BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NOs. 264,265,266,267,268,269,270,271,272,273,274/94.

1. Kum.Shobha B.Patil
2. Shri A.S.Rane
3. Shri P.P.Dalvi
4. Kum.Sangita G.Pilankar
5. Kum.Asha P.Sawant
6. Shri S.R.Chipte
7. Shri S.D.Shinde
8. Shri Suhas R.Kalambate
9. Shri Surykant R.Mobarkar
10. Kum.Arati V.Naik
11. Maharashtra Rajya Janagana Karmachari Sanghatana through the Secretary Raghunath Ganpat Mane

Applicants

V/S.

Union of India & Ors. Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri R.Rangarajan

Appearance

Shri V.S.Masurkar
and Ms.S.Sarnaik
Advocates
for the Applicants

Shri R.K.Shetty
Advocate
for the Respondents

ORAL JUDGEMENT Dated: 28.2.1994

(PER: M.S.Deshpande, Vice Chairman)

Heard. Admit. By these 11 applications the applicants pray for a declaration that the three contracts of service executed by them in 1992, 1993 and 1994 were malafide, arbitrary, unconstitutional, opposed to public policy and violative of the provisions of contract labour (Regulation and Abolition) Act, 1970 and that they be deemed to have been appointed as temporary employees and entitled ~~as much~~ to all rights and previleges including emoluments in the regular scale of pay and for a direction to give them the

.. 2/-

scale of pay as has been given to regular employees of the Census Department and further continue them in service beyond 28.2.1994 so long as the work of the kind done by the applicantcontinues to be available or work of any other kind in which the applicant can be employed, continues to be available, as temporary employees and not on contract basis and to frame a scheme for the absorption of the applicant in regular service in the Census Organisation in due course and to stop employing persons on contract basis for short durations.

2. The applicants were engaged as Coder/Checker on a consolidated sum of Rs.900/- from the year 1991 and their services were terminated on 28.2.1994. The applicants' contention is that activities of Census Department are spread over for years together and the working of the Department is of a permanent nature. The applicants were on contract basis and were directed to sign the agreement on dotted line without specifying the date. The applicants state that they will be discontinued from service without any notice w.e.f. 28.2.1994 and will be thrown on the streets. They have therefore approached this Tribunal for the aforesaid reliefs.

3. No reply was filed on behalf of the respondents ~~because~~ but we heard the case fully for admission. It appears to us that there is some controversy. The same controversy arose in a group of 4 applications (OAs.No.670/92,1070/92, 1268/92 & 1218/92) decided on 10.6.1993. The reliefs claimed were identical and this Tribunal held that having regard to the circumstances and especially the nature of work, there was nothing malafide or arbitrary in the contract and it would be extremely unreasonable to compel the respondents

to regularise or absorb the applicants or other employees employed on contractual basis for the work which is obviously of transitory nature. Having considered the reliefs claimed by the applicants from various aspects, the Tribunal found that there was no substance in the applications.

4. Our attention was drawn to the decision of the Lucknow Bench of this Tribunal in OA.NO. 38/93 & Ors. vs. Union of India & Ors. decided on 12.3.1993. By that judgement a scheme was formulated for absorption of the employees. It is apparent that there were 80 posts which were to be filled by direct recruitment and 20 by transfer on deputation, so far as retrenched employees were available, there was no question of any direct recruitment or taking the employees on transfer on deputation for other posts which were not claimed by these employees. The Tribunal directed a scheme to be framed in OA.NO. 385/91, D.N.Saxena vs. Union of India & Ors. decided on 26.2.1993. The final direction was that so long as vacancies were available, they were not to be filled by transfer on deputation without cosidering the cases of the applicants and giving them priority and preference for which provisions would be made in the scheme referred to above.

5. The learned counsel for the respondents Shri Shetty made a statement before us that the operation of the judgement of the Lucknow Bench of this Tribunal has been stayed by the Supreme Court in a special leave petition and no progress has been made in framing the scheme.

6. In view of the decision of this Bench of the Tribunal referred to above, we will not be in a position to hold that the contracts were malafide and arbitrary nor can we give a direction for regularising the applicants. The applicants

would be discharged from the contract after 28th February 1994, but we find that to a limited extent we may adopt the direction made by the Lucknow Bench and we, therefore, direct that if the respondents want to fill up the vacancies which would be caused consequent upon the discharge of the applicants within a period of one year from today, the respondents shall consider the case of the applicants on priority basis for the vacancies to be filled up within one year by waiving the age bar to the extent they have been employed with the respondents in the Census Department. In the event of the Special Leave Petition of the Lucknow Bench decision being dismissed and the ~~a~~ direction to frame a scheme as directed by that Bench remains unaltered, the applicants should also be given ~~an~~ the advantage of the scheme framed pursuant to the decision of the Lucknow Bench. Liberty to the parties to file fresh OAs in the light of the decision which may be rendered by the Supreme Court in the special leave petition.

7. With these directions these applications are disposed of. No order as to costs.

(R.RANGARAJAN)
MEMBER (A)

(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.