

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NOS. 92/93, 345 & 861/1994

THURSDAY THIS THE TWENTY NINTH DAY OF SEP.94

MR. JUSTICE P.K. SHYAMSUNDAR VICE CHAIRMAN

MR. T.V. RAMANAN MEMBER (A)

1. Smt. R. Prema
W/o Dharmapal
No.7, V Cross,
Subedharpalya,
Yeshwanthapura,
Bangalore
Applicant
(in O.A.No.92/93)
2. L. Shivalingaiah
aged 32 years
S/o K. Lingaiah
Assistant Compiler,
Office of the Director,
Census Operations in Karnataka
No.21/1, Mission Road,
Bangalore
Applicant
(in O.A.No.345/94)
3. Siddagangaiah
aged 29 years,
S/o Siddarangaiah,
Assistant Compiler,
Office of the Director,
Census Operations in Karnataka,
No.21/1, Mission Road,
Bangalore
Applicant
(in O.A.No.345/94)
4. Smt. K.K. Kshama,
d/o late K.R. Keshava Murthy,
aged 27 years,
No.568, II Main, 3rd Cross,
II Block, Baneshankari I Stage,
Bangalore - 560 050
Applicant
(in O.A.No.861/94)

(By Advocate Shri K.N.
Subramanyam for applicants
in O.A.Nos.92/93 & 345/94

Shri A.N. Venugopal for
applicant in O.A.No.861/94)

v.

1. The Director of Census Operations,
Karnataka, Govt. of India,
Ministry of Home Affairs,
No.21/1, Mission Road,
Bangalore
Respondent
(in O.A.No.92/93,
345 & 861/94 -)

2. The Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi

Respondent
(in O.A.No.92/93)
345 & 861/1994

3. The Joint Director of Census
Operations in Karnataka,
No.21/1, Mission Road,
Bangalore - 560 027

Respondent
(in O.A.345 & 861/
94

4. The Deputy Director of Census
Operations in Karnataka,
No.21/1, Mission Road,
Bangalore - 560 027

Respondent
(in O.A.345 & 861/
94

5. Traver John,
aged 31 years,
Assistant Compiler,
Office of the Director of Census
Operations in Karnataka,
No.21/1, Mission Road,
Bangalore - 560 027

Respondent
(in O.A.345 & 861/
94

(By learned Standing Counsel)
Shri M.V. Rao for Respondents
in O.A.No.92/93
Shri M.S. Padmarajaiah in
O.A.No.345/94
Shri G. Shanthappa in OA 861/94
Shri M.R. Achar in O.A.345 &
861/1994 for respondent No.5

O R D E R

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

We have heard all these cases and propose
to make a common order. We direct their
admission. These cases bring to the fore the
tragic circumstances leading to dismissal of
applicants from employment. All these applicants
were employed with the Census Department as
Assistant Compilers. They were invited to take
up those jobs at the instance of the Department
who had called upon the local Employment Exchange
to forward the names of eligible candidates for

manning those posts. Accordingly, all of them were summoned, screened and found suitable for the post and orders of appointment issued. We are extracting below one of the orders just for the sake of reference. It reads:

"Smt. R. Prema, a candidate sponsored by Employment Exchange, Bangalore and having interviewed for selection is appointed to the post of Assistant Compiler under CS (Temporary) Service Rules, 1965, on regular basis in a temporary capacity in the scale of pay of P.950-20-1150-EB-25-1500 with all allowances admissible under Rules from time to time against existing vacancies until further orders.

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 reasons;
- iii) the appointment carries with it the liability to serve in any part of Karnataka. It will also bear extensive tour within the state;
- 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) Verification of character and antecedents by the competent authority. In the event of any adverse remarks, the appointment will be terminated forthwith.
- iii) taking an oath of allegiance or faithfulness to the Constitution of India (or making a solemn affirmation to that effect) in the form enclosed;
- iv) in case he/she is employed, he/she should produce relief order by the present employer at the time of reporting for duty in this office.

- v) he/she shall be kept under probation for a period of 2(two) years from the date of her joining duty in the post of Assistant Compiler.
- vi) no travelling allowance will be allowed for joining duty.
- vii) the pay of Smt. R. Prema shall be fixed at Rs. 950 plus allowances as per existing rules.

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 Smt. R. Prema accepts the appointment on the above terms, he/she should report for duty on or before 10.4.1991. If he/she fails to report by the prescribed date, the offer will be treated as cancelled."

2. A cursory perusal of the aforesaid order makes it very clear that although the persons were regularly appointed but it was on temporary basis. In other words, the appointment was regular but tenure was temporary which means it was liable to be terminated in terms of CS (Temporary) Service Rules, 1965. One of the terms of the appointment order is that the appointment may be terminated at any time by a month's notice given by either side i.e. the 'appointee' or 'appointing authority' without assigning any reasons. It so transpires that some three years later all these people lost their jobs by virtue of the termination orders following the abolition of large number of posts in the Department which included the posts all these applicants were manning. It is these orders which have been challenged by the applicants.

Applicants want us to quash the termination orders, continue their services and regularly appoint them against the posts held by them before their services were terminated.

3. We wish there was some way in which we could have assisted the applicants to continue in the positions so held by them but unfortunately we cannot do anything for the simple reason the posts having been abolished. It seems the posts were created for a particular exigency and that exigency having been met with, Government has found it unnecessary to continue the posts. This is the position. Under the circumstances, the posts themselves being retrenched or having vanished from the scene, the applicants cannot seek to continue and ask that government be obliged to treat them as being in service and paying them their salary etc. The right to abolish posts rests with the government and depends on the availability of work to be turned out. If there is no work to be done, then people cannot be hired. As long as work was there, they were working in the Department. Once the work was over, they are turned out. They cannot continue to work. The axiomatic principle being if the post goes, the holder of the post also goes. We cannot, therefore, assist the applicants at all. While dismissing these applications as not tenable under law, we, however, direct the Department to consider the cases of these applicants if in case in the future some vacancies arise in which their

services can be utilised particularly in view of their past experience. This is the highest we can do. Having said so, we dismiss all these applications with a direction that in case if in future the posts of Assistant Compilers should fall vacant, the applicants claims should be considered for appointment to such posts but the same shall not confer any right to regular appointment vi-a-vis the applicants but will be only as an interim measure and until those posts are filled up by recruitment through regular channel. But, it will be open to the applicants to apply and get jobs if they are successful in selection. Learned counsel for the applicant in C.A.No.92/93 contends that the applicant is entitled to back wages. If the applicant is entitled to any back wages, it is upto her to demand and get the same from the Department. No costs.

Sd/-

MEMBER (A)

Sd/-

VICE CHAIRMAN

TRUE COPY

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[Signature]
06/10/94
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore