RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

1. Original Application No. 1831 of 1992

Panna Lal & Others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

2. Original Application No. 1789 of 1992

Ram Kripal Yadav and others . . . . . Applicants

Versus

Union of India & others . . . . . Respondents

3. Original Application No. 1830 of 1992

Bbola Nath and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

4. Original Application No. 1829 of 1992

Masood Ali and others . .. . . Applicants

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Union of India & Others . . . . . Respondents

5. Original Application No. 1828 of 1992

Ramesh Kumar Verma and others. . . .Applicants

Versus

Union of India & Others . . . . . Respondents

6. Original Application No. 42 of 1993

Ashok Kumar Srivastava and others . . . . . Applicants

Versus

Union of India & Others . . . . . .Respondents

7. Original Application No. 41 of 1993

Karuna Nath Tewari and others . . . . . Applicants

Versus

Union of India & Others . . . . . .Respondents

8. Original Application No. 1840 of 1992

Ram Jeevan and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

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9. Original Application No. 1836 of 1992

Ram Deo Bhartiya and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

10. Original Application No. 1835 of 1992

Smt. Rita Rani Srivastava and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

11. Original Application No. 1834 of 1992

Atul Sangram Singh and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

12. Original Application No. 1833 of 1992

Rajendra Kumar Gupta and others . . . . . Applicants

Versus

Union of India & Others . . . . . .Respondents

13. Original Application No. 1832 of 1992

Rajeev Kumar Pandey and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

14. Original Application No. 52 of 1993

Arun Kumar Dubey and others . . . . . .Applicants

Versus

Union of India & Others . . . . . Respondents

15. Original Application No. 82 of 1993

Prakash Singh and others . . . . . .Applicants

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Vinod Kumar Prasad and others . . . . . Applicants

Versus

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17. Original Application No. 1841 of 1992

Udai Singh and others . . . . . Applicants

Versus

Union of India & Others . . . . . Respondents

18. Original Application No. 83 of 1993

B.K. Shukla & Others . . . . Versus Union of India & Others

Hon'ble Mr. Justice U.C.Srivastava,V.C.
Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. Justice U.C.Srivastava,V.C.)

Group C and D employees of Census Department have filed all these cases, which involve common question of law and facts and are being disposed of together. Officeof the Director of Census operations was initially not permanent and used to be created at the time of declaration of intention of taking census in the whole or in the part of the territory under section 3 of the Census Act 1948 and permanent office of Director Census Operations was established in the U.P. and other States and the Census operations have taken places in the years 1951, 1961,1971, 1981 and 1991. A large number of staff have been regularly appointed and various service rules have been framed under Article 309 of the Constitution of India including the recruitment rules of class III and class IV, including the rules governing the service of class I officer, Recruitment rules and conditions of service of Stenographers in the office of respondent Nos 2 and 3. Class II and class IV of U.P. Statutory rules were promulgated vide Govt. of India gazette dated 26.10.1974, Part II, section 3(1) known as Office of the Director of Census Operations and ex-officio Superintendent of Census Operations, Uttar Pradesh(Class III and class IV Posts)Recruitment Rules, 1974.Besides the direct recruitment rules, the posts are to be filled in by taking the persons on deputation from various Central Government and State Departments. Earlier the subordinate staff appointed for various purposes like Statistical collection, compilation/Coding etc. used to be employed on temporary and adhoc basis and after

completion of work, their services used to be terminated which resulted in massive unemployment. It was thereafter, measures were taken for giving employment to these persons after giving concessions in age by the Central Government. The lowest office of the Census Department isheaded by the officer of Deputy Director rank and ~~khxx~~ assisted by Tabulation officers, Statistical Assistants, Printing Inspectors, Cashiers, Supervisors, Checkers, Compilers/Coders and class IV employees like Peons, etc., Only Tabulation officers, Statistical Assistants, Printing Inspectors, Cashiers/have been taken on permanent roll of the Government but the remaining staff is employed on short term contract basis and the staff is dispensed with as and when it is not required by the department, and benefit of equal pay for equal work is also not given to them. Alternative employment was not given to many 1981 employees and in the year 1991 the posts of Supervisors, Compilers, Checkers in the Regional Tabulation Office, Allahabad with the conditions that preference shall be given to the Ex employees of the department having sufficient experience of work/were advertised and in pursuance whereof the applicants applied. Thereafter they were appointed withthe condition that their service will continue to remain for one year or upto 20.2.1992 whichever is earlier. The applicants had no option but to execute the agreement being unemployed. A public notice was issued/published on 28.2.92 in the 'Dainik Jagaran' indicating that the services of the

employees who have been appointed on contract basis in the office of the Regional Tabulation Office, Allahabad, were terminated w.e.f. 29.2.1992. It was thereafter fresh agreements were entered into andthe services of the applicants were terminated on 30.6.92, the third agfeement entered into on 1.7.92 for a period of three months andthe fourth agreement was exexuted on 1.10.92. According to the applicants, the above fact shows that although the requirements of the applicants the continuity of work and posts were there, yet the respondents, only to deprive the applicants the benefitsof continuous service, they were required to fill the bond and only fixed salary was paid to them. Although the Assistant Compilers were employed on regular scale of pay of Rs 950-1500 and other allowances and at the minimum of pay scale the total salary comes to Rs 1800/-, even though they are inferior in rank and status to Compiler and thus the payment of wages of Rs 900 tothe compiler and Rs 1050 to the Checker is arbitrary and violative of Article 16 of the Constitution of India. In these applications, the applicants have challenged the clauses 1,2,3 and 10 of the Printed agreement exccuted between the applicantss and the respondents, on the ground that these conditions are arbitrary and discriminatory, including that the respondents have deprived them from continuity of service whichis violative of Articles 14 and 16 of the Constitution of India and the payment of

consolidated salary is discriminatory and amounts to exploitation of unemployed persons. The denial of the benefit as per condition 10 of the agreementis also arbitrary and discriminatory. The Census department having become permanent department and census operations a and are also recurring & continuous it is wholly arbitrary and discriminatory on the part of respondents to adopt the policy of temporary creation of certain subordinate offices and thereafter to employ the persons for a short term and then terminate their services.

2. The learned counsel for the applicant contended that giving of employment for a short period and thereafter to terminate their services is arbitrary and discriminatory. All these employees have worked for more than a year and it is settled law that continuous employment of unemployed persons on exploitative condition on adhoc basis is arbitrary and discriminatory and where the employment is for a period of more than one year, it should be made on regular basis. In this connection he made reference to the case of Daily Rated Casual Employees under Post and Telegraphs Deptt. vs. Union of India & ors. (AIR 1987 SC 2342) wherein the Hon. Supreme Court directed in respect of such employees that the respondents should prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year and this judgment was followed in various cases of Income Tax Department by Hon. Supreme Court including in 'Income Tax Department Staff Welfare Association vs. Union of India and others

(AIR 1988 SC 517) and in Delhi Municipal Corporation Karmchari Union vs. P.L. Singh and others (AIR 1988, SC 519). The reference has also been made to the case of A.K. Jain vs. Union of India (1988 SCC (L&S) 222 wherein somewhat similar policy decision has been held arbitrary and discriminatory and similar employees who have worked for more than a year were directed tobe sent to Commission for regularisation. Reference has also been made to the case of State of Haryana, vs.Piara Singh (JT 1992(5)S.C. 179, in which guidelines for regularisation of temporary employees/have been given in govt. service:

> "The normal rule of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. Insuch a situation effort should always be to replace such an adhoc/ temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete alongwith others for suchregular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidates. The appointment of the regularly selected candidates cannot be withheld or kept in abeyance forthe sake of such an adhoc/temporary employees.
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> Secondly, an adhoc or temporary employee should not be replaced by another adhoc or temporary employee, he must be replaced only by a regularly selected employee. There is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available, or is not sponsored by the employment exchange some appropriate methods consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified persons ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment doesnot run counter to the reservation policy of the State.

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same maybe made consistent with our

observations herein so as to reduce avoidable litigation in this behalf if and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category class or service, as the case may be.

So far as the work-charged employees and casual labour are concerned the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any prescribed for the post and subject also to availability of work, if a casual labourer is continued for a fairly long spell, say two or three years-a presumption may arise that there is a regular need for his services.In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive appro-- ach coupled with an empathy for the person. As has been repeatedly stressed by this court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana(contained in its letter dated 6.4.90 referred to hereinbefore)both in relation to work charged employees as well as casual labour."

3. According to the learned counsel for the applicant, all these applicants have worked for more thanone year continuously, the respondents are bound to regularise them and to pay them regular salary and no regularisation is arbitrary and violative of Article 14 and 16 of the Constitution of India. According tothe respondents, the

question of regularisation can arise only when there are vacancies for the same. The office has been abolished and the posts have also been abolised and the building has been vacated and various other sfaffand other officers have been repatriated to their parent department and question of regularisation can arise only if there are vacancies and the question of vacancies will arise only when new Census takes place and there being no posts, no questionof regularisation arises. According tothe respondents, the cases cited by the applicants will not apply and they were not the cases of temporary departments where the posts are created for a short term and the analogy given by the learned counsel for the applicant will not apply. Reference has been made to the case of M. Ramanath Pillai vs. State of Kerala and others (1973 SCC (L&S) 560) it has been observed that"the abolition of posts is an exectitive policy n decision, whether after abolition of the post the Government servant who was holding thepost would or could be offered any employment under the State would therefore, be a matter of policy decision of the Govt. because the abolition of posts does not confer on the person holding the abolished posts any right". It was further observed that the Government has a right to make alteration in the establishment according to the exigencies of administration and such a policy decision by the Government cannot by any reason be said to be a colourable exercise of the power bythe State. In the

case of K.Rajendran and others vs. State of Tamilnadu and others (1982 SCC (L&S) 208) it was held "The government has always thepower, subject, of course, to the constitutional provisions,to reorganise a department to provide efficiencyand to bring about economy.The power to abolish a post which may result in in the holder thereof ceasing to be a government servant is inherent in the right to create it. Whether or not a post should be retained or abolished, is essentially a matter of policy decision.But the decision should be taken in good faith and the action to abolish a post should not be just a pretence taken to ge-t rid of an inconvenient incumbent. Any action, legislative or executive, taken pursuant to the powers to abolish a post is always subject to judicial review." M. Ramnath Pillai case was relied onin K. Rajendran's case. According to the respondents the question of regularisation ofthese employees, thus can arise, only if there are vacancies and the department is continuing and appointment will be made obviously in case vacancies are created. The retrenched employees are to be given priority and their cases for regularisation can be considered even now, as and when vacancies arise and incase the vacancies are not there, there can not be any regularisation of each and every employee.

4. Condition No. 10 has been challenged on the ground that the applicants shall not be entitled to any employment, is arbitrary as after rendering

service, as per statutory provisions absorption in other departments can be done.

5. On behalf of the applicants reliance hasbeen placed inthe case of G. Govida Rajlu vs. A.P. Steel Corporation (AIR 1987 SC 1801) in which it was observed:" we have carefully considered the matter and after hearing the counsel for the parties, we direct that the employees of A.P. State Construction Corporation Ltd, whose services have been terminated on account of closure of the Corporation, shall be continued in service on the same terms and conditions either in the Government Department or in the Government Corporations." This case will not sequarely apply in the present case, as it is the case where the employees are not the government employees, but they are the employees of the State Corporation. Observations were made that their services were continued in the same terms and conditions in the Government Deptt. andother corporations.

6. So far as the government is concerned, for retrenched employees, obviously the rules are there and in the welfare state itis to be seen alongwith the persons who are waiting for their turn. Direction can be given for creating posts for all these persons but theTribunalis not competent to issue any suchdirections and to interfere in the policy matter and requires the government to change its policy, though certainly directions and

observations can bemade which we will discuss hereinafter.

7. On behalf of the applicant, condition No. 10 of the agreement has been challenged and thus condition puts a bar on these employees to get any employment.The retrenched employees are entitled to certain benefits even in the Central Government.The retrenched employees are also entitled to certain benefits under the various schemes/ which are framed by the Central Government and the contract was in respect of Census Department and the Central Govt. and no bar could have been put in for debarring the employees to appointment in other departments.Merely because a person becomes an employee of one department that itself does not entitle him tobe an employee of the other department. The clause inserted is arbitrary and entail benefit tothe employer and a sort of excessive condition and such a clause in Government service is against public policy hit by the Public policy of the contract. Thus the clause has got to be struck down on the ground of its being against public policy.

8. It was then contended that even then the respondents were not justified in terminating the services of the applicants, by closing their Regional TabulationOffice, as such an action will result in denying the employment to more than 450 persons in the Regional Tabulation office

Allahabad and more than 4500 persons in respect of all Regional Tabulationoffice and in such circumstances, the Government should give alternative employment to such persons in their departments or public sector corporations. In this connection reference has made to the case of Gowida Rajlu (supra). Census department is a permanent/temporary department and as and when the workescalates or Census takes places, temporary employment is given to persons who are desirous of having employment and not having employment in other departments and they offer their services in the Census Department only for the purposes of employment but many of them get permanent appointment in the department after putting in satisfactory service/work therein.

9. Census department is a permanent department and its activities are spread over for years together and it has got ramifying effect and purpose of the department shows that its work can go on for years together. It is for the government, which under the State Policy requires to see that more persons are given permanent appointment and avenues of promotionsfor years together and some of them become overage. Whie acting as a Welfare state, the State can even extend the scope of the department and the number of retrenched employees can be reduced, then many other persons will continue to remain in employment for providing jobs and for allowing them to get jobs again or for those who become permanent or regular employe

obviously the employees of the department are entitled to be given priority and preference over outsiders and there is no question of appointing outsiders unless the retrenched employees are absorbed. In the case of D.K. Saxena vs. U.O.I & connected cases/(O.A. No. 385/1991 decided on 26.2.93, we have directed the respondents for framing a scheme and the same will also apply in this case. We issued certain directions in that case which are as follows:

> "Accordingly, the respondents are directed toframe a scheme within 3 months which may contain the appointment of 900 or remaining employees and their absorption and regularisation and appointment of subsequently appointed employees who have been retrenched and their appointment in the department or elsewhere if they can be given appointment as retrenched employees, in the other departments, and those posts are not to be filled in by outsiders so long as these employees are appointed and includin those who are waiting for their turn inpursuance of 1984 judgment and they will be given priority over the staff appointed in subsequent years. In case the employees, who are still working or on the verge of retrenchment, or working under the interim orders of the Court, will also be given benefit of the said scheme and their regularisation and absorption will also take place as mentioned above. If vacancies are

existing or last date of working has been extended the incumbents will be allowed to continue to hold the post."

The above direction has been confined to 900 employees but in this case we are issuing above directions for all the retrenched employees of the Census Department which will cover 900 employees and other retrenched employees of the Census Department who are still working and who are not covered by the HighCourt judgment of 1984. The applicants' cases for above benefit will be considered after cases of 900 employees have been considered.

10. The applications aredisposed of as above with no order as to cots.

Adm. Member. Vice Chairman.

Shakeel/- Lucknow: Dated: 12th March 1993