

CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH

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Tuesday the 16th day of May 2000 (16.5.2000)

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PRESENT

The Hon'ble Shri D.V.R.S.G.DATTATREYULU, MEMBER(J)
and

The Hon'ble Shri S.MANICKAVASAGAM, MEMBER(A)

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O.A.No.	582	of 1992
O.A.No.	127	of 1994
O.A.No.	675	of 1994
O.A.No.	702	of 1994
O.A.No.	716	of 1994

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O.A.No.582_of 1992_

1. JANA GANANA CHOSHIT SAMUHA ' CHA'
Karmachari Sangh, Jana Ganana Karya
Nideshyalaya, Lucknow(UP) through its
General Secretary Shri Kanad Tripathi

2.Faizal

3.Daya Shanker

4.Balak Ram

5.Rakesh Kumar Tewari

6.Mohan Lal

7.Beni Shankar

8.Ram Sagar Maurya

9.Suresh Kumar

10.Nanhau

11.Ram Prasad

12.Ram Autar

13.Ram Chandra

14.Om Nath

15.R.Dixit

16.Madan Kumar

17.Munna Roy

18. Sajjan Lal
19. K. Tripathi
20. Sewa Lal
21. Jagdish Pd. Singh
22. Ramnath
23. Ram Shanker
24. Dala
25. Ram Sajwan
26. Ram Chandra
27. Misrilal
28. Ram Sagar
29. Shiv Bihar
30. Ramkumar
31. Chottey Lal
32. Shri Lalita Pd.
34. Anil Kumar Shukla
35. Chandrika Prasad
36. Uma Shanker
37. Shri Ram Chandra
38. Dhori Lal
39. Kaushal Kishore
40. Sunilkumar Srivastava
41. Bishan Lal
42. Virendra Kumar
43. Ram Asrey
44. Ram Dass
45. Kamal Narain
46. Yaudashitar
47. Ram Sewak
48. B. N. Saxena
49. Prem Shanker
50. Leela Dhar Pandey

51. Anil Kumar

52. Phool Chandra

.. Applicants

Vs.

1. The Union of India through the Secretary
Home Affairs, M/o Home, New Delhi

2. The Director of Census

3, Park Road, Lucknow

3. The Registrar General Census,
Commissioner Office, 2/A Mansingh Road
New Delhi

.. Respondents

O.A.No. 127/94

1. Alha Prasad

2. Aftab

3. Arun Kumar

4. Shyam Lal

5. Knur Bahadur

6. Ram Singh

.. APPLICANTS

Vs.

1. Union of India through the Registrar
General of India

2/A Mansingh Road, New Delhi

2. The Director of Census Operations

U.P. 52, Wazir Hussain Road, Lucknow .. Respondents

O.A.No. 675/94

Shri Ram

.. Applicant

Vs.

1. Union of India through the
Registrar General of India

2/A Mansingh Road, New Delhi

2. The Director of Census Operations,

U.P. Lekhraj Market, Faisabad Road

Lucknow

.. Respondents

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O.A. 702/94

Sri Kant

.. Applicant

Vs.

1. Union of India through the

Registrar General of India

2/A Mansingh Road

New Delhi

2. The Director of Census Operations

U.P. 52 Nazir Hasan Road, Lucknow .. Respondents

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O.A. No. 716/94

Smt. Srimathi

.. Applicant

Vs.

1. Union of India through the Dy.

Director, Census Operations, U.P.

Lekh Raj Market, 3-Indira Nagar, Lucknow

2. The Dy. Director, Census Operations

U.P. Leh Raj Market, 3 Indira Nagar, Lucknow

3. The Registrar General of India, M/o Home Affairs

Griha Mantralaya, New Delhi

.. Respondents

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Mr. Rabin Mithra .. Advocate for the applicants in OA 582/92

Mr. R.B. Pandey .. Advocate for the applicants in OA No. 127/94

Mr. C.B. Verma .. Advocate for the applicant on OA 675/94

Mr. E.P. Srivastava .. Advocate for the applicant in OA No. 702/94

Mr. R.C. Saxena .. Advocate for the applicant in OA 716/94

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Mr. ... K. Chaturvedi .. Advocate for the respondents in all

the above OAs.

Order: Pronounced by the Hon'ble Shri D.V.R.S.G. DATTATREYULU
MEMBER (J)

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All these batch of cases arise out of the retrenchment of the workers belonging to Census Department. The facts are almost similar and the impugned order is the same. Hence a common order is pronounced.

2. OA No.582/92 deals with retrenchment of 52 workers who were employed from 1979 onwards and had prayed for regularisation of their services. But during the pendency of the application the authorities had passed orders terminating the services of the applicants. Therefore the OA was subsequently amended questioning their termination.

3. The applicants in OA No.127 of 1994 had also prayed for the relief of quashing their termination orders. In this OA the applicants are 7 in number. It is also their case that they were working with the department from 1988 and are affected by the termination orders passed by the respondents.

4. OA No.675 of 1994 has been filed by the applicants seeking the relief of setting aside the impugned order of termination of their services. According to these applicants they have been working as casual labourers since 1984.

5. OA No.702 of 1994 is filed by the applicants stating that he has been working as a casual labourer since 1990 and also prays to quash the impugned order retrenching him from service.

6. OA No.716 of 1994 the applicant prays to quash the impugned order of termination. It is stated that she has been working in the department from 1990-1992.

7. The respondents have filed a counter in all these OAs stating that the Census Organisation is a separate entity and whenever there is necessity of census work coming once in every 10 years, persons were employed for a particular period and immediately after the work is over their services are terminated and there is no outdgetary

sanction for continuing any of the employees after the work is over and after the lapse of the period. In all these cases the period lapsed by 31.12.1993. Therefore they cannot be given any relief and their services were therefore terminated according to the rules. The allegations otherwise made with regard to the applicants service are not practically denied, except with some variation here and there.

8. We have heard the learned counsel appearing for both sides and here itself we have to express our sincere gratefulness to all Advocates who assisted ably the Tribunal for arriving at a conclusion in these OAs. We have considered the various judgments and also the various annexures that are filed in these OAs.

(A) LEGAL ASPECTS

9. The points for consideration are whether,

- (a) the applicants are entitled to the relief of giving directions to the respondents to regularise their services by quashing the retrenchment order;
- (b) Any direction can be given to the respondents to consider the applicants for being absorbed in any other instrumentality of the State;
- (c) the Applicants have to be given the temporary status and to what other reliefs.

10. We would like to proceed first dealing with the aspect of law that has been focussed by either side. The main contention advanced on behalf of the applicants by the learned Senior Counsel Shri Robin Mithra is that it is no more a privilege of the employer to treat at random the employees. But the nexus between the employee and the employer is governed by the Constitutional Mandate under Articles 14, 16 and 21 of the Constitution and also under the Directive Principles of the State Policy, envisaged under Part IV of Art.36 of the Constitution of India.

11. In order to substantiate the above assertion the learned counsels relied on the following judgments

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dealing with the various aspects. The judgments have been discussed in the chronological order.

JUDGMENTS of the applicants (legal position urged by the applicants)

<u>Mode of Citation</u>	<u>Name of Parties</u>	<u>Date of decision</u>
a) (1982) 1 SCC 445 -	L. Robert D'Souza Vs. Deputy Executive Engineer, Southern Railway and another	16.2.1982

This decision has been cited to show that even casual or seasonal workmen^{men} who rendered continuous service for one year or more, cannot be retrenched on such ground without complying with the requisites of Sec. 25-F of the Industrial Disputes Act, 1947. This decision is cited for the purpose of saying that what sort of a legal protection should be given to a casual or a seasonal workman (emphasis supplied) (not practically on the point of the workers employed in the Census Department). In other words the law enunciated in this judgment is to the effect that there is a Constitutional Mandate to protect even a casual or a seasonal workman, without being retrenched without following the compliance of law. To put in other words the citizens are entitled to Constitutional protection though it may be a casual or seasonal work.

(b) (1990) 1 SCC 361 -	Shagwati Prasad Vs. Delhi State Mineral Development Corporation and batch	15.12.1989
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This decision is relied upon to show with regard to the regularisation of the daily rated workers and also to show that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability.

(c) (1990) 2 SCC 396 -	Sharwad Dist. PWD Literate Daily Wage Employees Association and others	23.2.1990
	Vs. State of Karnataka and others	

This is relied upon that there should parity in the payment of wages and also regularisation. This is also relied upon

dealing with the various aspects. These judgments have been discussed in the chronological order.

relied on
JUDGMENTS ~~by~~ the applicants (legal position urged by the applicants)

<u>Mode of citation</u>	<u>Name of parties</u>	<u>Date of decision</u>
(a) (1982) 1 SCC 645-	L. Robert D'Souza Vs. Executive Engineer Southern Railway and another	16.2.1982

This decision has been cited to show that even casual or seasonal workers who rendered continuous service for one year or more, cannot be retrenched on such ground without the complying with/ requisites of Sec. 25-F of the Industrial Disputes Act, 1947. This decision is cited for the purpose of saying that what sort of a legal protection should be given to a casual or seasonal workman (emphasis supplied) (not practically on the points of the workers employed in the Census Department. In other words the law enunciated in this judgment is to the effect that there is a Constitutional mandate to protect even a casual or a seasonal workman, without being retrenched without following the compliance of law. To put it in other words the citizens are entitled to Constitutional protection though it may be a casual or seasonal work

(b) (1990) 1 SCC 361 - Bhagwati Prasad

Vs.

15.12.1989

Delhi State Mineral
Development
Corporation and batch

This decision is relied upon to show with regard to the regularisation of the daily rate workers and also to

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show that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability.

(c) (1990) 2 SCC 396 - Dharmad Dist.

PWD Literate

Daily Wage Employees

Association and others 23.2.1990

Vs.

State of Karnataka

and others

This decision is relied upon to show that there should be parity in the payment of wages and also regularisation. This is also relied upon with regard to regularisation stating that the daily or monthly or casual workers working continuously for long under the instrumentality of the State must be regularised in service with parity in pay. This is the case dealing with regularising the services of 18,600 out of 50,000 workers who completed 10 years of service. It is also stated in this judgment as follows:-

" The philosophy of the Court as evolved in various cases is not that of the Court but is ingrained in the Constitution as one of the basic aspects and if there was any doubt on this there is no room for that after the Preamble has been amended and the Forty Second Amendment has declared the Republic to be a socialist one. The relevant constitutional philosophy must be allowed to become a part of every man in this country, then only would the Constitution reach everyone and he or she would be nearer the goals by it. That perhaps can happen in every field".

This is the case duly filed by two trade unions formed by the Law Students of the University college and and two individuals asking for quashing of the Karnataka Govt. Notification and for a direction to confirm the daily rated and monthly rated employees as regular government servants and for payment of the normal salary at rates prescribed for the appropriate categories of the government servants and other service benefits.

(d) (1991) 1 SCC 28 Jacob Pthuparambil and
others and batch 19.9.1990
Vs.
Kerala Water Authority and others

This is one of the leading judgments dealing with the Service Law about regularisation and the analysis of this judgment lays down the Law, that the employees serving for reasonably long period and having the requisite qualification for the job deserve to be regularised. Though this deals with another aspect of the Water Works Authority, the principle of law is relied upon to show the aspect that rendering of service for a long period is the basic aspect that has to be considered for regularising the employees.

(e) 1993 Supp(1) SCC - 525 Sandeep Kumar
and others and Batch 17.9.1991
Vs.
State of Uttar Pradesh
and others

This is relied upon ~~for~~ regarding regularisation

(f) (1992) 4 SCC 118 .. State of Haryana and others
Vs. .. 12.8.1992
Piara Singh and others

This also deals with regularisation of ad hoc or temporary government servants. It has been laid down that work charged or casual/daily rated workers in case of long continuance in service, presumption for regular need of service would arise obliging the authority concerned to consider with a positive mind with regard to feasibility of regularisation.

(g) 1995 Suppl.(4) SCC 182 - Khagesh Kumar
and others 27.9.1995
Vs.
Inspector General
of Registration
and others

This is relied upon regarding regularisation principles
(this is not of much help for decision in this case)

(f) 1996 (7) SCC 381 .. Rajpal- Vs.- State of
Haryana
and others ..20.11.1995

This has been relied upon to show that if persons similarly
situated are already taken in service and when their
services were regularised that applies to others also
in the same field.

(g) (1998) 8 SCC 473 .. Raj Narain
Prasad and others .. 18.1.1996
Vs.
State of U.P. and
others

This decision is relied upon to show that when casual
labourers are to be regularised the ~~following~~ ^{financial} constraints,
vis-a-vis welfare of the employees, balance has to be
maintained between the two competing factors. It is stated
that the scheme of regularisation should be done taking
into consideration with reference to the scheme of the
vacancies that are likely to arise.

(h) (1997) 9 SCC 377 .. AIR INDIA
Statutory Corporation
and others .. 6.12.1996
Vs.
United Labour Union
and others

This is relied upon to show ~~the~~ Constitutional mandate
as to how the employees have to be protected by the State.
The most relevant paragraph to decide the present case
on hand which lays the guidelines to be considered in deciding
the case of this Type on hand. Paras 14 and 15 are reproduced
below:-

" 14. As noted the appellant to start with was a statutory
authority but pending appeal in this Court due to change in
law and in order to be in tune with open economy, it
became a company registered under the Companies Act. To
consider its sweep on the effect of Heavy Engineering case
on the interpretation of the phrase 'appropriate Government'
it would be necessary to recapitulate the Preamble, the
Fundamental Rights (Part III) and Directive Principles (Part IV)

--trinity setting out the conscience of the Constitution deriving from the source "we the people" a charter to establish an egalitarian social order in which social and economic justice with dignity of person and equality of status and opportunity are assured to every citizen in a socialist, democratic Bharat Republic. The Constitution, the Supreme Court heralds to achieve the above goals under the rule of law. Life of law is not logic but is one of experience. Constitution provides an enduring instrument, designed to meet the changing needs of each succeeding generation altering and adjusting the unequal conditions to pave way for social and economic democracy within the spirit drawn from the Constitution. So too, the legal redressal within the said parameters. The words in the Constitution or in an Act are but a framework of the concept which may change more than the words themselves consistent with the march of law. Constitutional issues require interpretation broadly not by play of words or without the acceptance of the line of their growth. Preamble of the Constitution as its integral part is designed to realise socio economic justice to all people including workmen, harmoniously blending the details enumerated in the Fundamental Rights and the Directive Principles. The Act is a social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of the individual entrepreneur. It seeks to achieve a public purpose, i.e. regulated conditions of contract labour and to abolish it when it is found to be of perennial nature etc. The individual interest can therefore no longer stem the forward flowing tide and must of necessity give way to the broader public purpose of establishing social and economic democracy in which every workman realises socio economic justice assured in the Preamble, Art. 14, 15 and 21 of the Constitution and the Directive Principles of the Constitution.

15. The founding fathers of the Constitution, cognizant of the reality of life wisely engrafted the Fundamental Rights and Directive Principles in Chapters III and IV for a democratic way of life to every one in Bharat Republic. The State under Art. 38 is enjoined to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social economic and political shall inform all the institutions of the national life and to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 39(a) provides that the State shall direct its policies towards securing that the citizens, men and women equally have the right to an adequate means of livelihood; clause (d) provides

equal pay for equal work for both men and women; clause(e) provides to secure the health and strength of workers. Art.41 provides that within the limits of its economic capacity and development, the State shall make effective provision to secure the right to work as fundamental with just and humane conditions of work by suitable legislation or economic organisation or in any other way in which the worker shall be assured of living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workmen. The poor, the workman and common man can secure and realise economic and social freedom only through the right to work and right to adequate means of livelihood, to just and humane conditions of work, to a living wage, a decent standard of life, education and leisure. To them these are fundamental facts of life. Art.43-A brought by the 42nd Constitution (Amendment) Act 1976 enjoin upon the State to secure by suitable legislation or in any other way, the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. Art.46 gives a positive mandate to promote economic and educational interests of the weaker sections of the people. Correspondingly Art.51-A imposes fundamental duties on every citizen to develop scientific temper, humanism and to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. To make these rights meaningful to workmen and meaningful right to life a reality to women, shift of judicial orientation from private law principles to public law interpretation harmoniously fusing the interest of the individual entrepreneur and the paramount interest of the community is essential. Art. 39-A furnishes beacon light that justice be done on the basis of equal opportunity and no one be denied justice by reason of economic or other disabilities. Courts are sentinel on the qui vive of the rights of the people, in particular the poor. The judicial function of a Court, therefore, in interpreting the Constitution and the provisions of the Act, requires to build up continuity of socioeconomic empowerment to the poor to sustain equality of opportunity and status and the law should constantly meet the needs and aspiration of the society in establishing the egalitarian social order. Therefore the concepts engrafted in the statute require interpretation from that perspective, without doing violence to the language. Such an interpretation would elongate the spirit and purpose of the Constitution and make the aforesaid rights to the workmen a reality lest establishment of an egalitarian social order would be frustrated and constitutional goal defeated."

12. The learned senior counsel appearing for the applicants made a special mention on the above decision stating that social philosophy of law as emerged from time to time as per interpretation of the Constitution as given by the Apex Court reflects the legal barometer and have to be followed in dealing with the exigency of service of the employees, vis-a-vis employer and the focus in deciding the rights inter-se the parties should be the socialistic philosophy of life, as envisaged in the Constitution and put into practice by the Court which acts as the 'break' of the executive decisions of the Government and fulfils the Constitutional obligations cast on the Government by interpreting the law and by giving directions to follow the law.

(i) 1999 SCC(L&S) 138 .. Sadhan Chandra
Dey and others .. 27.8.1998
Vs.
UOI and others

This decision deals with casual labourers and also/deals with the aspect of ^{conferment of} ~~employment~~ temporary status. This case deals with the railway employees. But this is relied upon to show the principle of law regarding as to when temporary status has to be given.

(j) 1999 SCC(L&S) 765.. Secretary, HSEB
Vs. .. 30.3.1999
Suresh and others

This is relied upon to show that when a contract labour has to be absorbed (This decision would not be of much help to decide the case on hand).

(k) 1999 SCC (L&S) --838 .. V.. Chandra .. 6.4.1999
Vs.
UOI and others

This is relied upon to show that casual labourers can be engaged as a Peon or a Clerk and absorption can be done keeping the long ~~long~~ service of more than 5 years put in by the appellant. This decision is mainly relied upon to show the applicants in all these cases have been working for a number of years and they should be considered for absorption in any of the units of the State.

13. The most important judgment relied upon on behalf of the applicants is the ^{one} reported in 1999 SCC 148 (Government of Tamil Nadu and another - Vs. - G. Mohamed Ammenudeen and others) (decided on 28.9.1999). This case is directly dealing with the Census Department workers recruited on a temporary basis. In this case it was held that in view of the special features of the case, it would be appropriate for the State Govt. to frame a scheme to absorb the retrenched workers working in the Census Department. This judgment will be discussed in detail in the coming paragraphs.

B. DECISIONS RELIED UPON ON BEHALF OF THE RESPONDENTS

(a) W.P.No.3235 of 1984.. Joint Front of
 High Court, Census Fixed Pay
 Allahabad Employees and 13 others
 Vs.
 UOI and others

In this case it was held that the employees who belonged to the Census Department and who had been retrenched for want of budgetary sanction, the High Court had held that the retrenched employees have to be considered first before persons from open market are considered. However the SLP filed against the decision of the Allahabad High Court has been dismissed on 21.2.1990.

(b) OA No.582 of 1992
 CAT, Lucknow Bench

In the above OA, this Bench had dealt with the various applicants therein and while dealing with the same Census Department on retrenchment of the employees had directed that scheme should be prepared to absorb the employees retrenched from service.

(c) OA No.491 of 1991 - In the above OA it was directed that the Census Department should consider the retrenched employees by framing a scheme.

14. These matters were taken in appeal to the Hon'ble Supreme Court in Civil Appeal No.731 to 769 of 1994 (decided on 24.2.1995) = (1995) 3 SCC 401 (UOI and others - Vs. - Dinesh Kumar Saxena and others) in which the orders of the Tribunal holding that such a kind of

scheme cannot be followed. But a direction is given stating that the employees have to be considered for being taken into service immediately when the vacancies arose.

14. It is necessary here to keep in mind that the respondents have relied upon the decision which is latest in time dealing with the same Census Department matter. This decision, i.e. Dineshkumar Saxena and others case, reported in 1995(3)-SCC-401 was decided on 24.2.1995, whereas the decision relied on by the applicants, as reported in 1999 SCC L&S 1348 (Govt. of Tamil Nadu and others-Vs.- G.Mohammed Ammenudeen and others) is dated 28.9.1999 in which formulation of a scheme has been upheld.

15. It is ~~also~~ to be mentioned here that ~~though~~ the respondents ~~had~~ relied on the judgment of the Apex Court, as referred to in the decision reported in 1995(3) SCC 401, decided on 24.2.1995, which has reflected the position that it is only in the Census Department that the retrenched employees have to be considered, ^{But the applicants relied on the} ~~which is~~ law as laid down in the latest judgment of the same Apex Court as reported in the decision reported in 1999 SCC(L&S)-1348, decided on 28.9.1999 (the proximity of time is to be noted) upholding the view that absorption of the retrenched employees in the Census Department have to be considered for being taken into other instrumentality of the State.

16. An analysis of the above legal position would go to show that the service conditions of the employees are governed not merely by the statutory rules of the respective services, ~~but~~ but the statutory rules should be interpreted by the judicial scrutiny keeping the equality clause and the right to have a decent life and a decent living which can be achieved only by ~~an~~ employment as envisaged under Art.21 of that the Constitution, dealing with the right to live has to be considered with the broad spectrum of the service life of the retrenched employees from the Census Department. The Census Department is part of the Government(Central) and the State is bound to implement the Constitutional mandate

as espoused in the various decisions discussed above.

17. The question of regularisation as discussed in the various judgments referred to also would go to show that if a particular employee has worked for a number of years, that employee cannot be thrown away at random stating that either there is no work or there ^{is} no budgetary sanction, but a scheme to protect employment of such person, so that he can have a decent living, has to be struck by balancing the two factors, viz. financial constraints and also the hardship to which the employee would be subjected to.

18. The next proposition that emerges from the various decisions relied upon would go to show that ^{whether} ~~where~~ the particular employees of the Census Department can be absorbed in the other units of the State with employment avenues and ^{whether} ~~where~~ they can be given temporary status as well.

19. The main contention of the applicants in OA 582/92 is that they have been working since 1979 onwards and likewise the other applicants in ~~the~~ various other OAs are also working for so many years. Therefore they cannot be simply be re-trenched by the impugned orders contained in Annexures A-12 and A-13. (OA No. 582/92) and pushed to great hardship in life. Therefore the applicants are seeking the direction to grant them temporary status and also regularisation of their services with all the attendant benefits in service.

20. Per contra, it is the contention of the respondents that the Census Department is a separate organisation where the work is very much limited and the work ceases the moment the census operations come to a close, except the short establishment that goes on with continuity. Therefore there cannot be either temporary status or regularisation. The only possibility in the given circumstances to remedy the grievances of the applicant would be to engage them as and when vacancies arise to fill up the posts which were manned by the retrenched employees and ~~and~~ they can be taken into service based on their seniority as per the exigency of

service and there will be no taking back from open market. Thus the factual and legal aspect as urged by the learned senior counsel Shri A.K.Chaturvedi, in all fairness as he ^{was in fact} ~~was in fact~~, is that the decision of the Hon'ble Supreme Court reported in 1995(3) SCC 401 will squarely apply to the applicants in the instant case.

21. Before actually reproducing the law as enunciated in the particular case, referred to and relied on by ^{both} the sides, the narration of a few facts that led to the judgment in those cases are as follows. The applicants in those cases were retrenched after the census work was over and thereafter they filed WP No.3235 of 1984 before the Lucknow Bench of the Allahabad High Court challenging their termination. The Allahabad High Court by its judgment dated 16.7.1984 noted the stand of the Union of India that ~~the~~ the employees working in the Census Department was time bound and came to an end on 30.6.1984 and those posts were abolished as there was no budgetary sanction beyond 30.6.1984. In the given facts and circumstances of that case the High Court, Allahabad had held that the reliefs sought for by the petitioners therein cannot be given. However the High Court directed the respondents therein not to make fresh recruitment in the Census department, but to take only the retrenched employees as and when work comes. A Special Leave Petition was filed in the Apex Court questioning the ^{judgment} ~~order~~ of the Allahabad High Court. While deciding the above case, the Hon'ble Supreme Court held after discussing various other judgments ^{and held} as follows:-

" The facts of the present case are closer to those of Sandeep Kumar and others etc. -Vs.- State of UP and others, etc. (supra) than the other cases cited earlier. Here also the respondents have been temporarily employed to handle work which is of a limited duration. It is not possible therefore to direct the framing of any scheme for their being regularised in the Census Department since there is not enough work of a permanent nature to keep these extra employees busy throughout. We also do not see how these employees

who had been engaged on a contract basis for a limited and fixed duration and on a fixed pay can be directed to be absorbed in any other department of the Govt. Ends of justice will be met if the Directorate of Census Operations U.P. is directed to consider those respondents who have worked temporarily in connection with 1981 and/or 1991 census operations and who have been subsequently retrenched for appointment in any regular vacancies which may arise in the Directorate of Census Operations and which can be filled by direct recruitment. If such employees are otherwise qualified and eligible for these posts for this purpose the length of temporary service of ~~of~~ such employees in the Directorate of Census Operations should be considered for relaxing the age bar, if any for such appointment. Suitable rules may be made and conditions laid down in this connection by the appellants. The appellants and/or the Staff Selection Commission may also consider giving weightage to the previous service rendered by such employees in the Census Department and their past service record in the Census Department for the purpose of their selection ~~in the~~ to the regular posts. It is directed accordingly. The appellants have in their written submissions, pointed out that as of now 117 posts are vacant to which direct recruits can be appointed. They have also submitted that out of these posts there were 38 vacant posts of Data Entry Operator, Grade B, which had been advertised for being filled only from amongst the retrenched of 1981, 1984 and 1991. As per recruitment rules only those retrenched were eligible to apply who were graduates and had a speed of 8000 key depressions ~~per~~ per hour of data entry. Although approximately 800 ~~retrenched~~ retrenched employees applied, only 476 appeared in the test conducted by the NIC of the Lucknow unit and only two applicants qualified. Out of these only one could be appointed since the other person was overaged even after allowing for age relaxation. Whatever may be the difficulties in giving regular appointments to such ~~retrenched~~ retrenched employees in the past, the appellants, viz. the UOI and the Directorate of Census Operations, U.P. are directed to consider these retrenched employees for direct recruitment to regular posts in the Directorate of Census Operations, U.P. in the manner hereinbefore stated. The retrenched employees will however have a right to be considered only if they fulfil all other norms laid down in connection with the posts in question under the recruitment rules and/or in other departmental regulations/circulars in that behalf. The appeals are accordingly partly allowed".

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Therefore on the basis of the above judgment it is the contention of the respondents that the relief as sought for by the applicants cannot be given. However the learned counsel for the respondents fairly admitted that the applicants will be considered for being taken into the posts that are likely to arise without going into the open market recruitment.

22. However the learned counsel for the applicants relied upon the latest judgment of the Apex Court reported in 1999 SCC(L&S) 1348, decided on 28.1.1999. It is necessary to go into the facts which resulted in the legal proposition that was laid down in the said judgment. In the State of Tamil Nadu for the purpose of census operations which was commenced in the year 1991, certain workers, including the respondents therein, were engaged on a consolidated pay for a period of 18 months from 1.2.1991 to 30.6.1992. On completion of their work, their services were terminated. The Govt. of Tamil Nadu banned any recruitment of temporary employees by its orders dated 15.5.1991 and it continued for some time. The Registrar General of India and the Census Commissioner of India had addressed a letter on 26.12.1991 and requested the State of Tamil Nadu for taking steps for absorbing the temporary workers employed in the Census Department at the state level in its services in the undertakings under its control. It is also seen from the judgment that the same request was made by the Director of Census Operations. The services of the respondents in that case who had been engaged as census workers were terminated or retrenched on 30.6.1992. In fact certain concessions were sought to be extended to the respondents therein. But these were withdrawn. It is also seen that as there was a ban on recruitment of temporary workers, the persons have to be sponsored only by the Commission. Thus the temporary employees who were working in the Census Department and whose services were terminated also had to pass such qualifying examination conducted by the Commission. Questioning the above action

the employees filed an application before the Tamil Nadu Administrative Tribunal seeking a direction that they have to be absorbed either in the State Govt. service or in any of the undertakings of the Govt. since they had worked for more than 15 months continuously and actually they sought for a direction to absorb them as Junior Assistants/Typists. The Govt. of Tamil Nadu had resisted the said petition before the Tribunal stating that the Tribunal has no jurisdiction to entertain the application on the ground that the applicants therein were not employed on any civil post. However the Tribunal had held that the Government of Tamil Nadu had to absorb the terminated temporary employees of the Census Department in 1971 and 1981 as per G.O.Ms.No.341 dated 13.12.1992 and GO Ms.No.444 dated 23.12.1992 which were subsequent to the issue of ban on recruitment on 15.5.1991 and directed that the retrenched employees of the Census Department are entitled for absorption in the State Govt. The Tribunal further directed the State Govt. to consider their cases for such absorption within the time limit of 2 months. As against this orders of the Tribunal, the State Government preferred a SLP before the Supreme Court. The Supreme Court after hearing both sides had held as follows:-

"It would be appropriate for the State Govt. to frame a scheme to absorb the respondents and other employees who were similarly placed and who have been retrenched. On the commencement of the census operations persons who have registered themselves in the employment exchange get jobs in that Department. However when the project is over their employment would come to an end and they are retrenched thereby losing both the employment and their position in the queue in the employment exchange. Bearing this aspect in mind, the Govt. was asked to work out an appropriate scheme".

The above judgment also discloses as to how the scheme was to be framed by the Govt. for absorption of the retrenched employees of the Census Department in the State Govt. In this connection G.O.Ms.No.144 dated 11.8.1999 refers. The Apex Court had further

held that some of the clauses in the said G.O. are not for the benefit of the employees and ~~thereby~~ held that these have to be deleted. The further directions in the above said judgment are as follows:-

"Subject to this modification the scheme proposed by the State Government may be worked out so as to absorb the respondents in services of the State Govt. or in any of the local authority or government undertakings as may be feasible as expeditiously as possible. This appeal stands disposed of accordingly".

23. It is worthy to note here that the Apex Court had appreciated the stand taken by the Tamil Nadu Govt. in taking steps to absorb the retrenched employees of the Census Department. Placing reliance on the above said judgment of the Apex Court, the applicants pray that such a sort of direction is necessary in these OAs.

24. We have given our anxious thought in respect of the various contentions raised on behalf of the respondents as also on behalf of the applicants. As already stated the learned senior counsel appearing for the respondents had relied on the judgment reported in (1995) 3 SCC 401 (decided on 24.2.1995) wherein it was held that there was no feasibility of framing any scheme. But it is equally seen from the march of law as well as the steps taken by the sovereign authority, the State in ~~trying~~ to explore the possibility of absorption of the retrenched employees belonging to the Census Department and how to safeguard their rights to live and the State of Tamil Nadu appears to be ~~going~~ ^{been going} in this direction taking a decision to absorb the retrenched employees of the Census Department and have formulated a scheme as per GO Ms.No.144 dated 11.8.1999 which was considered as a reasonable stand by the Apex Court. Therefore the law as of today is of the latest judgment of the Apex Court, i.e. a scheme can be formulated by the State and the retrenched employees can be absorbed.

25. Coming to the aspect of constraints faced by the department that there will be no allocation of funds, there would be no budgetary sanction, we hold that the stand of the respondent department with regard to the above problem is true. But as per the decision referred to above when there is a financial constraint on the part of the State and hardship of losing job by the employees, a balance has to be struck keeping in view the fundamental right guaranteed in the Constitution. Under such circumstances the only alternative left is the State itself should step in to remedy the situation as per the mandate of the Constitution to give ~~live~~ livelihood under Art. 21 of the Constitution. It should be borne in mind that the Census Department is part of the instrumentality of the State. Therefore it is not as if a person working in that department cannot be absorbed in other departments. As could be seen in the various judgments discussed above, the opportunity to seek employment in other departments of the Government is not lost. Further a person who is accustomed to some sort of livelihood by getting a job in the Census Department, the moment he loses ^{job} it not only the employee but the dependant members of the family is thrown out of the bare necessity of life ~~of~~ of having two meals per day. Will it be in consonance to say that the State will not take steps to protect them?; will it be in consonance with the Constitutional philosophy of right to life?. Further going into the discussion of equality before law and equal protection of law as envisaged under Art. 14 and 16 of the Constitution, every State in the ~~the~~ country ~~country~~ is bound only by one commandment, i.e. Constitution of India. The length and breadth of the nation ~~has to be~~ has to be governed according to the Constitutional mandate only. One State cannot say that I cannot do certain things which the other States have shown to have followed on a rationalism and well considered decisions. When some of the employees of the Tamil Nadu State have been absorbed by virtue of GO Ms.No.144 dated 11.8.1959, the State of U.P. is forbidden to say that they cannot take the same stand.

It would be inequality in the administration and violative of Art.14 and 16 of the Constitution of India. Further the census department employees of the Tamil Nadu Govt. and the Census Department employees of the U.P. Government form only one part. There cannot be any discriminatory treatment to them by any State Govt. as every State in India is bound to implement the Constitutional Policy. Therefore the plea raised on behalf of the UP Govt. has to be negated.

25. As discussed in the preceding paragraphs, a particular methodology is followed in the scheme of absorption of the Census Department employees by the Tamil Nadu Govt. The same scheme with necessary modifications/amendments has to be formulated taking into account the service conditions of the State by the Govt. of U.P. as well. Hence we are of the opinion that this Tribunal is bound by the latest position of law as laid down by the Apex Court in 1999 SCC(L&S)1348. We are therefore of the opinion that the applicants in this case ^{are} entitled for a direction to the respondents to formulate a scheme for absorption of the applicants in the various departments of the Govt. or in other instrumentalities of the Government, as stated in the above judgment cited supra and on the same lines as envisaged in G.O.Ms.No.144 dated 11.8.1999 of the Tamil Nadu Govt.

26. Thus our findings on point No.(a) and (b) in para 9 of this judgment on the question of ^{absorption} ~~regularisation~~ which the applicants have sought in various departments of the Govt. or other instrumentalities of the State is that the respondent department shall formulate a scheme for 'absorption' of the applicants.

27. With regard to the question as to fixation of seniority and other aspects, we are of the view that these have to be separately taken into consideration only after deciding as to where the applicants can be absorbed and only thereafter the aspect of seniority will have to be decided on the basis of material without affecting persons already working in those departments, *and also regularising them.*

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28. On the question of granting temporary status it is to be seen that in a number of Govt. departments for such of those employees who had worked up to a certain point of time, temporary status is being granted. In this connection/^{we} would like to invite a reference to the CM issued by the Dept. of Personnel of 10.9.1993/ with regard to grant of temporary status and regularisation which reads as follows:-

"Sub: Grant of temporary status and regularisation of casual workers - formulation of a scheme in pursuance of the CAT Principal Bench, New Delhi, judgment dated 16.2.1990 in the case of Raj Kamal and others-Vs.- UOI.

The guidelines in the matter of recruitment of persons on daily wage basis in Central Govt. offices were issued vide this Department's OM No.49014/2/86-Estt.(C) dated 7.6.1988. The policy has further been reviewed in the light of the judgment of the CAT, Principal Bench, New Delhi delivered on 16.2.1990 in the writ petition filed by Shri Raj Kamal and others-Vs.-UOI and it has been decided that while the existing guidelines contained in OM dated 7.6.1988 may continue to be followed the grant of temporary status to casual employees who are presently employed and have rendered one year of continuous service in Central Govt. Offices other than Dept. of Telecom, Posts and Railways may be regulated by the scheme appended.

Ministry of Finance etc. are requested to bring the scheme to the notice of appointing authorities under their administrative control and ensure that recruitment of casual employees is done in accordance with the guidelines contained in the OM dated 7.6.1988. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities for taking prompt and suitable action.

Sd/- Y.C.Parande
Director"

In the above CM we find that there is a reference to the question with regard to grant of temporary status and regularisation of casual workers and also a reference to the judgment of the Principal Bench, CAT, New Delhi. We further find that there is a reference to the Directorates of Census Operations in Annexure No.15(OA No. 582/92). This would go to show that temporary status is to be granted to employees working in the Census Department. There cannot be

any doubt for the reason that the above OM has been informed to all Census Directorates in the States and Union Territories. Further in the above reference it has been made clear ^{that} casual employees who have been employed and who have rendered one year continuous service in the Central Govt. offices, except in the case of Department of Telecommunications, Posts and Railways, are to be considered for grant of temporary status. It is thus clear that persons working in the Census Department are to be considered for grant of temporary status if they had worked for more than one year continuously. In fact the procedure to be adopted has also been clearly stated in the annexure to the said OM while granting temporary status to casual labourers. It is stated therein that casual labourers must have been engaged for a period of at least 240 days (206 days in the case of five days a week). In the annexure appended to the OM the ~~important~~ following clause which is important reads as follows:-

" Temporary status:

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Gr. 'D' posts".

From the above it is clear that the employees of the Census Department have been clearly apprised of the fact that the question of availability of posts for continuation in the department does not arise for the purpose of conferment of temporary status. We are of the view that the applicants ~~shall~~ ^{shall} be granted the temporary status, ~~even though~~ ^{even though} the judgments of the Apex Court which have been referred to ^{on} and relied by both sides, has not considered the aspect of granting of temporary status to ^{Census} casual employees. But we are not inclined to give a direction for conferment of temporary status to the applicants because of the reason that as per our direction in the preceding paragraph we have held that the applicants are entitled to be absorbed by evolving a scheme in other departments of the Government.

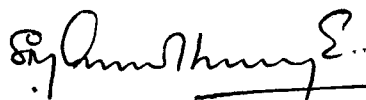
Therefore it is not necessary to give any direction with regard to conferment of temporary status in the facts and circumstances of this case.


20. In the result these applications are allowed to the following extent:-

(a) The respondents are directed to formulate a scheme as stated and approved in the judgment of the APEX COURT in the decision rendered in Govt. of Tamil Nadu and another Vs. Mohammed Ammenudeen and others (1999 SCC(L&S) 1348) and on the lines of the Tamil Nadu Government issued in GO Ms.No.144 dated 11.8.1999, referred to in the said judgment, for absorption and regularisation of the applicants in the Census Department or in other departments. Such a scheme will be formulated within three months from the date of receipt of a copy of this order by the respondents and shall be implemented thereafter.

(b) The interim orders granted in the various OAs are hereby extended for a further period of three months from today. Either party is at liberty to move for vacating the stay as per the circumstances and conditions prevailing at that time before the concerned Forum.

21. There will be no order as to costs.


(S. MANICKAVASAGAM)
MEMBER (A)


(D.V.R.S.G. DATTA TREYULU)
MEMBER (J)

16.5.2000

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