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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.NO.149 OF 1996. DATE OF ORDER:- 23-3.1998.

BETWEEN :

1. Smt. A. Manamma
2. Smt. C.Anjamma
3. Smt. N. Yellamma
4. Smt. P. Bharathi
5. Smt. N. Padma
6. Smt. N. Yadamma
7. Smt. K. Balamani
8. Smt. A. Rajamani
9. Smt. P. Annapurna
10. D. Laxmi
11. M. Padmavati
12. V. Pentamma
13. N. Laxmi
14. A. Shantabai
15. S. Laxmi
16. Ch. Chandramma
17. Nagaram Laxmi
18. E. Nagamany
19. A Narasamma
20. Y. Narasimma
21. B. Yeshoda
22. G. Shanthamma
23. M. Ramana
24. E. Kamalamma
25. K. Rajamma
26. A. Yellamma
27. V. Radha Bai
28. K. Anasuya
29. N. Vasantha
30. M. Rajamma
31. N. Saroja
32. P. Elzabeth
33. P. Kalavathi
34. P. Yellamma
35. S. Renuka
36. G. Tara Bai
37. P. Saraswathi
38. T. Martha
39. N. Venkatamma
40. N. Laxmi Bai
41. N. Andalu
42. P. Sulochana
43. M. Laxmi
44. K. Venkata Laxmi
45. M. Lalitha
46. M. Anjaiah
47. B. Narsing Rao
48. M. Srinivas
49. B. Yadagiri
50. V. Raju
51. S. Srinivas
52. N. Bashaiah
53. R. Ramachander
54. M. Komaraiah
55. G. Yadagiri
56. M. Lingaiah
57. M.Kumar
58. V. Babulu
59. K. Raju
60. M. Narsing Rao
61. K. Babu
62. A. Dasarath
63. B. Sathyanarayan
64. N.R.Srinivas
65. G. Narsing Rao
66. J. Veerasham
67. B. Vardaraj
68. J. Yadagiri
69. B. Sai Kumar
70. M. Shiva Lingam
71. D. Yadagiri
72. P. Kumar
73. S. Raj Kumar
74. Bala Sudarshan
75. K. Upendra
76. R.T. Rama Rao
77. Y.Venkatesh
78. Y. Premanandam
79. M. Rajeswhari
80. S. Padma
81. Y. Shankar
82. S. Pentaiah
83. Dasarath
84. Ch. Ramdas
85. K. Venkatesh
86. T. Anand Singh
87. P. Ashok
88. D. Narender
89. Md. Anif
90. M.Yadaiah
91. G. Andalu
92. G. Shantamma
93. G. Anasuya
94. T. Parvathi
95. G. Radhamma
96. T. Chandramma
97. Y. Annapurnamma
98. D. Lalithamma
99. G. Punnamma
100. G. Bhagyamma
101. D. Joseph
102. P. Jangaiah
103. R. Yadaiah
104. M. Amrutamma
105. P. Lingaiah
106. J. Balamallayya
107. K. Balanarasimha

...APPLICANTS.

A N D

1. Council of Scientific & Industrial Research
   represented by its Chairman,
   New Delhi.

2. Centre for Cellular & Molecular Biology
   represented by its Director
   Habsiguda, Hyderabad- 500 007.

... RESPONDENTS

COUNSEL FOR THE APPLICANTS : MR.P.B. VIJAYA KUMAR

COUNSEL FOR THE RESPONDENTS: MR. C.B. DESAI, C.G.S.C.

C O R A M :

HONOURABLE MR. R. RANGARAJAN, MEMBER(ADMINISTRATIVE)

HONOURABLE MR. B.S.JAI PARAMESHWAR,MEMBER(JUDICIAL).

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O R D E R.

(Per Hon.Mr.B.S.Jai Parameshwar, Member(Judicial))

1. Heard Mr. P.B.Vijaya Kumar, the learned counsel for the applicants and Mr.C.B.Desai, the learned Standing Counsel for the respondents.

2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 2.2.1996.

3. The facts giving raise to this O.A. may, in brief, be stated thus :

(a) There are 107 applicants in this O.A. They have been performing the duties of house cleaning/gardening on casual basis under the respondent No.2. The respondent No.2 is a constituent Unit of the CSIR- a Society registered under the Societies Registration Act,1860.

(b) The service rendered / duties performed by the applicants and other members are more fully described in Annexure-II (at pages 16 to 27 of the O.A.). It is submitted that the applicants have been performing the duties right from March,1982 to March,1995. They submit that they have been performing the duties of house cleaning/ gardening in daily shifts of 8 hours each. They submit that they are also attending to the sweeping and cleaning of computers, furniture and toilets in the office of the respondent No.2.

(c) They submit that they are being paid scale of pay, Bonus, and are contributing to P.F. and performing the duties for 6 days in a week. They submit that they

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are paid by the establishment of the respondent No.2. They submit that a Contractor is introduced between the respondent No.2 and themselves with a view to create mask as to the actual state of affairs of the respondent No.2. They state that though the Contractors were changed from time to time, they have been continuously performing the aforementioned duties under the respondent No.2.

(d) They assert that the relationship of master and servant exists between them and the respondent No.2. It is also stated that the respondent No.1 introduced a Scheme of absorption of certain employees working in IICT Unit but it is exhibiting a discriminatory attitude towards them.

(e) In view of continuous work, they submit that there is a need of man power in the establishment of the respondent No.2. Hence they have filed this O.A. to direct the respondents to absorb/treat them as regular employees of the respondent No.2 with all benefits with effect from a date as this Tribunal may deem fit and and proper with all consequential benefits.

4. In support of the above reliefs, the learned counsel for the applicants submits that non-absorption of the applicants on the basis of the scheme and the decisions of the Hon'ble Supreme Court on par with other employees of the Unit, namely, IICT which is also a constituent Unit of the respondent No.1 is arbitrary and illegal. The respondents are under an obligation to treat them as employees of the CCMB together with all benefits. The inaction on their part is illegal and violative of the Articles 14 and 16 of the Constitution of India.

5. The respondents should have extended the

benefit to the applicants instead of driving them to this forum.In support of their claim for the reliefs, they placed reliance on the observations of the Hon'ble Supreme Court in the case of Gujarat Electricity Board, Ukai, v. Hind Mazdoor Sabha, reported in AIR 1995 SC 1893.

6. On 2.2.1996 an interim order was passed directing the respondents not to replace the applicants by fresh entrants until further orders. Thus by virtue of the interim order, the applicants have been continuing under the respondent No.2.

7 (a) The respondents have filed their reply stating that the respondent No.1 is an autonomous society competent to formulate its own policies for managing its affairs; that as per its policy, jobs of cleaning and other menial works may be got done by or through competitive Contractor. The respondent No.1 decided to adopt the policy and provisions of the Contract Labour(Regulation and Abolition)Act, 1970 (in short, "the Act").

(b) The respondent No.2 is registered under Sec.7 of the Act. They are entrusting jobs to the licensed Contractors. The Contractor is at liberty to select his workmen and employees or his own men for performing the contractual works.

(c) The respondent No.2 has no connection whatsoever with the persons so employed by the Contractor. The Contractor maintains Attendance Rolls and makes payments. The respondent No.2 has no control on the labour of the contractor. The contractor is responsible for execution of the work under the contract.

(d) The respondent No.2 had not employed the applicants. The service particulars detailed in Annexure-II to the O.A. are not true. The respondent No.2 is registerd with the Central Commissioner of Labour.

(e) It is the sole responsibility of the contractor who selects the labourers and the gets work done as per the instructions of the respondent No.2 from time to time. The respondent No.2 disputes the working hours/shifts and other particulars alleged by the applicants in the O.A. The contractor is licensed by the Central Labour Commissioner. The CCMB has never paid any amount to the workers employed by the contractor. The CCMB also gets its miscellaneous jobs done by a contractor wherever necessary.

(f) The Act permits the employers to get their miscellaneous jobs done through contractors and they grant licence for the particular employer for the said purpose subject to certain conditions including that the contractor should be registered with them for doing the jobs and compliance of labour laws. The CCMB has complied with all those provisions and has obtained a licence from the Central Labour Commissioner and awarded contract for such works. The contractors are given the contract by the process of competitive tenders. The contractors are free to select and choose their workmen. The law does not provide for contract labour system to enable the organisation to give job contracts in the specified fields. The decision of the Hon'ble Supreme Court reported in AIR 1978 SC 1410 has been quoted out of the context and is not relevant to the facts of the present case.

(g) There is no relationship of master and servant between the applicant and the respondent No.2. The applicants may be working under a contractor. It is submitted that the Hon'ble Supreme Court in the case of Association of Chemical Workers, Bombay v. A.L.Alaspurkar & Ors, reported in AIR 1993 S.C. p.359. , has settled that in such types of contrtacts, no relationship of master and servant exists with the contractual workers and the employer.

(h) The respondents dispute that the applicants are similarly placed to those employees of the IICT. The scheme for absorption of casual workers was valid only in respect of the workers emplyed by the CCMB on its rolls and cannot be applied to the workmen employed by the contractor. The case of IICT is not relevant to the facts of this case. There was no discussion during the meeting of CSIR Staff Federation with regard to the absorption of contract labourers. They submit that in similar circumstances, the employees of the contractors engaged by NEERI, the Hon'ble Industrial Tribunal rejected the claim of the workers. The Hon'ble Supreme Court in the case of Denanath and others v. National Fertilisers and others, reported in AIR 1992 SC 457 stated that the Court does not have the power to abolish the contract system or to issue orders for admitting the contract labour as having become employees of the principal employer. The applicants ought to have approached the authorities of the respondent No.2 for redressal of their grievances. They have approached this Tribunal without exhausting the remedies available to them. The applicants cannot claim regularisation or absorption under respondent No.2 and that the O.A. is

liable to be dismissed.

(i) The respondents have produced the copies of the agreements executed by the contractors in favour of the respondent No.2 undertaking to perform certain menial works like cleaning, sweeping etc.

8. The applicants have filed a rejoinder more or less reiterating their averments in the O.A. and claiming that they are liable to be regularised under the respondent No.2.

9. The respondents filed M.A.No.744 of 1997 seeking modification of the interim order. In the M.A. it is submitted that the respondents organisation has been registered with the Central Labour Commissioner under Section 7 of the Act and engages contract labour through the registered contractor annually; that during this year also tenders were invited from the contractors and tenders have been finalised; that in the normal course,each contractor is free to recruit his own work force; that in view of the interim order of the Tribunal the present contractor is not able to control the workers; that the Tribunal further directed that the O.A. should be listed for hearing on 13.3.1996; that the contractor is unable to recruit his own work force and therefore unable to manage the work entrusted to him under the contract and on account of this, the respondents are put to great hardship and inconvenience. On 18.8.1997 this Tribunal stated to take up the O.A. for final hearing.

10. The applicants are attending to the cleaning and menial works of the respondent No.2. They claim to be engaged in such works from 1983 to 1995 and thus claim for regularisation under respondent No.2. The

learned counsel for the applicant contended that the applicants are engaged on contract basis; that it is immaterial whether the applicants are casual labourers or contract labourers; that the contract labour system has been abolished by the State of Andhra Pradesh effective from 9.1.1976; that the respondent No.2 though has come into picture in the matter of engagement of the applicants as labourers as such, it in fact is the actual beneficiary; that the respondent No.2 cannot shirk its responsibility to regularise the services of the applicants though they have worked under a contractor- an intermediary person; that the applicants are eligible to be regularised under the respondent No.2. Though the applicants stated that they are being paid by the establishment of the respondent No.2, it is now disclosed that they are receiving wages and emoluments from the contractor. The respondents in support of their contention that there is no relationshi8p of master and servant between them and the applicants, have produced the copies of the agreements executed by the contractors during the previous years. The respondents categorically state that the CCMB-a constituent Unit of the respondent No.1 does not come under the definition of 'State' as defined under Article 12 of the Constitution of India; that they have obtained licence under the Act and that they have registered under the Central Labour Commissioner; that the contractor is expected to follow the provisions of the Act in letter and spirit; that there is no nexus between the reliefs claimed by the applicant and the respondents.

11. The applicants in support of their contention

that they are eligible for regularisation under the respondent No.2 have relied upon the following decisions:-

(a) Gujarat Electricity Board,Thermal Power Station,Ukai, Gujarat. v. Hind Mazdoor Sabha and others(1995 SCC(L&S) 1166)

(b) Dena Nath and others v. National Fertilisers Ltd. and others Ltd. and others(AIR 1992 SC 457)

(c) Husainbhai v. The Alath Factory Tezhilali Union and others(AIR [illegible])

(d) Air India Statutory Corporation v. United Labour Union and others(AIR 1997 SC 645)

12. The respondents in their arguments submitted that the applicants during the course of arguments canvassed a new point to the effect that by notification No.SO 779(E) dated 9.12.1976 the contract labour system was abolished by the State of Andhra Pradesh; that the said point was not pleaded by the applicants in the O.A. Therefore, the said point cannot be permitted to be raised for they have no opportunity to meet the said new point. Further they submit that the said notification dated 9.12.1976 is applcicable to only to the Government Undertakings, Public Undertakings of the Undertakings which come within the definition of 'State' as defined under Article 12 of the Constitution of India; that the appropriate Government as defined under Section 2 of the Act defines what is the appropriate Government; that in relation to any industrial disputes concerning any industry carried on, by or under the authority of the Central Government, then the appropriate Government will be the Central Government; that, admittedly, the CCMB is

not a 'State' or other authority within the meaning of Article 12 of the Constitution of India; that it is only the State Government that is the appropriate Government so far as CCMB is concerned under the Act; that even in the decisions relied upon by the applicants the Hon'ble Supreme Court has observed that it is only the appropriate Government that can abolish the contract labour system and it is not for the Courts. The Court cannot enquire into or decide the question whether the employment of the contract labour in any process, operation or any other work in an esttablishment should be abolished or not, and it is for the appropriate Government to decide it. That so observed by the Hon'ble Supreme Court of India in para 57 at page 676; that the Hon'ble Supreme Court of India in the said case further observed that there is no express provision in the Act for absorption of employees whose contract labour system stood abolished by issuance of a notification under Section 10(1) of the Act; that in a proper case, the Court as sentinal in the quivivi is required to direct the appropriate authority to act in accordance with law; that in the case of the CCMB, the appropriate Government has so far not issued any notification under Section 10(1) of the Act; that Section 10 of the Act makes it clear that when an application is made for abolition of the contract labour, the appropriate Government after consultation with the State or Central Board, as the case may be, prohibit,by notification in the official Gazette, employment of contract labour. Thus they submit that in case the applicants are so desirous may approach the appropriate Government to putforward their case and then the appropriate

Government may in consultation with the Board take such action as may be necessary in the facts and circumstances of the case. These are all questions of fact to be decided by the appropriate Government in consultation with the Board. They also relied on the following decisions :-

(a) Sabhajit Tiwari case(AIR 1975 SC 1329)

(b) Balbir Thomas case(AIR 1997 AP 167)

(d) AIR 1993 SC 359

(e) AIR 1995 SC 1893

13. First of all we have to consider whether the CCMB can come under the definition of 'State' as defined under Article 12 under Article 12 of the Constitution of India. It is an admitted fact that the CCMB is a constituent Unit of CSIR. The CSIR is a Society registered under the Societies Registration Act. The CCMB is registered under the Act,1970. It has got the necessary licence under Section 7 of the Act. It is an admitted fact that the CCMB has entrusted to the contractors the works of cleaning, sweeping etc. in the premises through the competitive tender system. It is on this score, the respondents vehemently contend that there is no relationship of master and servant between the applicants and the respondent No.2. They further specifically state that the applicants are not paid by the establishment of the respondent No.2. In support of their contention that the CCMB is not a 'State', they relied upon the decisions of the Hon'ble Supreme Court cited at (a) above.

14. The first point to be considered is, whether the CCMB is a 'State' as defined under Article 12 of the Constitution of India. Admittedly, the CCMB is a constituent Unit of CSIR which is registered under the Societies Registration Act. The learned counsel for the respondents relied upon the decisions of the Hon'ble Supreme Court in the case of Sabhajit Tiwari v. Union if India reported in AIR 1975 SC 1329. The Hon'ble Supreme Court in that case considered whether the CSIR is the authority within the meaning of Article 12 of the Constitution of India. After considering the features, and constituents of the society in paragraphs 3 and 4 of that judgment the Hon'ble Supreme Court observed that the CSIR is not an authority within the meaning of Article 12 of the Constitution of India. We feel it proper to reproduce herein the paragraphs 3 and 4 of the said judgement :

> "3. The Council is a society registered under the Societies Registration Act. Reliance was placed by counsel for the petitioner on these features of the society. Under Rule 3, the Prime Minister of India is the ex-officio President of the Society. The Governing Body under Rule 30 consists of inter alia some persons appointed by the Government of India representing the administrative Ministry under which the Council of Scientific and Industrial Research is included, and the Ministry of Finance and one or more members appointed by the Government of India. The Government of India may terminate the membership of any member or at one and the same time of all members other than the ex-officio members of the Governing Body. Rule 45 states that the Governing Body shall have the management of all the affairs and funds of the Society. Rule 46 states that the Governing Body shall have power, with the sanction of the Government of India to frame, amend or repeal bye-laws not inconsistent with the rules for the administration and management of the affairs of the Society and in particular to provide for the terms and tenure of appointments, emoluments, allowances, rules of discipline and other conditions of service of the officers and staff of the Society. Reference was also made to the Government of India (Allocation of Business)Rules,1961 and in particular to page 76 where it is stated that all matters relating to the Council of Scientific and Industrial Research are under the department of Science and Technology.

> 4. Extracting the features as aforesaid, it was contended that these would indicate that the Council of Scientific and Industrial Research was really an agency of the Government. This contention is unsound. The Society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments of the existing institutions for scientific study problem affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner."

15. The views expressed in the above case came up for consideration in the case of Balbir Thomas v. Centre for Cellular and Mlecular Biology, Hyderabad and others, reported in AIR 1997 A.P. 167. The Hon'ble High Court of Andhra Pradesh relying on the above observations of the Hon'ble Supreme Court formed an opinion that the CCMB is a constituent Unit of CSIR which cannot be regarded as a 'State' or an authority as defined under Article 12 of the Constitution of India.

In view of the principles laid down in the two cases cited above, we are of the opinion that the CCMB is not an authority as defined under Article 12 of the Constitution of India. It cannot be regarded as a 'State'.

16. The respondents have registered themselves under Section 7 of the Act,1970. Under the provisions of the Act,1970 an industrial establishment or an establishment is entitled to get certain works performed or executed through a contractor. In the instant case, the

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contention of the respondents is that the applicants are not employed directly by the respondent No.2 and that they are working under a contractor and that though they are working under a contractor, the contractor was changed from time to time on account of acceptance of competitive tenders after expiry of the term of a particular contract. No doubt, the learned counsel for the applicants relied upon the Notification dated 9.12.1976 to contend that the State of Andhra Pradesh has abolished the contract labour system.

17. The provisions of the Contract Labour Act came up for consideration before the Hon'ble Supreme Court in the case of Dena Nath and others v. National Fertilisers Ltd and others, reported in AIR 1992 SC 457. The Hon'ble Supreme Court considered various provisions of the Act and in paragraph 14 of the judgment, observed as under:-

> "14. ..... The combined effect of these provisions makes it clear that for a valid employment of contract labour, two conditions must be fulfilled, viz., (1) every principal employer of an establishment must be registered and (2) the contractor must have valid licence. In other words, the mere registration by the principal employer or the holding of licence by contractor alone will not enable the management to treat the workmen as contract labour. Whilst considering the provisions of the Act, it must be kept in mind that this Act is a piece of beneficial legislation. The aim of the Act is to regulate conditions of service of contract labourers and to abolish contract labour under certain circumstances. It is therefore meant for securing proper conditions of service to under contract labour. It is not the purpose of the Act to render workmen jobless. The interpretation which must be given is one which would further these objects and not one which results in greater hardship. It must be noted that there is no provision which states that the relationship of principal employer and workmen comes to an end on the abolition of contract labour. On the contrary as already stated there is a deemed contract labour only if the two conditions of registration and licence are fulfilled. In such a case i.e., where either or both the conditions are not fulfilled, the necessary implication would be that the workmen remain workmen of the

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principal employer. It must be remembered that on a failure of the contractor to provide amenities or to pay wages the principal employer remains liable for the same. The same would be the position on a failure by reason of there being no valid contract labour."

In the case of Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha and others, reported in 1995 SCC(L&S) 1166, the Hon'ble Supreme Court considered the provisions of the Act,1970. In paragraph 58, the Hon'ble Supreme Court has observed as under :-

"58. In the first instance, we find that the contention that the Tribunal has held that the workmen in question are the employees of the Board only because of the non-production of the valid proof of the certificate and the licences in question, is not correct. The Tribunal has, on the basis of the evidence on record, come to the conclusions, among others, that (i) the work was being done on the premises of the Board itself as the coal was being used for the purposes of the Board, viz., generation of electricity; (ii) the workmen were broadly under the control of the Board; (iii) there was overall supervision of the work by the officers of the Board; (iv) the work was of a continuous nature; and (v) the work was an integral part of the overall work to be executed for the purposes of the generation of the electricity and that it had to be performed within specified time-limits as part of the integrated process. The Tribunal has also in this connection referred to a decision of this Court reported in HUSSAINBHAI Case to support its conclusion that in the aforesaid circumstances found by it, the workmen in question were the employees of the Board. It is true that the Tribunal has not in so many words recorded a finding that the contract was a sham or bogus or a camouflage to conceal the real facts. It is also true that the workmen should be deemed to be the employees of the Board. However, the decision of the Tribunal has to be read as a whole. Thus read, the decision makes it clear that the Tribunal has based its conclusion both on the ground that the workmen were in fact engaged by the appellant-Board and not by the contractors who were merely intermediaries set up by the Board and also on the ground that there was no valid proof of the registration certificate and the licences in the possession of the Board and the contractors respectively. It is not, therefore,correct to say that the decision of the Tribunal is based only on the latter ground. We are of the view that there is a factual finding recorded by the Tribunal that the labour contracts in question were not genuine and the decision of the Tribunal based on this ground as well."

In the case of Air India Statutory Corporation,etc. v. United Labour Union and others etc., reported in AIR 1997 SC 645, the Hon'ble Supreme Court in paras 65 and 66 has observed as under :-

> "65. Thus, we hold that though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification under Section 10(1) of the Act, in a proper case, the Court has sentinal in the qui vive is required to direct the appropriate authority to act in accordance with law and submit a report to the Court and based thereon proper relief should be granted.
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> 66. It is true that learned counsel for the appellant had given alternative proposal, but after going through its contents, we are of the view that the proposal would defeat, more often than not, the purpose of the Act and keep the workmen at the whim of the esttablishment. The request of the learned Solicitor General that the management may be left with that discretion so as to absorb the workman in the best manner favourable to the workmen cannot be accepted. In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the ccontract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required tobe absorbed in the establishment of the appellant. Though there exists no specific scale of pay to be paid as regular employees, it is for the establishment to take such steps as are necessary to prescribe scale of pay like class 'D' employees. There is no impediment in the way of the appellants to absorb them in the last grade, namely, grade IV employees on regular basis. It is seen that the criteria to abolish the contract labour system is the duration of the work the number of employees working on the job etc. That would be the indicial to absorb the employees on regular basis in the respective services in the establishments.Therefore, the date of engagement will be the criteria to determine their inter se seniority. In case, there wouldbe any need for retrenchment of any excess staff, necessarily, the principle of "last come, first go" should be applied subject to his reappointment as and when the vacancy arises. Therefore, there is no impediment in the way of the appellants to adopt the above procedure. The award proceedings as suggested in Gujarat Electricity Board case (1965 AIR SCW 2942) are beset with several incongruities and obstacles in the way of the contract labour for

immediate absorption. Since, the contract labour gets into the service of the principal employer, the Union of the existing employees may not espouse their cause for reference under Section 10 of the ID Act. The workmen, who on abolition of contract labour system have no right to seek reference under Section 10 of ID Act. Moreover, the workmen immediately are kept out of job to endlessly keep waiting for award and thereafter resulting in further litigation and delay in enforcement. The management would always keep them at bay for absorption. It would be difficult for them to work out their right. Moreover, it is a tardy and time-consuming process and years would roll by. Without wages, they cannot keep fighting the litigation endlessly. The right and remedy would be a teasing illusion and would be rendered otiose and practically compelling the workman at the mercy of the principal employer. Considered from this pragmatic perspective, with due respect to the learned Judges, the remedy carved out in Gujarat Electricity Board case (1995 AIR SCW 2942) would be unsatisfactory. The shortcoming were not brought to the attention of this Court. So, that part of the direction in Gujarat Electricity Board case is not with due respect to the Bench, correct in law. The Dena Nath's case (1991 AIR SCW 3026), as held earlier, has not correctly laid down the law. Therefore, it stands overruled. Moreover, the Bombay High Court has correctly held that the High Court under Article 226 of the Constitution would direct the principal employer to absorb the contract labour, after its abolition, even though some of the contractors have violated Section 12 of the Act and the appellants have violated Section 7 of the Act. In the judgments under appeal, High Court has directed to absorb the services of the workman from the date of the judgment. The respondent-Union did not challenge it. We are, therefore, constrained not to grant the benefit to the employees of the respondent-Union from the date of the abolition of the contract labour system. We, therefore, uphold the direction issued by the High Court to regularise their services with effect from the respective dates of the judgments of the High Court with all consequential benefits. Before conclusion, we express our deep appreciation for valuable assistance given by all the learned counsel in the appeals."

18. Considering the principles enunciated by the Hon'ble Supreme Court in the cases cited above,we are satisfied that the CCMB, a constituent Unit of CSIR is not a 'State' as defined under Article 12 of the Constitution of India. Further it is not for the Court or Tribunal to abolish the contract labour system. It is

for the appropriate Government to make necessary order issuing notification abolihsing the system of contract labour. It is only when an establishment or an employee of an industry moves the appropriate Government, it has to take suitable decision as to abolition of contract labour system aftr taking advice from the Board etc. In that view of the matter, we feel that we are not competent to give any reliefs to the applicants. This Tribunal is exercising powers of the High Court as contemplated under Article 226 and 227 of the Constitution of India. In the case of Balbir Thomas (supra) the Hon'ble High Court of Andhra Pradesh refused the relief to the petitioner therein under Article 226 of the Constitution of India. In that view of the matter we cannot compel the respondents to regularise the services of the applicants herein. The applicants, if so advised, may move the appropriate Government or authority for abolition of contract labour system under the respondent No.2 and except observing that, we cannot give any reliefs to the applicants herein.

19. In this case we declined to issue any directions taking the view that the CSIR and CCMB are not amenable to the jurisdiction of this Tribunal. In coming to that conclusion, we relied upon the decisions of the Hon'ble Supreme Court of India and also the decision of the Hon'ble High Court of Andhra Pradesh.

19.A. The CSIR has been constituted, inter alia, for the purposes of (a) Scientific and Applied Industrial Reserach of national importance; (b) Setting up Research and Development Projects of national priority with overall planning for science and technology in the in the country and for other similar goals including setting up Research and Development Projects sponsored

by industries in public/private sectors. The CSIR further contended that it has entrusted the menial and other works of intermittent nature to a contractor under the provisions of the Act,1970. In such a case, the employee engaged by a contractor cannot have the direct relationship with the CSIR. The CSIR has adopted the Central Civil Services Rules for its employees. Whenever a clear relationship of master and servant is established between the applicants and the CSIR, we can and shall entertain the O.A. against the CSIR. The decision in this O.A. cannot be taken to mean that this Tribunal has no jurisdiction over the CSIR for the above said reasons.

20. With the above observations, the O.A. is disposed of. The interim order granted in M.A.No.82 of 1996 is hereby vacated. No order as to costs.

(B.S.JAI PARAMESHWAR)
MEMBER(JUDICIAL)

(R.RANGARAJAN)
MEMBER(ADMINISTRATIVE)

23/3/98

DATED THE 23rd MARCH,1998.

DJ/

Copy to:

1. The Chairman, Council of Scientific & Industrial Research, New Delhi.
2. Director, Centre for Cellular & Molecular Biology, Hubsiguda, Hyderabad.
3. One copy to Mr.P.B.Vijaya Kumar,Advocate,CAT,Hyderabad.
4. One copy to Mr.G.B.Desai, CGSC,CAT,Hyderabad.
5. One copy to HBSJP,Member(J), CAT,Hyderabad.
6. One copy to D.R(A),CAT,Hyderabad.
7. One duplicate copy.

YLKR

TYPED
COMPARE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.B.RANGARAJAN : M(A)

AND

THE HON'BLE MR.B.S.JAI PARAMESHWAR:
M(J)

DATED: 23/3/98

ORDER/JUDGMENT

M.A./R.A/C.A.NO.

in

O.A.NO. 149/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLKR