



CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA

O.A. 817 of 2015 & O.A. 818 of 2015

Present : Hon'ble Justice Shri Vishnu Ch. Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

O.A. 817 of 2015 Shri Sanjoy Lal Maitra,
Son of Hemendra Lal Maitra,
Aged about 41 years,
Working as Data Entry Operator,
Grade-III, National Sample Survey Office,
Survey Design & Research Division,
164, Gopal Lal Tagore road,
Kolkata – 700 108,
Residing at BB-13/H, Salt Lake City,
Sector – I, Kolkata – 700 064.

O.A. 818 of 2015 Shri Pannalal Thakur,
Son of Late Mahanand Thakur,
Aged about 52 years,
Peon (on contract basis),
National Sample Survey Office,
Survey Design & Research Division,
Mahalanobis Bhavan,
164, Gopal Lal Tagore Road,
Kolkata – 700 108,
Residing at Gobra Bikash Nagar 3rd Lane,
P.O. Chandital, P.S. Dunkuni,
Dist. Hooghly, Pin : 712 702.

..... Applicants.

Versus

1. Union of India,
Through the Secretary to the Govt. of India,
Ministry of Statistics & Programme Implementation,
Sardar Patel Bhawan, Sansad Marg,
New Delhi – 110 001.
2. The Director General,
Central Statistics Office,
Ministry of Statistics & Programme Implementation,

Sardar Patel Bhawan, Sansad Marg,
New Delhi – 110.001.

3. The Additional Director General,
Survey Design & Research Division,
National Sample Survey Office,
164, Gopal Lal Tagore Road,
Kolkata – 700 108.

4. The Additional Director General
Data Processing Division,
National Sample Survey Officer,
164, Gopal Lal Tagore Road,
Kolkata – 700 108.

..... Respondents.

For the Applicant : Mr. S.K. Datta , Counsel

For the Respondents : Mr. P. Mukherjee , Counsel
Mr. R. Roychoudhury, Counsel

Date of hearing : 10.11.2016

Date of order: 18 .11.2016

ORDER

JUSTICE V.C. GUPTA, JM

As common questions of law and facts are involved in these two applications therefore they are disposed of by this common Judgement.

2. These applications under Section 19 of the Administrative Tribunals Act, 1985 were filed by the applicants with a common prayer. The prayers made in OA No.817 /2015 and 818/2015 respectively are as under:

In O.A.817/2015

“8.a) An Order granting leave to the applicants under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 to move this application jointly as the applicants have common interest in the matter.

- b) An order holding that the decision as contained in Annexure "A-9" Clause III is arbitrary, discriminatory and bad in law.
- c) An order holding that the decision contained in Clauses III to VI of Annexure "A-11" and any effect of the said Clauses are arbitrary, Discriminatory and bad in law.
- d) An order quashing and/or setting aside the order dated 21.05.2015 at Annexure "A-12" so far as the applicant No.2 is concerned.
- e) An order directing the respondents to allow the applicants to continue in service on contract basis till their regularization and further directing the respondents to regularize the service of the applicants in the manner done in respect of the applicants in O.A. No.278 of 2012 and the O.A. Nos.339 of 2011, 104 of 2012, 105 of 2012 and 106 of 2012 vide Annexure "A-9" to the Original Application.
- f) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

In O.A.818/2015

"8.a. An order holding that the decision as contained in Clause III of OM dated 5.1.2015 is arbitrary and discriminatory as well as bad in law.

- b. An order holding that the decision contained in Clause III to VI of the OM dated 15.5.2015 is totally arbitrary and discriminatory in as much as bad in law.
- c. An order quashing and/or setting aside the impugned order dated 21.5.2015 so far as the applicant is concerned.
- d. An order directing the respondents to allow the applicant to discharge his duties as Peon/MTS till his regularization in service and further directing the respondents to regularize the service of the applicant in the manner done in respect of applicants in O.A. No. 278 of 2012 and the O.A. Nos. 339 of 2011, 104 of 2012, 105 of 2012 and 106 of 2012 with all consequential benefits.
- e. An order directing the respondents to produce/cause production of all relevant records.

(Signature)

f. Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

3. So far as the O.A.817/2015 is concerned the applicant No.1 Subhas Ghosh was permitted to withdraw the application vide order dated 26.05.2015. Hence in this O.A 817/ 2015 the sole applicant Sanjoy Lal Mitra remains for pursuing his remedies.

4. Applicants in both the cases namely, Sanjoy Lal Mitra and Pannalal Thakur were appointed as Data Entry Operator Grade III and Peon respectively in pursuance of an offer of appointment issued on 12.08.1999 and 22.03.1997 respectively. They were appointed temporarily on contractual basis on fixed wages initially till 31.12.1999 and 31.3.1997 respectively. The period was extended from time to time but the services of both the applicants were discontinued by an order dated 21.05.2015, which is extracted below :

"No.A-12030/1/2012-SDRD (Admn.) Dated: 21.05.2015

O.R.D.E.R

In pursuance of MOS&PI's O.M. No. A-11011/5/2014-Ad. III dated 15.05.2015 regarding discontinuance of contractual employees Shri Sanjoy Lal Maitra, Data Entry Operator Grade III and Shri Pannalal Thakur, Peon, appointed on contractual basis are hereby disallowed to continue to work in this office w.e.f. 22.05.2015.

To:

- 1: Shri Sanjoy Lal Maitra, Data Entry Operator Grade III
- 2: Shri Pannalal Thakur, Peon

(N.K. Tudu)
Director & H.O."

5. Aggrieved by the action of the respondents the applicant challenged their discontinuance and made a prayer for absorption permanently in the



department after regularising their services. An interim order has been passed on 26.05.2015, whereby the applicants again joined after discontinuance and are still continuing in pursuance of that interim order passed on 26.05.2015.

6. Reply has been filed by the respondents in both the cases. Rejoinder has also been filed.

7. In the reply filed by the respondents it has been stated that the applicants were appointed purely on temporary and contractual basis against a plan post which remains for specific purpose/project for a specified period, the continuance depend upon the decision of the Government. They were offered appointments with conditions which they accepted voluntarily. Hence they cannot claim continuance in service and challenge the conditions of the service which were mentioned in the offer of appointments and the applications deserve to be dismissed.

8. Heard the learned Counsel for the parties and perused the record.

9. The Learned counsel for the applicant would submit that the applicants are entitled to the benefit of the judgment delivered by Hon'ble Karnataka High Court in WPC 57381/2013 and 8010-8035/2014, Union of India vs. S.D.Jaya Prakash and Ors. A copy of which has been placed on record. It has been further submitted that the Hon'ble High Court after considering the judgement delivered by CAT Calcutta in OA No.278 of 2012 decided on 18.02.2013 , affirmed by Hon'ble Calcutta High Court and against which the SLP was dismissed and also another judgement of O.A No. 51 Of 2007 upheld by the Hon'ble Karnataka High Court. It was further contended that applicants are

A handwritten signature consisting of a stylized 'S' and 'D' intertwined, followed by the initials 'W.G.' and a trailing mark resembling a checkmark or a '1'.

similarly situated persons who have been granted benefit of the judgment of Karnataka High Court as the same has already implemented and their services were regularised. Hence the respondents are bound by the act of the regularization which relates to the applicants of S.D.Jayprakash case (supra). The applicants further relied upon the judgment of Nihal Singh and Others vs. State of Punjab & Ors. delivered by the Hon'ble Supreme Court in Civil Appeal No.1059 of 2005 decided on 07.08.2013. On the strength of the judgment it has been contended that in that case the applicants were appointed purely on contractual basis and on fixed pay and they continued for a considerable long time. The Hon'ble Supreme Court regularised the services of the applicants in that case. Here in the case in hand the applicants were also appointed as per procedure through Employment Exchange. Hence they cannot be said to be appointed dehors of the rules. Though the applicants had been temporarily appointed but as per established procedure and are qualified for the post held by them and continued for more than a decade are entitled to be regularised in the service.

10. On the contrary, the learned counsel for the respondents pointed out that as the applicants had accepted voluntarily the terms of appointment, so in view of that they cannot claim regularization. There is no scheme to regularise the contractual persons. He relied upon a judgment rendered by the Patna High Court in Promod Kumar & Ors. Vs. State of Bihar and others, (2015) 4 SLR 463, wherein it has been held that a person who has been appointed on contract basis cannot claim his regularization. Hence learned counsel submits that these applications have no merit and liable to be dismissed. He also try to distinguish



the case of Biswajeet Das (supra) of CAT Calcutta on the ground that the same was related to non plan post

11. Before proceeding further with the matter it would be necessary to look into the nature of appointments of the applicants. The offer of appointments of both the applicants are available on record, which are reproduced herein below:

"No. A-11011/1/Rec/DPC/A'bad/99
GOVERNMENT OF INDIA
MINISTRY OF PLANNING
DEPARTMENT OF STATISTICS
N.S.S.O - D. P. C.

'C' Block, Premier Shopping Centre
Near Nyaya Mandir, Mirzapur Road
Ahmedabad – 380 001
Date : 12.08.99

MEMORANDUM

Sub: Offer of temporary appointment on contract basis for the post of Data Entry Operator Grade III in DPC, NSSO, Ahmedabad

Consequent upon his selection for recruitment to the post of Data Entry Operator Grade III, Sh. **SANJOY LAL MAITRA** is hereby offered the appointment on contract basis upto 31.12.99 for temporary post of Data Entry Operator Grade III in the office of NSSO, DPC, Ahmedabad in the scale of pay of Rs. 4500-125-7000. The appointee will also be entitled to draw dearness and other allowances at the admissible rates subject to conditions laid down in rules and orders governing the grant of such allowances from time to time.

2. The terms of appointment are as follows:

- i) The appointment is purely temporary and will not confer any title to a permanent employment.
- ii) The appointment is on contract basis and the services will be terminated at the end of the contract.

(Signature)

iii) The appointment may be terminated at any time by a month's notice given by either side, viz. the appointee or the appointing authority without assigning any reason. The appointing authority, however, reserves the rights of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

iv) Other conditions of service will be governed by the relevant rules and orders in force from time to time.

3. The appointment will be further subject to:

i) Production of certificate of fitness from the Competent Medical Authority, viz. Civil Surgeon, District Medical Officer or equivalent status.

ii) Submission of a declaration in the form enclosed (Annexure-I) and in the event of a candidate having more than one wife living the appointment will be subject to his being exempted from the enforcement of the recruitment, in this behalf.

iii) Taking of an oath of allegiance/faithfulness to the Constitution of India (or making of a solemn affirmation in the effect) in the prescribed form (Annexure-II).

iv) Production of following original certificates,

a) Certificate of educational and other technical qualifications.

b) Certificate of age.

c) Character certificate in the prescribed form (Annexure-III) from the Head of the Educational Institution last attended by him and a similar certificate from his employer, if any, duly attested by a stipendiary first class Executive Magistrate (including a District Magistrate or Sub-Divisional Magistrate).

d) Certificate in the prescribed form in support of candidate's claim to belongs to a SC/ST/Anglo-Indian Community.

e) Discharge certificates in the prescribed form of a previous employment, if any.

4. It may please be stated whether the candidate is serving or is under obligation to serve another Central Govt. Department, a State Govt. or a Public authority.



If any declaration given or information furnished by the candidates proves to be false or if the candidate is found to have willfully suppressed any material/information, he will be liable to removal from service and such other action as Government may deem necessary.

5. If Sh. Sanjoy Lal Maitra accepts the order on the above terms and conditions he should communicate his acceptance or otherwise to the undersigned immediately within a week of the receipt of this memorandum and thereafter should appear before the Competent Medical Authority alongwith the enclosed letter for medical examination and report for duty alongwith the medical fitness certificate and other document to the Director, D.P. Centre, 'C' Block, Premier Shopping Centre, Mirzapur Road, Ahmedabad – 380 001 within one month i.e. on or before 10.09.99. If he fails to join by the above date i.e. by 10.9.99, the offer of appointment made to him will be treated as cancelled.

6. No travelling allowance will be allowed for joining the appointment.

(R.J. LONE)
DIRECTOR"

"No. A-12011/1/96-SDRD(Adm.)/267

Government of India
Ministry of Planning
Department of Statistics
National Sample Survey Organisation
Survey Design and Research Division

164, Gopal Lal Tagore Road,
Calcutta – 700035
Dated : 20th March, 1997

MEMORANDUM

Sub: Offer of temporary appointment on contract basis for the post of "PEON" (Plan Scheme) in SDRD, NSSO.

Consequent upon his/selection for recruitment to the post of "Peon" (Plan Scheme) Shri Pannalal Thakur is offered an appointment on contract basis upto 31.3.1997 for temporary post of "Peon" in the office of NSSO, SDRD, Calcutta in the scale of pay of Rs. 750-12-870-14-940. The appointee will also be entitled to

(Signature)

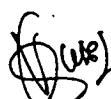
draw dearness and other allowances at the admissible rates subject to conditions laid down in rules and orders governing the grant of such allowances from time to time.

2. The terms of appointment are as follows:

- i) The appointment is purely temporary and will not confer any title to a permanent employment.
- ii) The appointment is on contract basis & the services will be terminated at the end of the contract.
- iii) The appointment may be terminated at any time by a month's notice given by either side, viz. the appointee or the appointing authority without assigning any reason. The appointing authority, however, reserves the rights of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.
- iv) Other conditions of service will be governed by the relevant rules and orders in force from time to time.

3. The appointment will be further subject to:

- i) Production of certificate of fitness from the Competent Medical Authority, viz. Civil Surgeon, District Medical Officer or Medical Officer of equivalent status.
- ii) Submission of a declaration in the form enclosed (Annexure-I) and in the event of a candidate having more than one wife living or being married to person having more than one wife living, the appointment will be subject to his being exempted from the enforcement of the recruitment, in this behalf.
- iii) Taking of an oath of allegiance/faithfulness to the Constitution of India (or making of a solemn affirmation to the effect) in the prescribed form (Annexure-II).
- iv) Production of the following original certificates:
 - a) Certificate of educational and other technical qualifications.
 - b) Certificate of age.
 - c) Character certificate in the prescribed form (Annexure-III) from the head of the educational Institution last attended by him and a similar certificate from his employer, if any,

A handwritten signature in black ink, appearing to read "S. (W.B.)".

duly attested by a stipendiary first class executive Magistrate (Including a District Magistrate or Sub-Divisional Magistrate).

- d) Certificate in the prescribed form in support of candidate's claim to belongs to a SC/ST/Anglo-Indian Community.
- e) Discharge certificates in the prescribed form of a previous employment, if any.

4. It may please be stated whether the candidate is serving or is under obligation to serve another Central Government Department, a State Government or a Public authority.

If any declaration given or information furnished by the candidates proves to be false or if the candidate is found to have willfully suppressed any material/information, he will be liable to removal from service and such other action as Government may deem necessary.

5. If Shri Pannalal Thakur accepts the order on the above terms and conditions he should communicate his acceptance or otherwise to the undersigned immediately within a week of the receipt of this memorandum and thereafter should appear before the competent medical authority alongwith the enclosed letter for medical examination and report for duty alongwith the medical fitness certificate and other document to the Deputy (Adm.), NSSO, SDRD, 164, Gopal Lal Tagore Road, Cal-700035 by 27.3.1997. If he fails to join by the above date, the offer of appointment made to him will be treated as cancelled.

6. No travelling allowance will be allowed for joining the appointment.

Deputy Director (Adm.)"

12. It is not in dispute that they accepted the offer and thus continued till they were discontinued by order dated 21.05.2015. The applicants of both the applications continued till they were discontinued by order dated 21.5.2015. Order of discontinuance was issued in pursuance of OM dated 15.05.2015 issued by GOI, extracted herein below:

"No.A-11011/5/2014-Ad.III
Government of India

Ministry of Statistics & P.I.

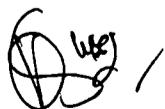
Sardar Patel Bhavan, Sansad Marg,
New Delhi – 110001, Dated 15.5.2015

OFFICE MEMORANDUM

Subject:- Continuation of 118 Plan Posts in DPD, NSSO and continuation of 50 contractual employees during 2015-16 to 2016-17 – regarding.

The undersigned is directed to say that the matter regarding continuation of 118 plan post in DPD (NSSO) and continuation of contract employees have been examined in consultation with IF Division of this Ministry. With the approval of competent authority, the following has been decided:

- (i) The related Court orders/ cases be expeditiously examined and put up for appropriate decision in the respective concerned files.
- (ii) Administrative proposal for continuation of these 118 Plan posts for the year 2015-16 be referred to Department of Expenditure for their approval/ comments etc.
- (iii) The continuation of services of 50 contract employees may not be linked with the administrative proposal for continuation of these 118 Plan posts for the year 2015-16.
- (iv) Keeping in view the multiple litigations no further contractual appointment, existing or fresh, be undertaken administratively under any circumstances whatsoever. [Administratively, only fresh appointments against sanctioned vacant unencumbered posts as per the due procedure be considered in due course (and not as of now), but after and only after the multiple litigations are appropriately settled.]
- (v) **Administrative proposal for continuation / appointment of 50 contractual employees, existing or fresh, is allowed.**
- (vi) Only and only appointments in compliance of Court orders be considered for the time being [which (as already stated above) is/ will be separately examined for suitable orders in consultation with DoPT Ministry of Finance and Ministry of Law etc. and with competent approval in this Ministry].
- (vii) Separately, and concurrently, the disciplinary actions for making the irregular/ illegal contractual appointments be expedited.
- (viii) In addition, the responsibility for the irregularity in continuing with the same set of persons from 1996 / 1997 be separately fixed.

A handwritten signature in black ink, appearing to read 'S. W. S.' or similar initials, is placed at the bottom right of the document.

2. DG(NSSO), and DG (CSO) and Ad.III Section of the Ministry are hereby directed to take immediate action accordingly in the matter in all such cases and furnish a compliance report to this Ministry on top priority basis.

Sd/-
(S.K. Roy)
Under Secretary to the Government of India,

Tele:23364008."

13. Whether the applicants are similarly situated with those who are applicants of O.A.339/2011 of Bangalore Bench and of O.A.278/2012, Biswajit Das vs. Union of India of Calcutta Bench, is the paramount question to be considered.

14. Learned counsel for the respondents has tried to distinguish the case of Biswajit Das of Calcutta Bench on the ground that case of Biswajit was pertaining to non plan post. Hence the benefit of that judgment cannot be extended to the applicants of this case, as they have been appointed against the plan post. The perusal of the appointment letters reveal that the appointment of Sanjoy Lal Mitra, the applicant in O.A.817/2015 was made on 12.03.1997 on the post of Stenographer Grade III in SDRD, NSSO. The appointment letter does not contain whether the post was plan post or non plan post, only it is stated that it is a temporary post. However, in the appointment letter of Pannalal Thakur it has been mentioned that the appointment has been made in the post of Peon on a plan post in SDRD NSSO. The learned counsel would submit that so far as non plan posts are concerned they are permanent post and plan post are for limited period with a specific purpose i.e. for the purpose of specific project or scheme and as soon as the purpose of the scheme or project is over, the post stand automatically abolished. Hence against such posts permanent appointment

6/16/2024

cannot be made. If this argument of Respondents is accepted, then it can be safely inferred that the appointments are made in both plan and non plan by the respondents on contractual basis. It could also be inferred that the department is a permanent one having both non plan and plan post. While making the appointments it has been made clear in the appointment letters that the appointments are being made in DPC /SDRD under NSSO. So far as the offer of appointment of Sanjoy Lal Mitra is concerned it does not reveal that which scheme was prevailing against which the applicant has been granted appointment on temporary basis or what is the tenure and purpose of the scheme, whether the post was plan or non plan post. But so far as the offer of appointment of Pannalal Thakur is concerned he has been appointed against an Designing and Discharge Division of NSSO but which plan or scheme was than prevailing against which the appointment of Pannalal Thakur was made, has not been disclosed in the letter offer of appointment. The tenure and the purpose has also not been disclosed.

15. It is not in dispute that the appointment of the applicants were made after inviting applications from Employment Exchange in terms of the regulation framed to fill up the vacancies. In case of Nihal Singh & Ors. Vs. State of Punjab, the Hon'ble Apex Court while delivering the judgment on 7.8.2013 in Civil Appeal No.1059/2005 ruled in para 28 that procedure of recruitment through Employment Exchange was held to be consistent with the requirement of Article 14 & 16 of the Constitution. Para 28 of the judgment is extracted herein below:

"28. Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by this Court

A handwritten signature in black ink, appearing to read "S. D. /", is located at the bottom right of the page.

in Union of India and Ors. v. N. Hargopal and Ors. (1987) 3 SCC 308.4."

16. It is also not in dispute that the applicants did not possess the qualification required for the post at the time of inviting the application. It is also not denied that they worked against the post till they had been discontinued for more than 15 years. It is not the case of the respondents that the scheme or project for which the applicants were appointed has been shut down and the post against which the applicants were appointed on contract basis has been abolished. It is true that creation of a particular nature of post, continuance of any post or abolition thereof is an exclusive domain for the Government. It is true that creation of a cadre or sanction of a post in a cadre is a matter exclusively with the authority of the State but the matter of appointment on a particular post which made on contractual basis after creation of a cadre which expected to be continued on permanent basis or for considerable long time, appointment must have been made atleast on contractual basis. If the Government made appointment on permanent post or a post temporarily created but expected to be continued for years together, the Government is required to make appointment after inviting and making wide circulation of the post and eligible candidates should be given an opportunity to compete and best out of the lot should be appointed purely on merit as per statutory provisions to uproot the arbitrariness. But making contractual appointment for a shorter term amounts to arbitrary nature of exercise of power by the Government as held in Nihal Singh's case (supra). The relevant para 19 of the judgment is extracted herein below :

"19. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No.209 of 1992 where the

(Signature)

claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not 10 Page 11 conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants."

17. The Hon'ble Apex Court in the case of *Uma Devi (supra)* has ruled that if initially appointment of the applicants could not be categorized as irregular appointment and were made in accordance with the statutory procedure contemplated under the rules and if they continue for more than 10 years without interruption and intervention of the Court orders the department must frame a scheme to consider for regularization of those employees. But, admittedly in this case such exercise has not been done by the Government. It is also well settled proposition of law that on a temporary post appointment on contract basis cannot be substituted by another appointment on contract basis and if it is allowed to do so it will give an authority to the State to act arbitrarily and to appoint the person of their own choice which may be contrary to Article 14 & 16 of the Constitution of India. Hence irrespective of the fact that the post is plan or non plan category but if continued for years together and if not abolished and the applicants continues without break for more than 15 years or so as in the present case they cannot be discharged by passing an order of



discontinuance without any valid reason. The O.M dated 15.05.2015, on the basis of which the impugned order said to have been passed reveals that certain posts are still continuing in the category of plan post and permission was sought for continuing 50 contractual post / appointment of contractual employees during 2015-16 and 2016-17 has been considered by the Government. The process was started for consideration but the administrative proposal for continuation/appointment of 50 contractual employees existing or afresh was disallowed but the post against which the applicants were appointed, were actually discontinued or continued has not been disclosed. Therefore order passed by discontinuing the service of the applicants without considering this aspect cannot be allowed to sustain in the aforesaid scenario.

18. Now it is necessary to look into the question of parity claimed by the applicants in the light of the judgment delivered by this Tribunal and other Tribunals and High Court. The Karnataka High Court vide its judgment dated 22.4.2014 delivered in Writ Petition No. 57381/2013 and Writ Petition Nos.8010-8035/2014 (S-CAT), the order of the Tribunal passed by Bangalore Bench was upheld. For convenience sake we reproduce the whole judgment of the Karnataka High Court:

"ORDER"

Aggrieved by the direction issued by the Central Administrative tribunal, Bangalore Bench in Original Application No.339/2011 on 4th April, 2011, the present appeal is filed.

2. Heard the learned counsel appearing for both the parties. The respondents are working on contract basis against sanctioned post and they were selected through regular selection process sponsored through employment exchange. Their services were not regularized. Therefore, they approached the Central Administrative tribunal requesting the tribunal to issue a direction to regularize their services. The tribunal considering the Judgment of the



Division Bench of this Court in writ petition no.17545/2011 and also the decision of a co-ordinate bench in O.A.278/2012 of the Calcutta Bench which was followed by this Court in connected matter allowed the application filed by the respondent directing the respondents-petitioners herein to take a decision to regularize their services and till then the respondents were allowed to continue the services. This order is called in question in these petitions.

3. It is brought to our notice that the decision of the Calcutta Bench of the Central Administrative tribunal was taken up before the Calcutta High court in writ petition CT No.488/2013 wherein the High Court of Calcutta has confirmed the order of the Bench against which a Special Leave Petition was filed before the Hon'ble Supreme Court of India by the Union of India in Special Leave Petition No.7686/2014 which has been dismissed by the Hon'ble Supreme Court of India on 2-4-2014.

4. In view of the dismissal of the Special Leave Petition by the Hon'ble Supreme Court of India after the Judgment has been rendered by the Central Administrative tribunal, Bangalore Bench, in the present case is based on the decision of the Central Administrative tribunal, Calcutta Bench, we have no other option but to dismiss these petitions. Accordingly, these petitions are dismissed."

The perusal of the judgment reveals that respondents of the aforesaid WPCs S.D.Jayaprakash & 26 others, were working on contract basis against sanctioned post and sponsored through Employment Exchange and they were selected through regular process but their services were not regularized. They approached the Tribunal. The Tribunal after considering the judgment of the Division Bench of the Karnataka High Court in Writ Petition No.17545/2011 and also the decision of a Co-ordinate Bench of Calcutta relating to O.A.278/2012 passed the order allowing the O.A. It further reveals that the judgment delivered by the Calcutta Bench of this Tribunal was also upheld by Calcutta High Court and SLP filed against the same was dismissed.

19. The Calcutta Bench of the Tribunal in O.A.278/2012 after extending the benefit of the judgment passed by Karnataka High Court in 17545/2012 extended the similar benefit to the applicants of O.A.278/2012. The aforesaid

(Signature)

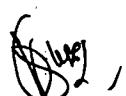
order was passed by Co-ordinate Bench of this Tribunal and upheld by Hon'ble Apex Court after affirming the order of this Tribunal. It is not in dispute that all the orders have been implemented, which is evident from O.M dated 05.01.2015. But it has been made clear in this order that this will apply only to the persons who are applicants or petitioners in the cases referred herein above and will not be applied for giving benefit of similarly situated persons.

20. The learned counsel for the respondents relied upon the judgment of Patna High Court in *Pramod Kumar and others vs. State of Bihar and others*, reported in 2015 (4) S.L.R 463 (Patna) decided on 01.08.2014. On perusal of the judgment reveals that in this case a specific undertaking has been furnished by the applicants that they will not claim for regularization or permanent absorption but no such undertaking has been brought on record in the present case. The relevant portion of the judgment is extracted herein below:

"The petitions were contested by the Board. According to the Board, the appellants were selected only for temporary appointments. The temporary appointments made on contract did not create a right to employment unto any of the appellants. The appellants had, at the time of contractual appointment in 2007, given undertaking to the Board that the appellants shall not claim a right to employment in the Board that the appellants shall not claim a right to employment in the Board by virtue of the temporary appointment made on contract for a period of six months."

Hence, in view of the above the judgment of Patna High Court cannot be applied in the present case which is squarely covered by the judgment of the Karnataka High Court. Accordingly we are of the view that the order dated 21.5.2015 discontinuing the service of the applicants is not sustainable.

21. The Hon'ble Apex Court in *Maharaj Krishan Bhatt & another vs. State of Jammu & Kashmir & Ors.*, (2008) 9 SCC 24 has ruled that once the judgment of a



Court had attained finality it could not be termed as a wrong judgment and this benefit ought to have been extended to the other similarly situated persons. Hence in view of the above we are of the firm view that the decision of Karnataka High Court in WPC No.17545/2012, *The Director General, National Sample Survey Organisation & Ors. Vs. Smt B.V.Chandnka & Ors.* and the judgment delivered by Karnataka High Court in Writ Petition No.57381/2013 with connected Writ Petitions 8010-8035/2014 (S-CAT) are fully applicable so far as the present applicants are concerned and the decision are binding on this Tribunal.

22. Consequently, we direct that the case of the applicants be considered in the light of the aforesaid decision referred to herein above and the exercise to that effect should be completed within a period of 3 months from the date of communication of this order. Till than they shall continue against the post on which they are working in terms of interim order passed by this Tribunal.

Both the applications are accordingly allowed. There shall be no order as to costs.

(Jaya Das Gupta)
Administrative Member

(Justice V.C. Gupta)
Judicial Member