BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

B O M B A Y

1. Original Application No.670/92.

Shri S.N.Shenvi & 12 Others. ... Applicants.

V/s.

Union of India & Ors. ... Respondents.

2. Original Application No.1070/92.

Maharashtra Rajya Jana Ganana Karmachari, Bombay & Ors. ... Applicants.

V/s.

Union of India & Ors. ... Respondents.

3. Original Application No.1268/92.

Shri A.Y.Gawas & Ors. ... Applicants.

V/s.

Union of India & Ors. ... Respondents.

4. Original Application No.1218/92.

Shri C.N.Khaladkar & Ors. ... Applicants.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri M.Y.Priolkar, Member(A),
Hon'ble Shri V.D.Deshmukh, Member(J).

Appearances:-

Applicants by S/Shri M.S.Ramamurthy, I.A.Sayyed and S.P.Saxena.
Respondents by Shri V.S.Masurkar.

JUDGMENT:-

(Per Shri V.D.Deshmukh, Member(J)) Dated: 10.6.1993

All these applications are filed for similar reliefs by the applicants who were employed as Supervisors, Coders, Checkers or Compilers under the Dy. Director of Census Operations, Regional Tabulation Office at different places in the State of Maharashtra. It is not necessary to refer to the dates of employment of the different applicants in different applications or their respective status. In addition to the applicants who were the

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employees in the Census Organisation, the Maharashtra Rajya Jana Ganana Karmachari claiming to be the Association of the employees in the Census Organisation is the applicant No.1 in O.A. 1070/92. The competence of the said association to file the application has been challenged by the Respondents and it shall be considered at the appropriate stage. However, the affected employees are also the applicants along with the Association in the said application.

2. We heard S/Shri M.S.Ramamurthy, I.A.Sayyed and S.P.Saxena for the applicants and Shri V.S.Masurkar for the Respondents. The learned Counsesl for the applicants in all the applications agreed that the issues involved and the reliefs claimed in all the applications were identical and all the applications can be heard and decided together.

3. The applicants in the various applications were employed as Coders, Checkers, Compilers and few of them as Supervisors in the Census Organisation for specified period and for lump sum payment as emoluments. In short, all the applicants were employed on Contractual basis and on the emoluments and the terms and conditions as stipulated in the Contract of Employment. As the facts in all the applications which are necessary for the decision of the issues arrising in the applications are similar, we shall refer to the facts and documents in Original Application No.670/92, as they are required only for the purposes of illustration. The various applicants were employed on contratual basis on different dates. We will refer to Ex. 'A' in O.A. No.670/92, which was pointed out to us as the illustrative agreement on which the employments were given. This agreement was

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of Shri Sunil Gopal Masurkar the applicant No.5 in O.A. No.670/92. This agreement was dated 20.6.1991 and Shri S.G.Masurkar was appointed as a Compiler. The agreement shows that the applicant No.5 had agreed to be employed on a temporary basis on the terms and conditions contained in the agreement. The agreement was initially for a period of one year and the applicant was employed on a consolidated salary of Rs.900/- per month. The agreement specifically provides that the employment may be terminated at the end of one year by either party without notice, or at any time on the notice of one Calendar Month in writing by the Government if in the opinion of the Government the employee proved unsuitable for the efficient performance of his duties. The Government could also terminate the employment without notice on the other grounds, but those provisions are not necessary for the purposes of any of the applications. The agreement also provided for E.L., H.P.L., Encashment of Leave at the time of termination of Contract, C.L., Medical facilities, gradation for the purposes of travelling allowances etc. and other incidental matters. It may be pointed out that these aspects are also not relevant for the purposes of the present applications.

4. It is an admitted position that the initial agreements dt. 20.6.1991 were for a period of one year however, further agreements came to be executed in the month of February, 1992 although on different dates in case of the different applicants. These agreements were for the period of 4 months and were more or less on the same lines and with the same terms and conditions as in the first agreement. The specimen agreement dt. 28.2.1992 in case of the said Shri Masurkar is Ex. 'E' to O.A. No.670/92.

It appears that before such fresh agreements came to be executed the applicants were given notices of one month terminating the first contract w.e.f. the date of expiry of the notice period. The specimen notice is Ex.'C' in O.A. No.670/92. This notice was given pursuant to para 3(v) of the original agreement dt. 20.6.1991 which enabled the government to terminate the services by one Calendar Month's notice in writing at any time, except during the first six months without assigning any cause. However, as stated earlier after the employees gave the declarations that they were willing to continue in the employment, fresh agreements came to be executed. As the period of employment of the applicants in O.A. No.670/92 as per the second agreement was to expire on 30.6.1992 they filed the application before this Tribunal and moved for interim relief. This Tribunal on 25.6.1992 directed by way of interim relief that the Respondents, if they had sufficient appropriate work available with them should not engage fresh hands from the open market in preference to the applicants. On 9.7.1992 the learned counsel for the Respondents Shri Masurkar made a statement in O.A. No.670/92 that the services of the applicant had been extended up to 31st December, 1992 and it was directed that in view of the statement it was not necessary to continue the interim order already ~~xxxxxxxx~~ passed. As O.A. No.670/92 was listed for final hearing the other applications were also listed along with it and all of them were heard together. Although the facts such as the posts on which the applicants were appointed or the dates on which they were appointed are different in the different applications, the appointments of the applicants in all the applications were to stand terminated by expiry of the period of agreement as extended, w.e.f. 31.12.1992.

5. In the above circumstances, which are more or less similar in all the applications the applicants have filed the present applications contending that the contracts on the basis of which they were employed were void, were against public policy and cannotbe terminated as sought by the Respondents. It is their contention that in fact the work of the Census Organisation is such that large number of hands are required all the year around and engaging employees on contractual basis was entirely arbitrary and illegal. They therefore, claim that the contracts of service entered into by them be declared malafide, arbitrary, unconstitutional and opposed to public policy and the applicants be deemed to have appointed as temporary employees. They also claim direction to the Respondents to evolve a scheme for the absorption of the applicants in regular service of the Census Organisation in due course.

6. It was also the contention of the applicants that engaging the applicants on contractual basis and on monthly emoluments and not on the regular scales payable to the employees in the same posts was also illegal and they were entitled to equal pay along with other permanent employees on the same posts in the Census Organisation.

7. After the applications were fully heard the applicants prayed for leave to amend the applications and alleged vide their amendments that the respondents were still employing persons on contract basis at their two offices viz. Editting and Coding Cell at Chembur and at Mulund. They challenge the termination of their employment on the above grounds as well.

8. The respondents through their written reply contended that the applicants were employed as on the different dates shown in the written statement and their services were terminable as per the provisions of the contract by giving them one month's notice on instructions of the Registrar General of India, New Delhi. It is their contention that

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since the work involved is ex-facie of a temporary nature, the appointments of the applicants and such other persons as were required were made on contract basis. It is well known that the work of the Census Organisation is not of a regular nature and has to be attended to once in 10 years, and the respondents contend that the applicants and other contractual employees were engaged to cope up with this temporary work. According to the respondents, the applicants and other persons were engaged on contractual basis in order to collect statistical information and compile the same. In all 14 Regional Tabulation Offices have been created for this work. These offices are manned by Supervisors, Checkers and Compilers appointed on contract basis. They contend that even the Deputy Directors (Selection Grade), ~~xxxxxx~~ Deputy Collectors or equivalent Officers, clerks and Peons etc.are taken on deputation for a limited period in order to complete the collection and tabulation work. The work is to be completed tentatively as per the schedule fixed by the Regional Tabulation Officers. It is their contention that for this work once in 10 years even the persons in ~~their~~ other employments such as teachers etc.are given the work of collecting information and tabulation on contractual basis. They rely upon the documents which show that these temporary appointments were sanctioned by the Presidential Order and the termination notices were also supported by the instructions givenby the Competent Authority of the Government of India, Ministry of Home Affairs. The Respondents deny that the work of the persons engaged on contractual basis and those who are employed permanently are similar and the applicants are entitled to equal wage.

9. The entire case thus depends upon the validity of

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the contracts on the basis of which the applicants were employed, and the main question is whether the contracts can be held to be void, and secondly whether the respondents can be directed to absorb the applicants in permanent posts in the same department or in any other departments of the Central Government. The applicants rely upon several decisions in this connection. The applicants relied upon the Judgment of the Hon'ble Supreme Court in Roshan Lal Tandon V/s. Union of India and Another (A.I.R. 1967 Supreme Court 1889) to show that the legal position of a government servant is more one of status than of contract. We do not think that there can be any dispute about this general principle. However, the facts in the case before the Supreme Court were entirely different. The validity of absorption of direct recruits and promotees in the same cadre was in question before the Supreme Court and it was held that no discrimination could be made for future promotions. It was also held that the terms of service cannot be altered unilaterally by the Government. All such questions do not arise in the present case. As stated earlier this case has been relied upon mainly to show that the government employment is a matter of status. However, it does not mean that the employment for specified period on contractual basis would not be permissible or would be void ab initio. In the present cases admittedly the employment on contractual basis was fully sanctioned by the Presidential Order.

10. The applicants also relied upon the Judgment in K.M.Joseph and Another V/s. State of Kerala (AIR 1968 Kerala 244). It was held in this case that the powers of the State are subject to limitations and regulations. It was further held that the powers of employment and termination of services were subject to Articles 14, 16 and 311 of the Constitution. There

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cannot be any dispute about this general principle also. However, Article 14 and 16 shall apply only in between the equals and it is well established that depending upon the nature of work thestate has power to employ persons for specified period on contractual basis.

11. Reliance was placed on the decision of the Hon'ble Supreme Court in Ratanlal and others V/s. State of Haryana and Others. (1987 S.C. 478). In this case the appointments of teachers were made on ad hoc basis at commencement of year and their services were terminated before Summer Vacation. There cannot be any doubt that the work of a teacher is of a permanent nature and therefore, the appointments made only during the sessions were unreasonable and arbitrary. We find that whether the appointments are valid or not shall depend upon the nature of work and the requirements of the administration. The applicants also relied upon the Judgment of the Hon'ble Supreme Court in Central Inland Water Transport Corporation Limited and Another V/s. Brojo Nath Ganguly and Another (1986 ATC (SC) 103). It was held by the Supreme Court that unconscionable terms in contractual employment were void and termination according to such terms was invalid. The employees who were involved in the case were however, permanent employees and the Supreme Court held that the term that their services could be terminated on three months' notice or pay on either side was void. The Supreme Court further held that the contracts which were unconscionable, unfair, unreasonable and opposed to public policy were void. It is needless to add that whether the contract is unreasonable and void shall depend upon the various circumstances such as the nature of work, the period for which the work is available and the adequacy of the emoluments. In the present case there cannot be any doubt that the work for which the applicants were employed was not of a permanent nature.

The work of the Census Organisation is by its very nature such that the Organisation would require large number of personnel for a short period when the Census information is collected, tabulated and coded. It also follows that once this work is completed the administration would not require such large strength thereafter and the other permanent work can be carried out by the permanent staff. It is very material that in order to complete this work after 10 years persons from various departments of the State as well as Central Government are taken on deputation. If therefore, persons are employed for a specified period on contractual basis it cannot be held to be unreasonable or arbitrary. It is also pertinent to note that all the applicants have entered into the contracts with open eyes and willingly. They did not raise any dispute as to the validity of contract till the period of contract and also the extended periods were over. They also did not raise any dispute before this Tribunal or any other forum as regards the emoluments till their services were sought to be terminated. The applicants therefore, cannot now turn around and say that the contracts were invalid. We have referred to the various terms of the contracts which show that either side has the right to terminate the contract with notice as specified in the terms and conditions. There cannot be any doubt that the contract shall stand terminated after the expiry of the contractual period unless the same is extended.

12. In the case of Karnataka State Private College Stop-Gap Lecturers Association V/s. State of Karnataka & Others. (1992) 20 ATC 190), the Supreme Court held that the order appointing ad hoc teachers for three months or less by Privately managed Colleges receiving cent per cent

grants-in-aid and again appointing the teachers after one day's break was illegal. It was held that the intention behind the Government's Order to re-appoint with one day's break was to differentiate between appointments for more than three months and others. As discussed earlier the validity of the contractual employment will depend upon whether the work for which the employment is made is of permanent nature or not. The applicants also relied upon the Judgment of the Hon'ble Supreme Court in Jacob M.Puthuparambil and Ors. V/s. Kerala Water Authority and Ors.](1991) 15 ATC 697[which was decided with other Writ Petitions and Civil Appeals. The Hon'ble Court held that India is a developing country, and had a vast surplus labour market. It was observed that large scale unemployment offers a matching opportunity to the employer to exploit the need and the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. In the case before the Supreme Court the employees were recruited in erstwhile public health engineering department and were continued even after transfer of their services to the Kerala Water and Waste Water Authority and it was held that the authority could regularise the services of the employees without waiting for any approval from the State Government. Our attention has been drawn to the recent decision of the Hon'ble Supreme Court in the case of Director, Institute of Management Development, U.P. V/s. Pushpa Srivastava (SMT)](1992) 21 ATC 377[. In this case the appointment of the respondent was purely on contractual and ad hoc basis on consolidated pay for fixed period and terminable without notice. The period of contract was extended from time to time thereby permitting the Respondent to continue in service for more than one year. Ultimately, the post was sought to be

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abolished and the action was challenged by the Respondent before the High Court. The High Court directed that the Respondent be put back on duty and be regularised. The Supreme Court however, held that as the appointment was purely contractual and ad hoc which came to an end by efflux of time, the respondent had no right to continue in that post and to claim regularisation in service in the absence of any rule providing for regularisation after a specified period of service. In our opinion, the present applications are fully governed by this decision of the Bench of the Supreme Court consisting of three Hon'ble Judges. The facts are identical. It may also be pointed out that the decision of the Supreme Court in the case of Jacob M.Puthuparambil (supra) was also taken into consideration before renderring the Judgment in this case. As has been stated earlier, the applicants have willingly and with open eyes entered into the contracts of services and had bound themselves with terms and conditions in the contract. They were fully aware that the appointments were for a specified period only. There cannot be any doubt that the work for which they were appointed could never be of permanent nature.

13. The respondents have filed reply to the amendments in the applications. It is not necessary to refer to the reply in details. The reply shows that certain appointments were made in editting and coding cells but they were also on contractual basis and were sanctioned up to 31st December, 1993. Ultimately, it is for the administration to decide as regards the requirement of persons in different cells and the management of the work. The applicants have not shown that there are any rules as regards the regularisation of their contractual services and we find that these applications would be fully

covered by the decision of the Supreme Court in the case of Pushpa Srivastava (Supra). The applicants also relied upon a judgment of the Supreme Court in Pratap Singh V/s. State of Punjab (AIR 1964 S.C. 72). The Supreme Court interpretated the phraseology in Article 301(1) of the Constitution "During the pleasure of the Governor" and held that the Governor did not have the power to compell an Officer to continue in service after superannuation or after expiry of term of service. It was also held that the Administrative Order obtained by fraud was invalid. We are unable to appreciate as to how the applicants can receive any benefit from this Judgment, although there cannot be any dispute about the principles laid down by the Hon'ble Supreme Court. Considering all the circumstances and especially the nature of work we do not find that there is anything malafide or arbitrary in the contract. As has been stated earlier teachers or other employees from other departments are often engaged for the same work. The applicants themselves have stated that even about 70 retired persons from the same organisation were employed on contractual basis for the same work. In these circumstances it cannot be held that the contracts are contrary to public policy. On the other hand, it would be extremely unreasonable to compell the respondents to regularise or absorb the applicants or other employees employed on contractual basis for the work which is obviously of transitory nature.

14. We shall now consider the claim of the applicants for equal pay. The applicants relied upon the Judgment of the Supreme Court in Surinder Singh and Anr. V/s. The Chief Engineer in Chief C.P.W.D. & Ors.(AIR 1986 S.C. 584). It was held that the persons who were

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employed on daily wage basis were entitled to same wages as are paid to similarly employed employees. Reliance was placed on the decision of the Supreme Court in Daily Rated Casual Labour employed under P & T Department V/s. Union of India and Others (AIR 1987 S.C. 2342). It was held that denial of minimum pay in pay scalesof regularly employed Workman to Casual Labourer in P & T Department amounted to exploitation of labour. Mr.Masurkar for the Respondents on the other hand, relied upon the Judgment of the Supreme Court in State of M.P. and another V/s. Pramod Bhartiya and Ors. [1992 (2) SCA 791]. It was held by the Hon'ble Supreme Court that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden was upon the petitioners to establish their right to equal pay or the plea of discrimination as the case may be. The Supreme Court found that the respondents before it had failed to discharge this burden. In the present applications also the applicants have not specifically and conclusively established that their duties and responsibilities are same as of the employees who are employed permanently in the equivalent cadres. As has been repeatedly said, the work which has been assigned to the applicants can never be compared with the work orthe duties and responsibilities of the permanent employees in the Census Organisation. AS large number of persons are employed for a short transitory period for the work of collection and codification of information, and when the employees entered into the contracts providing for consolidated emoluments the employees cannot be permitted to agitate that they are entitled to equal pay as with the permanent employees. Reliance has been placed on the decision of the Principal Bench in the case of Shiv Prakash Tyagi and Others. V/s. Central Building Research

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Institute (1992 21 ATC 20). In this case the salary was fixed on the basis of tenders quoting rates for the service to be renderred by the tendering persons. Thus the facts were entirely different. Similarly, it was also found that the staff employed in the projects was entitled to be regularised in due course which is also not the case in the present applications. The applicants have also referred to certain other decisions on this point. However, we think that it is sufficient to discuss the material decisions which are discussed above. Having considered the reliefs claimed by the applicants from various aspects we find that there is no substance in the applications.

15. In O.A. No.1070, the Respondents challenged the maintainability of the application on the ground that the applicant No.1-Maharashtra Rajya Jana Ganana Karmachari is not a legally recognised Association. There is nothing to show that the applicant No.1 is registered or legally recognised Association. However, we would not dismiss the application on that ground or on the ground of mis-joinder of parties as the concerned applicants are present in the application.

16. In view of the above discussion the applications are dismissed. No order as to costs.