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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 303/86
~~T.A. No.~~

198

DATE OF DECISION 13.2.1990

Shri D.M.Walve & anr. Petitioners

Shri M.S.Ramamurthy Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Shri S.R.Atre for Shri P.M.Pradha Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman

✶ The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✶
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✶
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✶

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

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OA.NO. 303/86

Shri D.M.Walve & anr.

... Applicants

v/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri G.Sreedharan Nair
Hon'ble Member (A) Shri M.Y.Priolkar

Appearances :

Mr. M.S.Ramamurthy
Advocate
for the Applicants

Mr.S.R.Atre (for Mr.P.M.Pradhan)
Advocate
for the Respondents

JUDGMENT

Dated: 13.2.1990

(PER: M.Y.Priolkar, Member (A))

This application has been filed on behalf of 57 employees (Computers, Junior Steno, Upper Division and Lower Division Clerks) listed at Exhibit 'A', working under the Director of Census Operations, Maharashtra, Bombay, who were appointed through Employment Exchange on a purely temporary basis between 1980 and 1983 and are continuing in service without any interruption. They have the grievance that though they were initially appointed on a temporary basis, they are treated as ad-hoc appointees and by order dated 5.3.1986, they were held to be not entitled to any kind of leave, though till then benefits of leave were being granted to them. They have approached this Tribunal on 16.7.1986 praying for directions to the respondents to restore their leave benefits with retrospective effect, to treat them as temporary instead of as adhoc and also that they should now be made permanent.

2. According to the respondents, the Census Organisation in which the applicants are employed, has the permanent function of registration of vital statistics as also the function of a

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purely seasonal nature of conducting the census of population once in ten years. There is a nucleus permanent staff in the Directorate of Census Operations of each State/Union Territory, which is augmented manifold during the peak period of the work of the decennial census of the population. As soon as this seasonal work is over, the additional staff so appointed for that purpose is disbanded, after taking into account the additional requirement, if any, of the nucleus staff.

3. The respondents state that the appointments of the officials listed at Exhibit 'A' were made on a purely temporary and adhoc basis/purely temporary basis since the posts which they are holding were created for a short term work in connection with the 1981 census. The very nature of work for which these posts were created being purely temporary and of short term duration, these posts cannot be made permanent. Further, under the recruitment rules, the method of recruitment to these posts was either through the Staff Selection Commission or through promotion/deputation. But all the applicants were recruited directly through the Employment Exchange. The respondents, therefore, contend that all these appointments were rightly treated as ad hoc and temporary, though only in the case of 29 out of 57 applicants, both the words "purely temporary" and "ad hoc" were used in the appointment orders but in the rest, the words "ad hoc" were not mentioned inadvertently.

4. Regarding withdrawal of leave benefits, the respondents state that the impugned order dated 5.3.1986 was issued by the Census Directorate in pursuance of the Department of Personnel's O.M. dated 16.9.1985, which has since been amended in their O.M. dated 24.7.1986 restoring leave benefits to the temporary and adhoc employees, except in respect of those ad hoc employees who have not completed three years of continuous service as on 1.7.1986.



5. Some of the applicants have filed affidavits stating that the work which has been assigned to them by the respondents is of a permanent nature, and the posts could, therefore, be made permanent. The respondents have also filed detailed replies to show that these posts which were created only for the specific work of 1981 census, will have to be discontinued and the applicants, who have been appointed against those posts, have no right of regularisation. The learned advocate for the applicants also cited in his support the Supreme Court judgment in the case of Daily Rated Casual Labour employed under P.T. Department v. Union of India (AIR 1987 SC 2342) where it has been observed that non-regularisation of temporary employees or casual labour for a long period was not a wise policy and the respondents were directed to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working in the Posts and Telegraphs Department. In our view, however, the Posts and Telegraphs Department cannot be treated on par in this respect with the Census Organisation where a large part of the set up, by its very constitution, is expected to be limited in its duration, meant as it is for a limited purpose.

6. The learned counsel for the respondents, on the other hand, has relied on two judgments concerning similar employees of the Census Organisation itself. The first is the Gujarat High Court's order in Special Civil Application No. 802/1984 decided on 2.7.1985 (unreported), where it has been held that "the Census Department is purely a temporary department and there cannot be any possibility of people being continued even though there is no work". The High Court further observed as follows : "We shudder to think of such people drawing their emoluments from public exchequer without there being any work, though some people may like to have this situation perpetuated despite national detriments".

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7. The second case cited by the respondents' Counsel was of OA.No. 147 and 181 of 1986 decided on 30.1.1987 by the Ahmedabad Bench of this Tribunal, where inter alia the identical issue of temporary versus ad hoc appointment of similarly placed employees as the present applicants had came up for determination. After observing that "we have to construe the nature of the appointment from the facts and circumstances giving rise to them and not merely from the word ad hoc used or omitted in the relevant orders", and that "if the petitioners claim that they were initially appointed as temporary employees under the relevant recruitment rules, their eligibility under the recruitment rules has to be established", the Tribunal has held that since they were not recruited through the Staff Selection Commission and they were not recruited against the direct quota,"there is no ground for their initial appointment to be construed as temporary". We are in respectful agreement with the above finding of the Ahmedabad Bench, and accordingly reject the prayers of the applicants to treat them as temporary employees or to direct the respondents to make them permanent. The grievance of the applicants regarding withdrawal of leave benefits has now been largely met with ^{by} the O.M. dated 24.8.1986 restoring leave benefits to the temporary and adhoc employees, except in the case of those adhoc employees who have not completed three years of continuous service as on 1.7.1986. In the view that we have taken that the applicants cannot be treated as temporary or regular employees, we cannot grant any relief in this regard also, as prayed for by the applicants.

8. On the basis of the foregoing discussion, the applicants do not succeed. We would, however, suggest that in respect of the present applicants also, the respondents should implement the direction given in the above judgment dated 30.1.1987 of the Ahmedabad Bench that the respondent-Government should take

urgent steps for giving opportunity to the petitioners who satisfy the criteria for direct appointment and, if necessary, consider invoking the powers to relax the rules so that such eligible ad hoc employees get a fair chance for regular absorption, and also consider further increase in regular posts as may be justified. In fact, since the applicants in the present case have already rendered continuous service, though on ad hoc basis, for seven to ten years, we would even go one step further and direct specifically that the age limit for direct recruitment should be relaxed to the extent of continuous service rendered by those of the otherwise eligible applicants, if at the time of their initial appointment, they were within the prescribed age limit for such appointment.

9. With the above direction, the application is dismissed, with no order as to costs.

M.Y. Priolkar
(M.Y. PRIOLKAR)
Member (A)

G. Sreedharan Nair
(G. SREEDHARAN NAIR)
Vice Chairman

Judgment dt. 13.2.90
Sent to parties
on 26.2.90.

Appoli

Judgment dt. 13.2.90
served on R.No. 2
on dt. Nil.

SSY
14.3.90