

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 15 FEB 1994

APPLICATION NO(s) 1005 of 1993.

APPLICANTS: M. Umadeve and ten Others. v/s. RESPONDENTS: Secretary, Deptt. of Home Affairs, N. Delhi and Others.

TO.

1. Sri. H. Subramhanya Jois, Advocate,
'Vagdevi', No. 36, Shankara park,
Shankarapuram, Bangalore-560004.
2. The Director, of Census Operations,
Karnataka Region, No. 21/1, Mission Road,
Bangalore-560 027.
3. Sri. M. S. Padmarajaiah, Central Govt. Stng. Counsel,
High Court Building, Bangalore-560001.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 19-01-1994.

gm*

olc
issued on 15-02-94
for
S. Srinivas
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A.NO.1005/93

WEDNESDAY THIS THE NINETEENTH DAY OF JANUARY 1994

Shri Justice P.K. Shyamsundar ... Vice-Chairman

Shri V. Ramakrishnan ... Member [A]

1. M. Umadevi, aged 24 years,
W/o M. Govinda Raju,
2. A. Kalyani, aged 25 years,
D/o M.A. Nathan.
3. M. Parimala, aged 24 years.
4. D. Bhavani, Aged 26 years,
W/o R.A. Rajan.
5. J. Margaret Manjula, Aged 27 years,
W/o X Jerry JOseph Mathi Das.
6. U. Amudha, Aged 24 years,
W/o G. Thandava Kumar.
7. Chitra Dayanidhi, Aged 26 years,
D/o K.S. Dayanidhi.
8. Umadevi P, aged 28 years,
W/o V. Ravindran.
9. Kavitha Krishna, Aged 24 years,
W/o Bhaskaran R.
10. Winifred Christina Raj,
Aged 25 years,
W/o Christopher Robinson.
11. Hanjappa S. Lamani,
Aged 26 years,
S/o Sakreppa H. Lamani.

... Applicants

Applicants 1 to 11 are
working as Draftsman/Artist,,
Office of the Director, Census Operations
in Karnataka,
No.21/1, Mission Road,
Bangalore-27

[By Advocate Shri H. Subramhanya Jois]

v.

Union of India represented
by its Secretary,,
Department of Home Affairs,
New Delhi.



2. The Director of Census Operations
in Karnataka, No.21/1, Mission Road,
Bangalore.
3. The Deputy Director of Census
Operations, 21/1, Mission Road,
Bangalore .

... Respondents

[By Advocate Shri M.S. Padmarajaiah ...
Senior Central Government Standing Counsel]

O R D E R

Shri Justice P.K. Shyamsundar, Vice-Chairman:

1. We have heard in this case both sides at the stage of admission. We propose to dispose it off finally on merits as well, now that the pleadings are complete. Although in other circumstance these matters may not have merited a formal order of admission we direct formal admission of the case and thereafter make the following order.

2. This application is sponsored by more than one person, all employed in the Census Department of the Union of India detailed for working in the State of Karnataka. All of them were appointed by identical orders of appointments several copies of which are available herein. By way of sample, we produce one such order. It reads as follows:

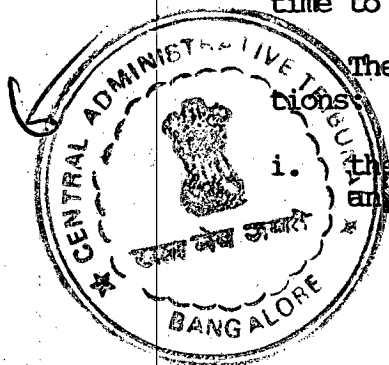
"MEMORANDUM

Sub: Offer of appointment to the post of Draftsman.

Shri/Smt/Km. Umadevi M, a candidate sponsored by Employment Exchange, Bangalore, having qualified in the Drawing test and Interview held in this office, is appointed to the post of Draftsman under Central Civil Services [Temporary] Services Rules, 1965, on regular basis and in a temporary capacity in the scale of pay of Rs.1200-30-1560-EB-40-2040 with all allowances admissible under Rules from time to time.

The above appointment is subject to the following conditions.

- i. the appointment is purely temporary and will not confer any title for permanent employment.



- ii. the appointment may be terminated at any time by a month's notice given by either side viz., the 'appointee' or 'appointing authority' without assigning any reason;
- iii. the appointment carries with it the liability to serve in any part of Karnataka;
- iv. other conditions of service will be governed by the relevant rules and orders in force from time to time.

The appointment will be further subject to :

- i. production of certificate of fitness from competent Medical Authority;
- ii. taking an oath of allegiance or faithfulness to take Constitution of India [or making a solemn affirmation to that effect] in the form enclosed.
- iii. in case he is employed, he should produce relief order by the present employer at the time of reporting for duty in this office.

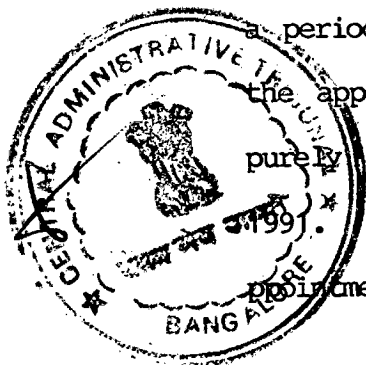
If any declaration given or information furnished by the candidate proves to be false or if the candidate is found to have wilfully suppressed any material information he/she will be liable to be removed from service and such other action as government may deem necessary.

If Shri/Smt/Km. accepts the appointment on the above terms, he/she should communicate his/her acceptance and report to the undersigned within 20[twenty] days from the date of receipt of this Memorandum. If he/she fails to report by the prescribed date, the offer will be treated as cancelled.

No travelling allowance will be allowed for joining the appointment.

Sd/-[Sobha Nambisan]
Director"

Anend to the same one more order was passed on 20.9.1990 stipulating that the appointed candidates will be on probation for a period of 2 years from the date of joining duty and even so the appointment was purely temporary as the project itself was purely temporary and tied up with the census work of the year 1991. It was immediately after completion of the work the appointments will be terminated with no further liability to the



organisation. It is useful to extract the said order which reads as follows:

"Ref: 1.This Office Memorandum No. ADM 73 EST 90 dated 16.8.90

2.Her acceptance letter dated.

Consequent upon her acceptance of this office Memorandum of even number dated 16-08-1990, the undersigned appoints Smt. M. Umadevi to the post of Draftsman in scale of pay of Rs.1200-30-1560-EB-40-2040 with allowances as admissible under Rules on regular basis and purely temporary capacity under CCS [Temporary] Services Rules, 1965, as amended from time to time. The appointment of Smt. M. Umadevi shall be subject to the following conditions in addition to the conditions accepted by her in her letter at reference [2].

2. Smt. M. Umadevi shall be under probation for a period of two years from the date of her joining duty in the post of Draftsman.

3. The appointment is purely temporary since the post is created in connection with the 1991 Census and after completion of the work her services will be terminated with no further liability to the organization.

4. Smt. M. Umadevi is directed to report for duty on or before 10-10-1990. No travelling allowance will be allowed for joining duty.

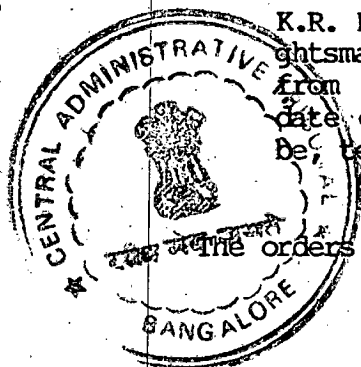
Sd/-[Sobha Nambisan]
Director of Census Operations,
Karnataka."

After a spell of nearly 3 years during which time all these applicants were working happily in the department, on one fine day there came a bolt from blue, with the orders of termination. Again by way of sample one of the orders is produced for information --

"Notice of termination of service issued under Rule 5[1] of the Central Civil Services [Temporary Service] Rules, 1965.

In pursuance of sub-rule [1] of Rule 5[1] of the Central Civil Services [Temporary Services] Rules, 1965, I, K.R. Narayana, hereby give notice to Smt. Umadevi, M., Draughtsman, that her services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to her."

The orders of termination have been passed by the Deputy Director

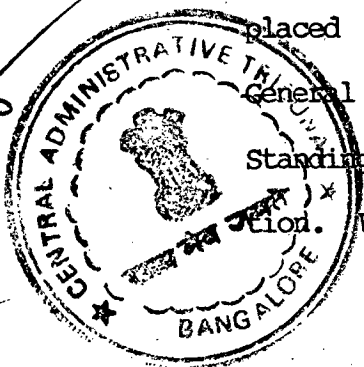


of Census Operation in Karnataka, Bangalore, and one of the points raised in support of this application is that the termination is invalid because it is passed by an incompetent authority, applicants having been appointed under specific orders issued under the name and seal of the Director of the Organisation. We have heard Shri Subramanya Jois, learned Senior Counsel who appears in support of the applicants. Counsel raised for our consideration the following points:

- i. That the applicants have been appointed specifically in connection with the census work for the year 1991 and albeit the census work for the year is not being complete, termination of the services of the applicants during the on-going work is invalid in law;
- ii. That although the orders of appointment pertaining to all the applicants did mention that their appointments were purely temporary, liable to be termination without any notice, etc., in fact all of them have been placed on probation for a particular period and they having gone through the period of probation and that apart the appointment itself having been made regularly following their sponsorship by the Employment Exchange. In those circumstances the appointments must be deemed to be of a permanent character not liable for summary eject~~for~~.
- iii. That somebody not competent to terminate the services of the applicants having ~~been~~ terminated them by issuing impugned orders such terminations were clearly invalid and liable to be treated as non-est.

Per contra the learned Standing Counsel maintained that this is a case wherein the posts themselves have been abolished as the tenure of the posts enjoined only a fixed life span between 1991 to December 1993, the department was therefore left with no option except to terminate the service of the appointees as the posts themselves stood abolished. In this connection he

placed before us a letter dated 11.1.1994 from the Registrar General which is in the nature of instructions to the learned Standing Counsel enabling him to support the orders of termination. We place on record the said letter. A copy of the letter



was also directed to be handed over to the learned counsel for the applicants. It seems to us that if the position is as envisaged in the letter of the Registrar General of India to which our attention has been drawn by the learned Standing Counsel, it becomes obvious that the Government of India directed cessation of these posts following completion of their life span ending with December 1993 starting from 1990. The letter further states that the question of extending the life span of these posts beyond December 1993 was also considered and it was not consented to because the work for which these posts had been created having been completed. Although this probably would have been the proper stand in opposing this application, the objection statement however, struck a slightly different note which Shri Jois for the applicants, says that the same is a demurrer on the assertion made on behalf of the applicants alleging that 75% of the work is still to be completed. This is how the controversial statement made by the department:

"7. Regarding para 7[E] of the application:- The reason for terminating the service is not the basis of work but these posts were sanctioned primarily for 1991 Census which expired on 31.12.1993, consequent to which the incumbents had to be terminated from service and no other reason is necessary. Since there is no sanction of the posts or continuation of the posts beyond 31.12.1993, the Head of the Office had no other option but to terminate the services as per the directions issued by the Registrar General, India, New Delhi. The said officials have not been declared as quasi-permanent nor even they have been declared as having satisfactorily completed the period of probation. However, as per the rules, they were eligible for certain statutory welfare measures which they were getting like OGHS, CHEGIS, etc., because of uncertainty that might befall them. It is not true that it was well within the ken of both the applicants and respondents that the employment of the applicants is a permanent one and it is also not true that they had been appointed whatever the security of tenure as amply made very clear in the terms and conditions of appointment order that their services can be terminated at any time without assigning any reason by way of a month's notice or a month's salary in lieu of notice."



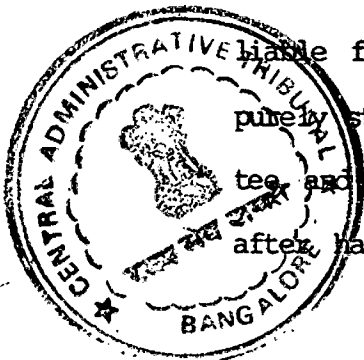
Standing Counsel says that in some other objection statement he has clearly traversed the aforesaid point and pointed out that the termination orders had to be mandatorily issued because the posts had been abolished.

2. Be that as it may, it now becomes clear that the axe had fallen on the applicants because the posts to which they had been appointed temporarily had themselves stood abolished. Shri Jois does not contend that the posts themselves have not been abolished and that the appointees cannot ask for further continuation in the posts or seek the benefits that flow from manning a post that is alive. On this short ground this application has to fail and Shri Jois agrees that such would be the position.

3. Now briefly referring to the submission of Shri Jois that the order of termination was issued by the Deputy Director whereas the Director had issued the appointment order the content thereof is that the Deputy Director is not empowered to terminate the services of the applicants. But it seems to us that these orders are orders of termination simplicitor and not termination by way of punishment following an enquiry. Therefore, the question of any illegality in passing the impugned order does not arise.

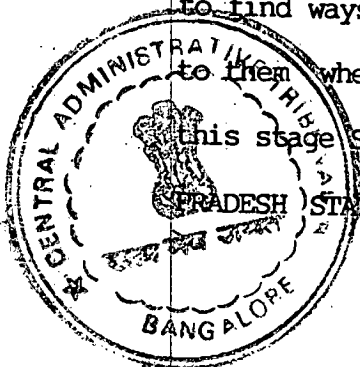
4. Turning next to the contention that the orders of appointment referred to hereinbefore placing the appointees on probation did conceive of a situation granting to the appointees a permanent or substantive position in the department it must be pointed out the appointments being transitory in character they were

liable for termination without any further ado. Such a right purely stems from the contract of appointment between the appointee and the Government. It is not for the appointee to demur after having accepted the appointment with full knowledge that



the appointment is liable to be cancelled at any time.

5. But the fact that the appointment came to be made in a technical fashion with the names of the appointees being called from the Employment Exchange, interviewing them, orders made and further orders also made keeping them under probation merely indicates that the department had been quite systematic in following that course but then if the appointments had to be made on a permanent basis they should have been made by the Staff Selection Commission. The fact that it is an appointment made by the Head of the Department and not by ^{Selection} Staff Selection Commission clearly marks a departure and lends no support to the contention that the appointment made is regular in nature and consequently termination is invalid. We find no substance in that contention. No other point arises for consideration and as pointed out by us the problem has arisen because the posts have been abolished. Again with reference to the question whether the work is incomplete as the applicants assert which is, however, denied by the department, all that is besides the point now that we find that the posts have all been abolished and no one holds them. In view of this situation none can possibly continue in a state of vacuum, we are thus unable to assist the applicants except adding for solace that Government may keep in view the fact that the applicants had worked for the Government for the last 3 years and more and therefore Government would do well to find ways and means to provide alternative means of employment to them wherever and whenever it is feasible. No costs. At this stage Shri Jois refers to the case of GOVINDARAJULU V. ANDHRA PRADESH STATE CONSTRUCTION CORPORATION AND ANOTHER AIR 1987 SC



1801 and says that our observations asking the Government to find out ways and means to provide alternative jobs to the applicants is in consonance with the said decision of the Supreme Court. We agree.

Sd/-

MEMBER [A]

PSV

Sd/-

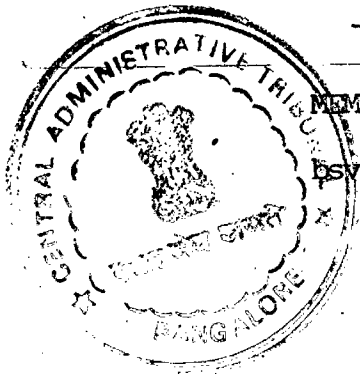
VICE-CHAIRMAN

TRUE COPY

Sd/-

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

15/2/94



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**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: **10 FEB 1994**

APPLICATION NO(s) 35 of 1994.

APPLICANTS **N. Sumithra**

RESPONDENTS: **Secretary, Ministry of
Home Affairs, New Delhi and Others.**

TO.

1. **Sri.H.Subrahmanya Jois, Advocate, 'Vagdevi',
No.36, Shankarapark, Shankarapuram, Bangalore-4.**
2. **Sri.M.S.Padmarajaiah, Central Govt. Stng. Counsel,
High Court Bldg, Bangalore-1.**

**SUBJECT:- Forwarding of copies of the Orders passed by
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Please find enclosed herewith a copy of the
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Se Shanwar 10/2/94
fw DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A.NO.35/94

WEDNESDAY THIS THE NINETEENTH DAY OF JANUARY 1994

Shri Justice P.K. Shyamsundar ... Vice-Chairman

Shri V. Ramakrishnan ... Member [A]

N. Sumithra,
W/o Venkataraju,
33 years,
Lower Division Clerk,
Office of the Director of Census
Operations in Karnataka,
Mission Road,
Bangalore-2.

... Applicant

[By Advocate Shri H.Subrahmanya Jois]

v.

1. The Union of India represented by its Secretary, Ministry of Home Affairs, New Delhi.
2. The Director of Census Operations in Karnataka, Mission Road, Bangalore.
3. The Deputy Director of Census Operations [Administration]. Mission Road, Bangalore.

... Respondents

[By Advocate Shri M.S. Padmarajaiah ...
Senior Central Government Standing Counsel]

ORDER

Shri Justice P.K. Shyamsundar, Vice-Chairman:

This application has been advanced from 28.2.1994 and called today and disposed off ~~the same~~ having regard to the fact that this application is liable to be dismissed in the light of our decision rendered in OA No.1005/93 just now. Following the same we dismiss this application subject to the observations made in the connected case supra.

Sd-

MEMBER[A]

bsv

TRUE COPY

Sd- *Se. Shauhar*

SECTION OFFICER 10/2
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd-

VICE-CHAIRMAN