

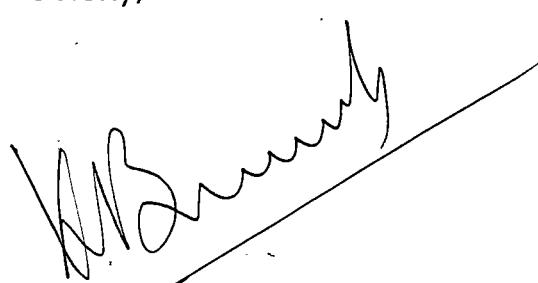
Central Administrative Tribunal
Jodhpur Bench

22nd OA-121/2010
This the 3rd day of January, 2011.

February 2011

Hon'ble Dr. K.B. Suresh, Member (A)

1. Jeevan Singh Gehlot,
S/o Sh. Jagdish Singh Gehlot,
R/o Jaloriyon Ka Bas Near Adhar
Shila, Inside Nagori Gate,
Jodhpur.
2. Mukhtiyar Ahmed,
S/o Sh. Kabir Ahmed,
R/o H.No. 651, Lakhara
Bajar, Gido Ki Gali, Jodhpur.
3. Tarun Parihar,
S/o late Sh. Jodhraj Parihar,
R/o C/o Mangi Lal Khangrot,
Udai Mandir Maliyon Ki Gali,
Jodhpur.
4. Sunny Panwar,
S/o Sh. Ramlal Panwar,
R/o C-8, Shiv Shakti Colony,
8th Residency Road,
Jodhpur.
5. Arjun Gujrati,
S/o Sh. Ratan Lal Gujrati,
R/o H.No. 68, Airforce, Indra Colony,
Panchbatti, Ratanada Road,
Jodhpur.
6. Devi Sahay,
S/o Jetharam,
R/o H.No. 9, Prathvi Pura,
Rasala Road, Jodhpur.
7. Yashpal Arya,
S/o Sh. Lala Ram Arya,
R/o C-9, Outside Nagori Gate,
Rambagh, Kaga Colony,
Jodhpur.



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8. Rinku,
 S/o Sh. Ashok Kumar,
 R/o Uda Mandir,
 Tilak Nagar,
 Jodhpur.

9. Virendra singh,
 S/o late Sh. Shaitan Singh,
 R/o H.No. 60, Gulab Nagar,
 Sector-C Behind New RT
 Office, BJS Colony, Jodhour.

10. Dheeraj Rajodiya,
 S/o late sh. Om Prakash Rajodiya,
 R/o B-3, Shiv Shakti Colony, 8th
 Residency Road, Jodhour.

Applicants

(through Sh. Kamal Dave, Advocate)

Versus

1. The Union of India through
 the Secretary,
 Ministry of Finance,
 Department of Revenue,
 New Delhi.

2. The Director General of Income Tax (Investigation),
 Central Revenue Building, Bhagwan Das Road,
 Jaipur.

3. Addl. Commissioner of Income Tax (Central)
 Ayakar Bhawan Lal Maidan, Paota 'C' Road,
 Jodhpur.

4. Joint Director Income Tax (Investigation/CIB),
 Ayakar Bhawan Lal Maidan, Paota 'C' Road,
 Jodhpur.

Respondents

(through Sh. R.B. Mathur, Advocate)

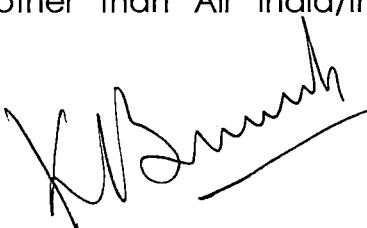
ORDER

The applicants are aggrieved by a Newspaper Advertisement issued by Respondent No.2, the Director General of Income Tax (Investigation) to fill up the work requirement of posts of Data Entry Operator, Chowkidar, Peon, and Sweeper through a private



contractor for which tenders have been invited and being apprehensive for not retaining them in employment, the applicants have approached this Tribunal.

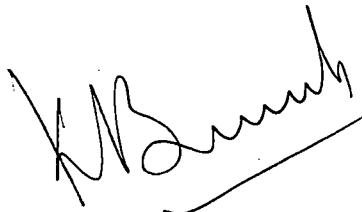
2. The respondents rely on Annexure R-2 that is an Office Memorandum F.No. 7(2)/E-Coord/2005 issued by Government of India on 23rd November, 2005 which calls for economy in expenditure, rationalization of expenditure and measures for augmentation of revenues. It emphasized the need for avoiding ostentatious expenditure and upon Government offices should be managed with every economy in operating expenses such as maintenance of buildings and office equipments, lighting, conservancy, stationary and postage etc. Austerity must be reflected in furnishing of offices/offices and at residence also. Expenditure on office expenses, foreign travel, over-time allowance/honorarium, hiring of vehicles, telephone charges, petrol, oil and lubricants, and seminars/conferences will, therefore, be restricted in 2005-06 to average of actual expenditure incurred in 2002-03, 2003-04 and 2004-05 through appropriate economy measures. No re-appropriation of funds to augment these Heads of Expenditure would be allowed during the current financial year. The expenditure limit prescribed for these purposes shall be strictly enforced. Size of official delegations, where foreign travel is essential, shall be restricted to the bare minimum. The air travel, both domestic and overseas, on official account, would now be permissible on airlines other than Air India/Indian Airlines also.



provided the criteria for selecting the alternative airline for official travel are based on better and more competitive prices being offered by the other airlines. It also indicated that there will be a ban on creation of new posts in all Ministries/Departments/Autonomous Institutions till further orders. Any unavoidable proposals for the creation of posts, including Groups 'B', 'C' and 'D' posts will continue to be referred to the Ministry of Finance (Department of Expenditure) for approval. The proposals would necessarily have to be based on 'new organization' and accompanied by matching savings from existing related establishment. Outsourcing of routine services such as cleaning, maintenance, moving paper, dak etc. may be encouraged. The respondents have also produced Annexure R-3, which is an explanation of DoPT circular regarding regularization of employees who had been in service for 10 years or more in duly sanctioned posts but not under cover of orders of Courts or Tribunals. This circular has taken to mean by the Chairman of Central Board of Direct Taxes, North Block, New Delhi that under cover of orders of Courts or Tribunals regularization may not be possible and for variety of endorsements made on the said circular. They also produced Annexure R-4 which points out that there was a shortage of staff vis-à-vis the sanctioned strength. In this connection, the Member (R) of CBDT seems to have recommended that under GFR 163 to 185 detailed instructions regarding the procurement of services and outsourcing of services are available and, therefore, it called for examining the possibility of outsourcing and procurement of

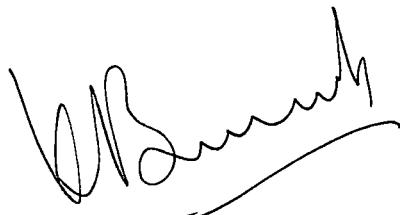
services in view of the acute shortage in the cadres of Stenographers, Peons, Chowkidars etc. The respondents would say that on the basis of this view prevailed in the Government that it was found necessary to outsource a portion of the work and as a first point they would say that the OA is not maintainable as the applicants are not the persons who are appointed by the authorities under the control of the Government of India and therefore the O.A. is not maintainable as especially the Tribunal is created to adjudicate the issues regarding service matters and conditions of service of those who are already appointed to public service and posted. In connection to the Articles 323 and 323A, it is postulated that service matters include 5 streams including any other matter whatsoever and therefore has to be understood in terms of service which they may provide in an office or agency of the Government but then the respondents would admit that there is pervasive control of the administrative authorities over the applicants. Their pay and other allowances are made by office funds belonging to the Government and therefore they are persons under the control of Government of India and officiating under the Government in such a way as to form the part of the jurisdiction and ambit of Central Administrative Tribunal. Therefore, the O.A., *prima facie*, would be maintainable.

3. They would say that the Bench of Central Administrative Tribunal at Jaipur had dismissed the claims of the daily wage casual workers in several proceedings vide order dated 18.03.2010 and

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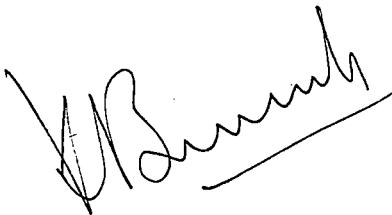
which is produced at Annexure R-1 but the applicants would point out that by the time that OA was filed, the applicants therein were already engaged by the Contractor whose contract had already come into being and therefore being contractual control, there cannot be unanimity between the claim of those persons and the applicants.

4. The respondents would say that the advertisement in question was issued to fill up the work requirement of the posts of Data Entry Operator, Chowkidar, Peon and Sweeper through a private contractor and it is denied that the applicants were working against vacant posts but they were on purely adhoc/contractual basis and they have no right to appointment to any post. They stipulated that on the basis of the decision of the Hon'ble Supreme Court in **Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others, (2006) 4 SCC 1**, it stipulated that such persons cannot invoke the doctrine of legitimate expectation, as appointment to a post could be made only by following proper procedure for selection and in consultation with UPSC. Therefore, legitimate expectation cannot be successfully claimed by contractual or ad hoc employees. There is no fundamental rights for those who have been employed on daily wage basis or temporarily or on contractual basis to claim that they have a right to be absorbed in service, but the applicants would point out that the Uma Devi's case would say much more. In fact, they would say that on the points canvassed by them, the view of the Hon'ble Supreme Court

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in **Rattan Lal & Others V/s. Lt. Governors & Others**, 1992 SCC (L&S) 824 and the view of the Hon'ble Supreme court expressed in **State of Haryana & Others V/s. Piara Singh & Others**, 1992 SCC (L&S) 825 remained unchanged. In **Rattan Lal**' case (supra), the Hon'ble Supreme Court held that the casual labourers would be entitled to salary or wages equivalent to minimum salary. Allowances to regular employees in comparable posts in accordance with any other issue settled in **Niadar Vs. Delhi Administration**, 1992(4) SCC 112.

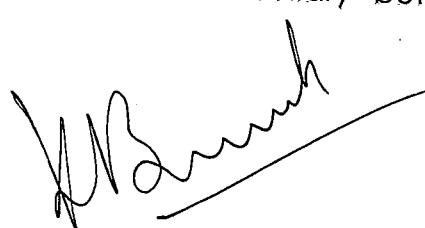
5. On an examination of the Constitutional conspectus, it is seen that these issues reflect the Directive Principles of State Policy which frowns on human bondage. In Piara Singh's case as well in paragraph 21, it is stated that the creation and abolition of post is the prerogative of the Executive. The courts come into picture to ensure observance of fundamental right/statutory provisions, rules and instructions, if any. The main concern of the courts in such matters is to infer the rule of law and to say fairly and to give fair deal to Articles 14 & 16 of the Constitution in its application. It also means that the State should not exploit the helplessness and misery of the unemployed. The State must be a model employer. In paragraph 46 of the said judgment the Court held that an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee, he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority. In paragraph 47 of the



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Judgement relating to methodology of appointment, the Court held that if no candidate is available or is not sponsored by employment exchange, some appropriate method consistent with Articles 14 & 16 of the Constitution should be followed. In other words, there must be advertisement calling for applications and also should be considered fairly, therefore, based on rules and equity, it would appear that the constitutional mandate is in favour of the employees and therefore, they should not be exploited any further by bringing in a private contractor to do their jobs.

6. The respondents seek to resist by stating that the daily wages of the employees have been revised from time to time according to the instructions of Government of India and CBDT. They would say there are no sanctioned vacant posts of peons in the offices of respondents No. 2, 3 and 4. They would say that vide Annexure R-2 dated 23.11.2005 outsourcing of routine services such as cleaning, maintenance, moving paper, dak etc. are to be encouraged. They would say that consequent upon the Scheme of public employment, contractual employment come to an end immediately whereas the temporary employment comes to an end on the expiry of its term. They would further say that the payment of Rs. 220/- per day itself is a testimony to the fact that they are doing daily service and the calculation of payment of Rs.220/- per day in a month is merely a method which is more functional in a regular manner to assist calculation itself. They have further stated that the payment is made not under the Head of the 'Salary' but under the



Head of 'Misc. Expenses'. Thus, they would say that based on the **Uma Devi's** case (supra), there cannot be any legitimate expectation of the applicants to continue. Therefore, the question is as to how such decisions in **Piara Singh's** case and **Uma Devi's** case are to be read together harmoniously and without conflict.

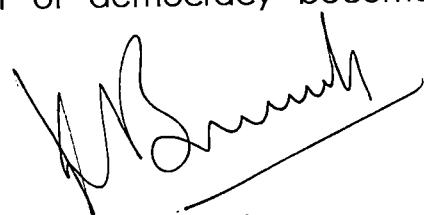
7. After careful examination, I find that one set of temporary employees cannot be substituted by another set of temporary employees. In **Tata Cellular Vs. U.O.I.**, AIR 1996 SC 11, the Hon'ble Supreme Court stated that "It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down." The respondents have no case that they have taken any work from the applicants on the job in continuity. When confronted with the



position that when the quantum of work is available, the relevant advantages of the Government, if such work is outsourced from a private contractor as are given to the contractual employees on different rates, learned counsel for the respondents invited my attention to the fact that in the earlier decision at Jaipur, the Contractor had offered job on the same condition to the applicants therein and thereafter have brought his own people also to do the work. Therefore, quite obviously the amount being paid to the applicants for doing the work and the amount paid on contract to the Contractor must be substantially different. The latter being the higher, therefore, quite obviously it will not beneficially affect the Notification produced at Annexure R-2 and in fact the Government would be spending more per month.

8. I find the issuance of advertisement will bring in a private contractor with control issues and may also be costlier to the Government while denying the life and livelihood to the applicants, then what is the motive behind private participation in the work of the Government? As noted by his Lordship, Justice P.B. Gajendragadkar in his Book Law, Liberty and Social Justice, that:-

"As soon as the democratic state embarks upon the adventure of achieving the ideals of a welfare state, it inevitably turns to law as its creates ally in the crusade. The function of the democratic state and its role assume wider proportions and cover a much larger horizon and in assisting the state to achieve these over expanding objectives, the function and the role of law correspondingly enlarge and cover a wider horizon...We reach a stage in the progress of the democratic way of life where law ceases to be passive just as democracy ceases to be passive and the purpose of law like that of democracy becomes



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dynamic; and that naturally raises the eternal question about the adjustment of the claims of individual liberty and freedom on the one hand, and the claims of social good on the other. It is a duel which a dynamic democracy has to face and it is in the harmonious and rational settlement of this duel that law has to assist democracy."

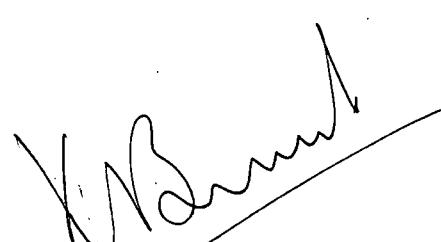
9. Therefore, having subjected the applicants and taken work from them for a long period of time even if I have to assume that no legitimate expectation on continued employment could be availed of by the applicants, no Welfare State can at the first place transgress from the applicants whatever rights which would have been avoidable to the applicants with substitution of a private contractor whether it be for cleaning or for some other work on daily wage basis especially as engaging them directly would have retained more control on the functional personnel then can be extracted from a private contractor. In **Uma Devi's** case (supra) a view was taken that it is not for a State to substitute one set of temporary employees with another set of temporary employees.

☞ The contractor cannot be expected nor is there any provision in the advertisement which will indicate that the Contractor could have only employees of a permanent nature. Therefore, quite obviously carrying employees from a contractor and the methodology of outsourcing would be more costly than as the Government will be Principal employer even then when not even continuing the employees as well. Even though the facts and figures have not been produced, what came out during the hearing was that in Jaipur Bench decision the same contractor is engaging all the



workmen besides his having supervisory staff to assist him. Therefore, the cost of the government will be irrationally high. The question then would be on what principles the respondents had taken decision to outsource for doing the work available with them which will not only result in denial of livelihood to the applicants but will make the outsourcing costlier. The reply of the respondents is silent on this point. If the applicants are being sacrificed whether it be in increase of efficiency or diminishment of functional commitment is not reflected in the reply. Therefore, the Court of Justice can only hold that the premises behind Annexure A-1 Advertisement is not rational and legal, it being violative of the cardinal principles of **Piara Singh** and **Uma Devi** cases. Therefore, it is declared that the respondent No.2 has no powers to issue Annexure A-1 Notification and deny the livelihood of the applicants in the circumstances aforesaid.

9. In the circumstances as aforesaid, while this will not prevent the applicants being sent out on duty if the administrative necessity of keeping them is not functional and not present but they cannot be removed by another substituted employees under any guise or cover. O.A. is allowed to the limited extend as stated above. No order as to costs.



(Dr. K.B. Suresh)
Member(J)

क्रियांक 2/1/16 के आदेशानुसार
मेरी उपस्थिति में दिनांक 9/4/16
को खण्ड-II ज/पर नक्ष लिय गए।

अनुपाम गोयकरी
केन्द्रीय प्रशासनिक अधिकारण
जोधपुर नक्षादारी, जोधपुर