner taking into account his full length of service rendered for CSIR as well as for CDRI with continuity of service and the seniority."

There are three appellants. First appellant is the Council of Scientific and Industrial Research (CSIR), a Society registered under the Societies Registration Act controlled by the Central Government. Second appellant is the Director of Central Drug Research Institute, Lucknow (CDRI), a body under the control of CSIR. Third appellant is the Senior Controller of Administration in the CDRI. At the outset it was pointed by Mr. Soli J. Sorabjee, learned Attorney General that in *Sabhajit Tewary vs. Union of India* and others [(1975) 1 SCC 485] a Constitution Bench of this Court held that CSIR is not an authority within the meaning of Article 12 of the Constitution. However, whether CSIR is

authority or not is not relevant for the purpose of decision of this appeal.

When the appellant sought leave to appeal to this Court under Article 136 of the Constitution from the judgment of the CAT this Court issued notice to the respondent limiting the notice as under : -

"The only grievance made by learned counsel for the petitioners is against the direction given by the Tribunal to absorb and regularise the respondent even though his appointment was merely as a Pool Officer, after expiry of the period of tenure of three years from the date of his appointment.

Issue notice returnable on 17.2.95 limited to this question stating that the matter would be finally disposed of at this stage.

Ms. Mridula Ray Bhardwaj, learned counsel, entered appearance on behalf of the respondent. No further notice is therefore necessary.

Meanwhile, the operation of the Tribunal's order to this extent alone shall remain stayed."

Subsequently, leave to appeal was, however, granted.

As to how OA came to be filed by the respondent resulting in the impugned judgment by the CAT we may refer to certain facts.

A Scientists' Pool Scheme was formulated by the Central Government by Resolution dated October 14, 1958. It was stated that Government of India had under consideration the question of establishing a Pool for temporary placement of well qualified Indian scientists and technologists returning from abroad until they are absorbed in suitable posts on more or less permanent basis. The Scheme was devised in consultation with CSIR. CSIR was authorised to take all steps necessary for the implementation of the Scheme. Some of the salient features of the Scheme are as under: -

"1. A Pool shall be constituted in the manner provided hereafter for a temporary placement of well-qualified Indian scientists and technologists returning from abroad until they are absorbed in suitable posts on a, more or less, permanent basis. Persons with Indian qualifications who have outstanding academic records may also be considered for appointment but, as the Pool is intended primarily for facilitating the utilisation of Indian scientists and technologists abroad, the proportion of persons with Indian qualifications who may be thus appointed will not ordinarily exceed 25 per cent of the total number of posts in the Pool.

Persons appointed to the Pool will be attached to a Government department or a State Industrial enterprise, national Laboratory, university or scientific institution, or given some other work depending on the requirement and their qualifications and experience. Officers of the pool may also be seconded to a Government Department or other organisations including industrial establishments in the

private sector. When a person is thus seconded to some department or organisation for a period of a year or more, the resultant vacancy in the Pool may be filled up if there are qualified candidates in waiting.

2. Controlling Authority :

3. Emoluments of Pool Officers.....

4. Authorised strength The authorised strength of the Pool at its initial constitution shall be 100. The strength may be reviewed as often as is found necessary.

5. Recruitment Selections for the Pool will be made in consultation with the Union Public Service Commission. A Special Recruitment Board will be set up consisting of.....

6.

7. Conditions of service The Council of Scientific and Industrial Research will frame regulations for regulating the conditions of service of Pool Officers. Until such regulations are framed, Pool Officers will be governed by the existing regulations which apply to temporary Class I Officers of the Council of Scientific and Industrial Research."

The respondent was given placement as Pool Officer and was attached to the second respondent CDRI. His appointment letter is dated May 25, 1988 and it reads as under: -

Sub.: Appointment as Pool Officer under the Scientists Pool Scheme of the Council of Scientific and Industrial Research

Dear Sir/Madam,

I am happy to inform you that you have been selected for appointment as Pool Officer under the Scientists Pool Scheme of the Council of Scientific & Industrial Research on the following terms and conditions.

1. You are offered a salary of Rs.2425/- per month (Rupees Two thousand four hundred and twenty five only), plus allowances as admissible to a temporary Class I Officer of the CSIR for a period of two year(s) or till you obtain a temporary or permanent employment in India, whichever is earlier.

2. This offer is valid for three months only from the date of this letter and will be treated as withdrawn if no acceptance is received during this period. However, on receipt of a formal acceptance of the offer from you it will be kept open for one year.

3. Please intimate your acceptance and return all the enclosed forms duly filled in to this office.

4. In case you accept the offer, you will be placed in a Government/quasi Government organisation in India. As far as possible, efforts will be made to match your professional specialisation with the objectives and activities of the organisation of your placement. You may also contact such organisations to arrange your placement.

5. In all matters of service you will be governed by rules applicable to temporary Class I Officer of the Council of Scientific and Industrial Research.

6. You will take oath of allegiance to the constitution of India in the form enclosed (Annexure II).

7. During your stay in the Pool you will be under the administrative control of the Head of the Organisation where you are placed for routine administrative matters while for all other matters (extension beyond the present term, contingency grant, all leaves other than casual leave, official tours etc.) you will be under the control of CSIR.

8. You will draw your salary as a Pool Officer from the day you join your duty.

9. You are entitled to a contingent grant of Rs.10,000/- per annum as per guidelines attached. You may submit your request for the grant through the Head of the Department of the organisation to which you are attached as a Pool Officer.

10. Since the Scientists Pool provides temporary employment support, you will be free to apply for any post in India in order to secure a temporary or permanent employment.

11. Your continuation in the Pool and extension beyond the present term will depend upon your performance as reflected through your work reports, sincere efforts made by you to secure a regular employment and a satisfactory report from the organisation of your placement. The prescribed forms for this purpose will be supplied to you in due course.

12. Since stay in the Pool is of a short duration, Pool Officers are not allowed to pursue higher education leading to a degree, diploma or a cert. The Pool Officers are also not allowed to take up any private practice nor they are entitled to any non-practising allowance in lieu thereof.

13. Your research contribution in the form of processes and patents acquired during your stay in the Pool if property of the CSIR and you will not transfer any knowledge or knowhow without prior permission of the CSIR.

14. You will be entitled to travelling allowance as per the CSIR rules for journeys undertaking on official duty. No allowance will be admissible for the journeys undertaken to join the duty or on termination of your appointment in the Pool.

15. Your appointment in the Pool can be terminated at any time without assigning any reason whatsoever.

16. If you have secured a job and do not wish to join the Pool now, please write to us about the organisation you have joined."

It is not disputed that maximum period for which a person could be appointed as Pool Officer is three years

which in the case of the respondent expired on July 31, 1991. At that time the respondent was being paid emoluments of Rs.3,737/- per month.

CSIR had another scheme called "Scheme of quick recruitment of Scientists (Fellows) for major projects" (for short "Quick Hire Scheme"). Under this scheme the Director constitutes a committee with himself as Chairman for selection of scientists. This Quick Hire Scheme prescribes different levels of emoluments depending upon the qualifications etc. of the Scientist, who is to be appointed. The appointment of such Fellows (Scientists) is to be on contract for a period not exceeding three years, which may be terminated by a notice of three months from either side (or three months' emoluments in lieu thereof). The contract could not be extended beyond the maximum period of three years.

After the expiry of the period of three years, the respondent as Pool Officer was selected for appointment under Quick Hire Scheme after a gap of few months. Respondent had appeared before the Selection Committee under the Quick Hire Scheme on March 11, 1992 and appointed as Scientist Fellow of CDRI by appointment letter dated March 17, 1992. The Selection Committee considered the case of the respondent for emoluments in the level/range of Rs.3000-4000 and recommended his pay as Rs.3400/- per month. On May 7, 1992 the respondent wrote to the Director, CDRI seeking protection of his salary which earlier he was getting as Pool Officer. We quote his letter: -

"Sir,

With due respect hereby, I would like to draw your kind notice to the following points: -

- that earlier when I was working as Pool Officer my total salary was Rs.3737/- p.m.
- that currently my salary has been fixed at Rs.3400/- p.m. under the Quick Recruitment Scheme.
- that apparently there is big difference in my total emoluments.

I shall be grateful, if you could kindly do the needful to protract my salary status to encourage my Scientific Zeal and enthusiasm.

With regards,

Yours faithfully,

Sd/- (DR. AJAY K. JAIN) Scientist Fellow of DRI
Division of Toxicology"

Request of the respondent was not acceded to and he was informed by Office Memorandum dated June 5, 1992 as follows:

"No.5(136)/82-Estt.I(Vol.II) Dated 5.6.1992

OFFICE MEMORANDUM

With reference to his application dated 7th May, 1992 Dr. Ajay Kumar Jain, Scientist Fellow is informed that the Selection Committee recommended his appointment as Scientist Fellow on a consolidated salary of Rs.3400/- p.m. in the range of Rs.3000-4000 under quick hire scheme.

Since the appointment has been made in accordance with the recommendation of the Selection Committee it is regretted that his request for fixing his emoluments at the level of Rs.3737/- drawn by him as Pool Officer can not be acceded to."

While respondent was appointed as Scientist Fellow of CDRI under Quick Hire Scheme with effect from March 17, 1992 for one year at the first instance, on the expiry of period of one year Director CDRI had approved the extension of his contract for a further period of six months with effect from March 17, 1993. Representation of the respondent for extension of his tenure was rejected and the rejection was communicated to him by Office Memorandum dated September 8, 1993 as under: -

"No.5(136)/82-Estt.I. Dated 08.09.1993

OFFICE MEMORANDUM

With reference to his application dated 12.08.1993 Dr. A.K. Jain, Fellow of CDRI is informed that it is not possible to extend the tenure beyond 16.09.1993."

The respondent approached the CAT challenging the Office Memorandum dated September 8, 1993 and also rejection of his request for being paid at the rate of Rs.3737/-, the rate at which he was drawing as Pool Officer before his appointment as Scientist Fellow under the Quick Hire Scheme. Respondent further prayed that he be reinstated with full arrears of salary and other perquisites and consequential benefits. Respondent also sought payment of his salary for the period from August 1, 1991 when the appointment as Pool Officer ceased and till his subsequent engagement as Scientist Fellow on March 17, 1992. His OA was allowed by the CAT with the directions aforesaid.

Before we consider the rival submissions we may note the case of Pratibha Misra, which came to this Court on a Special Leave Petition filed by the CSIR. Pratibha Misra was also doing research work since her appointment as Junior Research Fellow in 1981. Lastly, by order dated 11.6.1993 she was appointed as Senior Research Associate (Pool Officer) under Scientists Pool Scheme on the basic pay of Rs.2350/- per month plus allowances for a period of three years with no further extension. As in the case of the respondent before us the offer to Pratibha Misra indicated that she would be free to apply for any post in India in order to secure temporary or permanent employment. Pratibha Misra represented to the Director of National Botanical Research Institute, Lucknow (NBRI) for her appointment in regular cadre of CSIR on the post of Scientist. She also similarly addressed a letter to the Director General, CSIR on the same subject. However, she was told by Office Memorandum dated November 22, 1995 of the NBRI rejecting her request for appointment in the regular cadre of CSIR on the post of Scientist 'C'/'B' not being covered by the extant

rules. She was also advised by the said Office Memorandum to apply against the post as and when advertised in accordance with her area of research. Similarly, by letter dated January 9, 1996 Pratibha Misra was also informed by CSIR that the extant guidelines did not provide for automatic absorption of Pool Officers in CSIR in regular service. Pratibha Misra challenged both these communications by filing OA before the CAT, Lucknow Bench. CAT allowed her OA by issuing various directions as under:

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"20. Considering therefore, the conspectus of the case in the background of the foregoing discussions and also keeping in view the principles of equity and justice while we reject the reliefs prayed for by the applicant, we simultaneously order as below:

(i) The applicant shall continue to be paid at the existing rate until she is absorbed in one of the scientific posts under the CSIR and her services may be utilised by the respondents during this period in an appropriate manner.

(ii) The case of the applicant shall be considered for appointment as Scientist in an existing or future vacancy, if necessary by granting age relaxation, as per CSIR Service Rules.

(iii) The respondents shall formulate a scheme for absorption of scientific researchers at suitable levels in respect of those who have put in long years of research particularly those with 15 years or more.

Or in the alternative the respondents may suitably amend CSIR Service Rules, 1994 so as to include a provision for absorption of Scientific Researchers at suitable levels in respect of those who have put in long years of research work, particularly, 15 years or more. Modifications to be made in the Service Rules may provide for grant of weightage as may be considered appropriate to the period of research work already put in, especially for purposes of relaxation in age and qualifications. Provisions of weightage for purposes of fixation of seniority and for grant of advance increments could also be considered.

21. The above directions except those in Para 20(i) which come into force immediately shall be complied with within a period of six months from the date of communication of these orders.

22. In case the applicant has already not been absorbed as per directions contained in Para 20(ii) above, her case shall be considered within 2 months of formulation of the scheme or the amendment of the service rules as the case may be, in pursuance of the observations in Para 20(iii) above."

Aggrieved CSIR and others came to this Court seeking special leave to appeal. However, by order dated May 2, 1997 this Court refused to interfere with the following observations: -

"We feel that having regard to the facts and circumstances of this case, the direction of the Tribunal in respect of the respondent Dr. Pratibha Misra, should not be

disturbed. However, so far as the formulation of scheme is concerned, we direct the petitioners to consider the question of formulating a scheme for people who are working on contract basis. The special leave petition is disposed of."

We do not think that decision of the CAT in the case of Pratibha Misra and dismissal of the special leave petition by this Court would have any bearing on the issue involved in the present appeal. This Court did not consider the issues involved in the case of Pratibha Misra on merit and proceeded to dispose of the special leave petition on the facts and the circumstances of that case.

Thereafter in view of the directions of this Court a scheme was propounded on July 3, 1998 effective from May 2, 1997 the date of dismissal of the special leave petition in Pratibha Misra's case by this Court. This scheme was challenged in the CAT and also by filing a petition under Article 32 of the Constitution in this Court. The petition under Article 32 of the Constitution was, however, allowed to be withdrawn with liberty to challenge the Scheme before the CAT. It is contended by the appellants that purpose of two schemes, i.e., Scientist Pool Scheme and Quick Hire Scheme are altogether different. Under the Pool Scheme a scientist is retained to check the brain-drain from India and in the meanwhile to secure alternative job. The purpose of Quick Hire Scheme though the result may be the same but here it is to give quick appointment to a scientist on contract basis which is not to exceed three years period. Appellants, therefore, contended that since the purpose of both the schemes is different, the respondent could not have asked for emoluments in Quick Hire Scheme at the same rate he was getting as Pool Officer. Technically that may be so but when Quick Hire Scheme envisaged an emolument between three to four thousand there does not appear to be any sound reason for the Selection Committee to recommend pay of the respondent at the rate of Rs.3,400/- and not at Rs.3,737/-. Selection Committee must have been aware of the amount of emoluments drawn by the respondent as Pool Officer. We are left in dark as to what weighed with the Selection Committee to recommend lower emoluments. It is the CSIR, the appellant, under which both the schemes are being worked. We can only say that the decision of the Selection Committee is not informed with proper reason. CAT is, therefore, right in directing that the respondent be paid @ Rs.3,737/- per month while working as Scientist Fellow under the Quick Hire Scheme. Appointment of the respondent as Scientist Fellow under Quick Higher Scheme was for the period of one year to be extended for a maximum period of three years. After the expiry of one year of period, he was informed that his contract could not be extended beyond a period of six months effective from March 17, 1993. His services were terminated after the expiry of this period. CAT has held that the extension of the placement of respondent for six months period was not in order as the letter of appointment stated that the period was renewable on year to year basis and further that the appointment of the respondent should not have been made co-terminus with the project only. The duration of tenure of Scientist Fellow is as under : "The appointment of such Fellows will be on contract for a period not exceeding three years and it may be terminated by a notice of three months from either side (or three months' emoluments in lieu thereof). The contract cannot be

extended beyond the above maximum period."

We may also quote here paras 1 and 3 from the appointment letter dated March 17, 1992 of the respondent :

"1. Your appointment will be on a contract for a period of one year extendable on year to year basis for 3 years. Your services can, however, be terminated at any time after a notice of 3 months' from either side without assigning any reason. 3. The position is contractual and will not confer any right whatsoever for absorption in the regular strength of the Institute."

It would, therefore, appear that though the maximum period is three years, it could not be said that the contract could not be terminated before the expiry of that period. Rather the clause clearly provides that the contract could be terminated by giving notice of three months from either side. However, extension of contract for a further period of six months does not mean that the appellants have exercised their option to terminate the contract by giving three months notice. Extension of contract for six months cannot be equated with the notice of termination of contract as provided in para 1 of the letter of appointment. The question then arises if the contract could be extended for six months period only when the Scheme and the letter of appointment envisage extension of the contract on year to year basis. Both the schemes serve twin purposes. Highly qualified Indian scientists and technologists returning from abroad get temporary placement until they are absorbed in suitable post on more or less permanent basis. Nation also gains from the experience and knowledge of the scientists who have been working abroad. It is with pride that these scientists return to their motherland. They are to be shown due deference and consideration. Conditions are to be created that they do not again leave the country. The emoluments which are given to these scientists cannot be treated as a mere dole. They come back to the country of their origin with high hopes. Disappointment should not await them in the long run. The respondent was working as Post Doctoral Fellow in Japan before he came to India to be placed as Pool Officer. After the expiry of his tenure as Pool Officer, he was selected and appointed as Scientist Fellow under the Quick Hire Scheme by duly constituted Selection Committee. He was appointed for one year. His placement could be extended on year to year basis for a maximum period of three years. After the expiry of first one year period, he was given extension of six months. His representation for further extension was turned down. We do not know if his case of extension was again placed before the Selection Committee and what reasons, if any, prevailed upon the appellants to extend the term of the respondent for six months only. In the counter affidavit before the CAT or in the grounds of appeal, appellants have not given any reasons for such an extension of six months period only. This action of the appellants on the face of it seems to be rather arbitrary and it appears to us that in this respect they have meted out shabby treatment to the respondent, a scientist. In the circumstances, therefore, CAT is right in holding that the respondent would have continued for a full term of three years under the Quick Hire Scheme. But then the CAT has gone a step further and has directed the appellants to

regularise the services of the respondent which does not appear to be correct. No doubt, Scientists Pool Scheme and Quick Hire Scheme provided a sort of cushion to the scientists returning from abroad and under the circumstances period of their engagement under either of the schemes has to be for a limited period. For regular appointment or absorption in CSIR or any of its bodies the scientists have to be governed by the relevant service rules as applicable. Employment under the Quick Hire Scheme was on contract basis. The respondent was not governed by CSIR Service Rules, 1994 for recruitment of Scientific, Technical and Support Staff as he would not be appointed under those Rules. An appointment under the Quick Hire Scheme cannot be equated with regular appointment as per the relevant recruitment rules of CSIR against a sanctioned post. To be eligible for regularisation, the respondent had to come within the relevant rules. It is difficult to appreciate the directions issued by the CAT in the circumstances of the case. A Pool Officer or a Scientist Fellow under the Quick Hire Scheme cannot continue to hold on to the job till superannuation. The respondent has referred to certain instances where scientists were appointed on permanent contractual post by CSIR without following the selection procedure. If something wrong has been done in violation of the rules, we cannot use that as an example to perpetuate an illegality. In any case those cases are not before us and it is difficult for us to comment if there was violation of any rules regarding those scientists. Respondent, however, cannot take advantage of an illegality, if there is any. Appointment as Scientist Fellow under the Quick Hire Scheme cannot be understood to mean regular appointment under the relevant recruitment rules applicable to CSIR or to bodies under its control. The term 'appointment' has been only loosely used. It is mere placement as Scientist Fellow and not appointment in the sense in which this term is used in service law. As noted above, a scheme has been framed for absorption in the Pool effective from May 2, 1997. If the respondent case is covered by that scheme, he will certainly be entitled to be considered thereunder. We may refer to a decision of this Court which was rendered in somewhat similar circumstances. In Director, Institute of Management Development, U.P, vs. Smt. Pushpa Srivastava [JT 1992 (4) SC 489 = (1992) 4 SCC 33] the respondent was first appointed as Research Executive on a consolidated fixed compensation of Rs.1,250/- per month on contract basis for a period three months. It would specifically stated in the order that the appointment was purely on ad hoc basis. Appointment of the respondent continued on various posts like Training Executive or Executive on different emoluments but always on ad hoc basis. Before the expiry of the last period for which the appointment was made the respondent filed writ petition in the Allahabad High Court seeking regular or permanent appointment. She succeeded. High Court directed that she may be taken back on duty on the post hitherto held by her and that her services be regularised within a period of three months. On appeal filed in this Court, both the parties referred to relevant rules governing service conditions of the employees of the appellant in support of their respective contentions. Appellant referred to the office letter dated January 9, 1990 by which the respondent was appointed which stated that "with effect from the date of joining Smt. Pushpa Rani Srivastava is appointed on a consolidated fixed pay of Rs.2400/- per month on contract basis for a period of six months in the Institute. The appointment of Smt. Srivasvata is purely on ad hoc basis

and is terminable without any notice. " On that basis it was submitted that Pushpa Rani was appointed on contractual basis on a consolidated pay and duration of appointment was six months. The appointment was purely on ad hoc basis and was terminable without any notice. After examining the various contentions this Court held that the directions given by the High Court were not valid. It said that the appointment was purely ad hoc and on contractual basis for a limited period. Therefore, on the expiry of the period of six months the right to remain in the post comes to an end. Thus viewed, which this Court said was the only view, judgment of the High Court was set aside. The Assistant Director of the CDIR and Scientist-In-Charge appreciated the work of the respondent and recommended for the regularisation of his services and these recommendations did merit consideration. The respondent, it appears, after the expiry of his fixed period continued to work as Pool Officer under the Assistant Director CDRI in the hope of getting extension till he was selected Scientist Fellow under the Quick Hire Scheme without there being any order in his favour respecting that period. He could not, therefore, be awarded any emoluments for that period for which he continued to work as Pool Officer without there being any order in his favour. Yet the CAT awarded him emoluments for that period which appear to be rather irregular. We, however, notice that the leave was granted only to consider if the CAT could give directions to absorb and regularise the respondent when his appointment was merely as Pool Officer or Scientist Fellow. We shall not, therefore, disturb the order of the CAT that the respondent to be paid emoluments for the period from July 31, 1991 to March 17, 1992 @ Rs.3,737/- per month. We, therefore, set aside the impugned judgment of the Central Administrative Tribunal (Lucknow Bench) whereby it directed the appellants to put the respondent on duty as Scientist Fellow as if he was not turned out on the basis of time limit and to regularise his services taking into account his full length of service rendered for CSIR as well as CDRI with continuity of service and the seniority. The impugned judgment is, however, upheld to the extent that the respondent would be entitled to emoluments @ Rs.3,737/- per month as Scientist Fellow under the Quick Hire Scheme from March 17, 1992 for a period of three years and further the respondent will also be entitled to emoluments at this rate for the period from July 31, 1991 to March 16, 1992. Since there was no stay of this Court regarding payment of these amounts to the respondent, he shall also be entitled to interest @ 12% per annum on the delayed payments. Appellants shall be entitled to deduct the amount already paid to the respondent. The arrears shall be paid within a period of eight weeks from today. The appeal is partly allowed. There shall, however, be no order as to costs.