

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00489/2017

DATED THIS THE 12TH DAY OF NOVEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI DINESH SHARMA, MEMBER (A)

1. Gopal Bajentri

S/o Hanumanth Bajentri

Aged about 49 years,

Working as Monument Attendant,

Village & Post: Koujalagi

Tq; Gokak,

Dist: Belagavi – 591 227

2. Ramachandra Chavan,

S/o Bnaganu Chavan,

Aged about 43 years,

Working as Monument Attendant,

At Post: Minphnal,

Tq. & Dist: Vijayapura – 586 108

3. Parashuram Moluchi

S/o Narayana Moluchi

Aged about 55 years,

Working as Monument Attendant,

R/at Yellar, Subhash Galli,

H. No 762,

Tq. & Dist Belagavi

4. Ramaling Kammar

S/o Mahadevappa Kammar

Aged about 54 years,

Working as Monument Attendant

R/at Village & Post: Mutage

Gokul Nagar, Cross No. 20

Belagavi – 591 124

5. Dayanand Tubachi

S/o Shivalingappa Tubachi

Aged about 48 years,

Working as Monument Attendant,

R/at TMC No. 5131/2989/P-18

Shri Gurukrupa Building,

Mahaveer Nagar,

Uttar Chikodi, Tq: Chikkodi,

Dist: Belagavi – 587 205

6. Suresh Patnekar

S/o Balavant Patnekar
Aged about 54 years,
Working as Monument Attendant,
Village & Post: Basavanna Kudachi
Tq. & Dist: Belagavi – 590 012

7. Chandrashekharappa Bileyali

S/o Shivappa Bileyali
Aged about 57 years,
Working as Monument Attendant
R/o PO: Neeralagi,
Village: Nagasamudra
Tq. & Dist: Gadag – 582 103

8. Subhas Badiger

S/o Kalappa Badiger,
Aged about 51 years,
Working as Monument Attendant,
Village & PO: Hirebudihal,
Tq: Badami
Dist: Bagalkot – 587 205

9. Gavisiddayya Hiremath

S/o. Veerabhadrayya Hiremath
Aged about 50 years,
Working as Monument Attendant,
Village & Post: Timmapur
Tq. & Dist: Gadag – 582 115

10. Beemappa Emmi

S/o. Nagappa Emmi

Aged about 53 years,

Working as Monument Attendant,

Village & Post: Timmapur

Tq. & Dist: Gadag – 582 115

11. Sadananda M.R.

S/o Ramaiah Gowda

Aged about years,

Working as Monument Attendant,

R/o Door No. 25 (2), Chitra Nilaya,

New Colony,

Kushavathi (Thirthahalli) – 577 432

Shivamogga District

12. Jaya Sheela Reddy

S/o Late D. Srinivasa Reddy,

Aged about years,

R/o IUDB Layout, 3rd Cross,

H.No. 398, Near Saraswathipuram,

Chitradurga – 577 501

13. T. Kenchappa

S/o Thimmanna

Aged about 52 years,

Working as Monument Attendant,

R/at Vaishnavi Nilaya,

Rajendranagara,

Jogimatti Road,

Chitradurga – 577501

14. Nagarajappa V

S/o Virabhadrappa,

Aged about 48 years,

Working as Monument Attendant,

R/at T. Nulenur,

Holalkere Taluk,

Chitradurga District – 577 501

15. N.H. Siddalingappa

S/o Late Hanumappa,

Aged about 45 years,

Working as Monument Attendant,

R/at No. 289, Jampanna Nayakanakote,

Challakere – 577 532

Chitradurga District

16. Nagaraj P

S/o Papaiah

Aged about 50 years,

Working as Monument Attendant,

R/at Babujagajeevanram Nagar,

Near Sharada Ashrama,

IUDP Layout,
Chitradurga – 577 501

17. Yogesha
S/o Venkataamane Gowda
Aged about years,
Working as Monument Attendant
R/o K. Hirehalli,
Koushika Post,
Shanthigrama Hobli,
Hassan Taluk & District – 573 212

18. Nagachandrayya Hiremath
S/o Balayya Hiremath
Aged about 48 years,
Working as Monument Attendant,
R/at Sri Ram Nagar,
Attikolla,
Dharwad – 580 007

19. Basavantappa Kadappanavar
S/o Fakirappa Kadappanavar
Aged about 50 years,
Working as Monument Attendant
R/o Village & Post: Shirol
Tq: Nargund

Dist: Gadag – 582 207

.....Applicants

(By Advocate Shri B.S. Venkatesh Kumar)

Vs.

1. Union of India,
Represented by its Secretary,
Ministry of Culture,
Shastri Bhavan,
Dr. Rajendraprasad Road,
New Delhi – 110 001

2. The Director General of
Archaeological Survey of India,
Janapath Road, Vasana Vihar,
New Delhi – 110 001

3. The Superintending Archaeologist
Archaeological Survey of India
Dharwad Circle,
Behind Kannada Sahitya Bhavan
Near R.N. Shetty Stadium,
Dharwad – 580 008

4. The Superintending Archaeologist
Archaeological Survey of India
Bengaluru Circle
Kendriya Sadana, 5th Floor,
F Wing, 17th Main,
Koramangala,
Bengaluru – 560 034

.....Respondents

(By Shri M. Rajakumar, Counsel for the Respondents)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J)

Heard. The applicants are ex-servicemen who had served the country in one way or other and have acquired a right under the regulations attached to ex-servicemen for re-employment to be considered for other governmental positions. They were therefore appointed as Monument Attendants in the respondent organization under the quota for ex-servicemen through proper course and made a regular appointment, even though contractual, initially for a period of one year on a consolidated salary of Rs. 10,000/-. They have served for varying periods from 4 to 6 years or even more. When one of them submitted a representation that in other government departments for similarly situated people Rs.15,000/- was being given as consolidated pay, following this the concerned authority took a decision to terminate their services and had terminated their services.

2. The matter was taken up first on 12.09.2017. The applicants prayed for an interim relief at that time to continue in their employment but since the matter related to a mandatory application of jurisdiction we felt that the matter has to be allowed to be heard after reply is filed and then decide it. The matter was thereafter taken up on 10.10.2017 when we had given four more weeks as a last chance to file reply. Thereafter the matter was taken up on 04.12.2017 when we had granted even further four weeks' time to file reply. Thereafter on 22.01.2018 we had granted two more weeks as a last and final chance to file reply. On 22.02.2018 we had noted that in spite of last chance being given to file reply, reply is not filed. Thereafter on 01.03.2018 the learned counsel for the respondents sought two more weeks'

time to file reply and we had allowed it. Thereafter on 02.04.2018 the learned counsel for the respondents was not present but yet we had granted one more opportunity to file reply at a cost of Rs.2,000/- . Thereafter on 18.04.2018 we had not passed any other order and posted it to 22.06.2018 when also we declined to pass any order and posted it on 14.07.2018. Thereafter we had taken up the matter on 16.07.2018 and then posted it to 03.08.2018. On 03.08.2018 we had given a further period of two more weeks for reply as a last chance once again and posted it to 24.08.2018. On 24.08.2018 we had given two more weeks for reply as a last and final chance and posted it to 12.09.2018. Apparently on 12.09.2018 a memo is filed which apparently amounts to granting one of the requests sought for therefore we had posted the matter to 04.10.2018 as we needed elucidation on the points raised by the respondents in their memo. On 04.10.2018 none was present for the respondents therefore the matter was again posted to 11.10.2018. On that date we determined that mere disposal of the representation is not going to merit anybody as applicants had been out of livelihood for more than a year so we needed an explanation as to why their services were terminated or whether they can order an order simpliciter to terminate the services of the employees who had been regularly selected into a reserved post available only for ex-servicemen and why their employment had been terminated. Therefore we had granted two more weeks' time as a last and final chance once again and indicated that on failure to file reply we will pass order on merits and said that cost also should be paid in the interregnum. We had given a copy of the order to Shri

M. Rajakumar, learned counsel for the respondents, to place it before the respondents on that date. Thereafter the matter was taken up on 02.11.2018 when no reply is filed and no cost is also paid therefore we had posted the matter to 12.11.2018 for further orders which is today when we have taken up this matter.

3. At this point of time it is indicated by the learned counsel that they have no further reply other than a memo they have filed. We are quoting from the memo:

“BEFORE THE HON’BLE CENTRAL ADMINISTRATIVE TRIBUNAL,

AT BENGALURU

OA Nos. 170/00489/2017

BETWEEN:

Sri Gopal Bajanthri & Others.,

..... Applicants

AND

Union of India Dept., of ASI

& Others

..... Respondents

MEMO

The Respondents in the above OAs respectfully prays that this Hon’ble Tribunal may please to disposed the above OA by directing the respondents to consider the pending representations if any which were submitted by the applicants as stated in prayer. That the

applicants in the above OAs made one of the prayers that, to direct the respondents to continue the service of the applicants as monument attendants and further requested to consider representation dated 29/06/2016 submitted by the applicants and forwarded by the directorate, department of sainik welfare and resettlement.

Therefore this Hon'ble may take this memo on record and disposed the above OAs by passing the reasoned order in the interest of justice and equity.

Sd/-

Date: 10/09/2018

M. Rajakumar

Advocate for Respondents &

Place: Bengaluru

Senior Central Govt., Counsel"

4. But then as we have found earlier the disposal of representation cannot be of any use to anybody because the crucial question is that:

- 1) How can a contract employee be terminated?
- 2) When a contract employee is terminated from a regularly appointed post, can he be supplanted by any other contract employee or is there any proposal to induct regular employees?

5. These are the points we wanted the respondents to answer in their reply and had specifically asked them to do so in open court after querying

the matter with them. They have not yet said that they are going to appoint regularly selected employees. If they are not going to select any regular employees, 19 posts of Monument Attendants cannot be held vacant in greater public interest. Therefore, since the respondents have not given any reason as to why the services of the applicants were terminated even after repeated queries by the Court, we can only hold that it was done on a whim and fancy of a senior officer.

6. Therefore, what is the function of the Monument Attendants? It has come to the notice of anyone who is concerned that Archaeological Survey of India sites are being regularly pilloried and the press releases issued by them shows that articles are being stolen with impunity and there is nobody to protect them. It is the job of the Monument Attendants to protect them. Therefore, have the respondents failed in their jurisdictional responsibility on a whim and fancy? Without any doubt, they could have terminated a contract employee even though in the case of the applicants who had been regularly selected to a reserved post for ex-servicemen things would have been slightly more difficult. But, without giving them an opportunity of being heard, their livelihood could not have been curtailed, but assuming that they could have curtailed, in the face of mounting thefts of valuable heritage articles from Archaeological Survey of India sites which is found by the mounting number of cases and thousands of artefacts which have been listed as losing from India's heritage sites, no justification can be allowed to the respondents in their failure to protect these. Therefore, since the case put forth in the press releases by the Archaeological Survey of India was

that lack of staff resulted in such things, why add to this lack of staff once again? What was the reason behind it? Was not the services of these people satisfactory or were they found to be also indulging in it? If so, had any police complaint been filed against any of these persons? These we could not elicit from the reply filed by the respondents but, in spite of repeated directions to elicit reply from them, we admit that we have failed. Even imposition of cost could not merit a word from them other than a quite absurd memo filed by them. What is the point in determination of a representation at this stage? There is no point in locking the stable door after the horse had bolted. It should have been done before. This Matter seems to be covered by the order of Hon'ble Apex Court in Food Corporation of India Vs. General Secretary, Food Corporation of India Employees' Union and Others and other connected matters reported in AIR (2018) 9 SCC 464. We quote:

“Abhay Manohar Sapre, J.--

These appeals are directed against the final judgment and order dated 13.12.2006 passed by the High Court of Madras at Chennai in Food Corpn. of India v. Workmen¹ whereby the High Court dismissed the appeals filed by appellant herein.

2) *In order to appreciate the short controversy involved in these appeals, few relevant facts need to be mentioned infra.*

3) *The appellant is a Government of India Undertaking known as “Food Corporation of India” (hereinafter referred to as “the FCI”). The appellant is engaged in the business of sale, procurement, storage and distribution of food grains.*

4) *In order to carry out their business activities, which are spread all over the country, the appellant has established its Branch offices in every State. One such Branch office is at Chennai (TN). The appellant has*

employed a large number of employees to carry out its business operations through their Chennai Branch office with which we are concerned in these appeals.

5) In the year 1992, a dispute arose between the appellant FCI and around 955 employees working in the Branch Office at Chennai as to whether these 955 employees are the employees of the FCI or they are employed by the contract labourers' Society to work in the FCI to carry out their business operations and secondly, whether these 955 employees are entitled to claim regularization of their services as FCI employees.

6) The case of the appellant (FCI), in substance, was that these (955) employees were/are never the employees of the FCI but were/are the employees of a contract labourers' Society though working in the establishment of the FCI for doing their work. It was stated that due to this reason, they are not entitled to claim the status of the employees of the FCI and nor are they entitled to claim any regularization of their services in the set up of the FCI as the employees of the FCI. It was stated that their remedy, if any, would be against the contract labourers' Society engaged by the FCI but not against the FCI.

7) On the other hand, the case of the workers' Union was that these 955 employees are, in fact, the employees of the FCI and being in their regular employment since inception have been discharging their duties regularly for doing the work of the FCI. It was contended that they are therefore entitled to claim the regularization of their services in the set up of the FCI.

8) Since the aforementioned dispute could not be resolved amicably between the appellant and the workers' Union, the Government of India by order dated 06.04.1992 referred the said dispute to the Industrial Tribunal, Madras for its adjudication under Section 10 of the Industrial Disputes Act, 1947.

9) The following reference was made for adjudication (Food Corporation of India case1, SCC OnLine Mad para 4)

"4. ...Whether the action of the management of Food Corporation of India is denying to regularize 955 contract labourers engaged in management of Food Corporation of India, Godown, Avadi through TVK Cooperative Society in

respect of names as given in Annexure is justified ? If not, to what relief they are entitled to?"

10) Both the parties submitted their statements in ID No. 39/1992 & I.D. 55/1993 in support of their respective stand before the Industrial Tribunal. So far as the workers' Union (respondents herein) is concerned, they adduced the evidence to prove their case whereas the appellant (FCI) did not adduce any evidence to prove their case despite affording them an opportunity to adduce.

11) By awards dated 19.02.1997 & 29.07.1998, the Industrial Tribunal answered the reference in favour of the workers' Union and against the appellant. It was held that these 955 employees are entitled to be regularized in the services of the FCI.

12) The appellant (FCI) felt aggrieved and filed writ petitions before the High Court of Madras at Chennai. By order 14.08.2003², the Single Judge dismissed the writ petitions and upheld the award passed by the Industrial Tribunal. The appellant felt aggrieved and filed intra court appeals before the Division Bench.

13) By impugned order, the Division Bench dismissed the writ appeals and affirmed the order² of the Single Judge and the awards of the Industrial Tribunal, which have given rise to filing of the present appeals by way of special leave by the FCI.

14) Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals.

15) We have perused the awards of the Industrial Tribunal, order of the Single Judge² and the impugned order¹. Mere perusal of them would go to show that the Industrial Tribunal examined the question in right perspective on facts and the evidence adduced by the Union so also the Single Judge and lastly, the Division Bench.

16) It is evident that the Tribunal, on appreciating the evidence in its original jurisdiction, rightly concluded that firstly, the agreement with the contract labourer for doing the work had come to an end in 1991 and thereafter it was not renewed; Secondly, all the 955 workers were being paid wages directly by the FCI; Thirdly, the nature of work,

which these workers were performing, was of perennial nature in the set up of the FCI; Fourthly, all 955 workmen were performing their duties as permanent workers; and lastly, no evidence was adduced by the FCI in rebuttal to prove their case against the workers' Union.

17) The writ Court then re-examined the issues so also the Division Bench in the appeals with a view to find out as to whether the findings of the Industrial Tribunal are factually and legally sustainable or not. The High Court, by reasoned orders, passed in writ petitions and appeals affirmed the findings observing that none of the findings recorded by the Industrial Tribunal, which were impugned in the writ petitions and appeals, suffer from any kind of perversity or illegality so as to call for any interference by the High Court in writ petitions and appeals.

18) We are inclined to affirm the concurrent findings because, in our opinion, none of the findings though assailed in these appeals call for any interference.

19) In our opinion, the very fact that the appellant (FCI) failed to adduce any evidence to prove their case, the Industrial Tribunal was justified in drawing adverse inference against them. Indeed, nothing prevented the appellant from adducing evidence to prove the real state of affairs prevailing in their set up relating to these workers. It was, however, not done by the FCI for the reasons best known to them. It was not the case of the appellant (FCI) that they were not afforded any opportunity to adduce evidence and nor any attempt was made by the appellant to adduce any evidence in the writ petitions or in the intra court appeals and lastly even in these appeals to prove their case.

20) That apart, in our opinion, the four findings of fact recorded against the appellant by the Industrial Tribunal were based on sufficient evidence adduced by the workers' Union. Indeed, these findings being concurrent in nature are binding on this Court while hearing appeals under Article 136 of the Constitution.

21) These findings, in our opinion, were equally relevant for answering the question referred to the Tribunal and further they did not suffer from any

kind of perversity or illegality so as to call for any interference as rightly held by the High Court.

22) *In the light of the foregoing discussion, the reference was rightly answered in favour of the workers' Union.*

23) *It was then brought to our notice that similar industrial reference alike the one in the present case was also made in relation to the FCI Branch at West Bengal and the said reference was answered in favour of workers' Union. The matter was then taken to the High Court¹ unsuccessfully and then carried to this Court at the instance of the FCI in Civil Appeal No.7452 of 2008 and the appeal was dismissed on 20.07.2017² resulting in upholding the award of the Industrial Tribunal. It was stated that the FCI then implemented the award, as is clear from the notice on 05.10.2017, in favour of the concerned workers. Be that as it may, since we have upheld the impugned order in this case on the facts arising in the case at hand, we need not place reliance on any other matter, which was not before the High Court.*

24) *In the light of the foregoing discussion and examining the issues arising in these appeals from all angles, we are of the considered opinion that the appellant (FCI) failed to make out any which may call for any interference in the impugned order.*

25) *In view of the foregoing discussion, the appeals fail and are accordingly dismissed".*

¹ *Food Corpn. Of India v. Workmen, 2006 SCC OnLine Mad 1211 : (2007) 5 SLR 120*

² *Food Corpn. Of India v. Workmen, 2003 SCC OnLine Mad 1092*

³ *W.B. FCI Workmen's Union v. Food Corpn. Of India, FMA No. 1904 of 2003, order dated 03.05.2007*

⁴ *Food Corpn. Of India v. W.B. FCI Workmen's Union, (2018) 9 SCC 469*

7. Therefore since no contractual employee can be substituted, according to various decisions of the Hon'ble Apex Court, by another contract employee and without being heard the livelihood of no person can

be curtailed unless specific reasons exist thereof, we hold that the termination order is bad in law and hereby quash it. We further declare that therefore applicants have become eligible to receive from the respondents the pay and allowances which they would have normally received as if they are continuing in service. They will be immediately taken back into service and within two months next the entire pay of this period will be restored to them.

8. But then, if the circumstances so warrant, we will reserve a liberty to the respondents to issue show cause notices to the applicants if their services are found wanting and after giving an opportunity to them pass appropriate order as they seem fit to which we will add a counteracting liberty to the applicants also to challenge it at that point of time if such situation arises.

9. This litigation has prolonged for all these while because of the recalcitrance attitude of the respondents. Therefore the earlier cost of Rs.2,000/- for non-filing of reply is amplified to the effect that Rs.2,000/- cost to be paid to the applicants, i.e., to each of them.

10. Therefore the OA is allowed with cost of Rs.38,000/-.

(DINESH SHARMA)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00489/2017

Annexure A1 Copy of the order of appointment dated 08.07.2011 of applicant No. 1

Annexure A2 Copy of the order of appointment dated 30.08.2011 of applicant No. 2

Annexure A3 Copy of the order of appointment dated 12.06.2012 of applicant No. 3

Annexure A4 Copy of the order of appointment dated 12.06.2012 of applicant No. 4

Annexure A5 Copy of the order of appointment dated 12.06.2012 of applicant No. 5

Annexure A6 Copy of the order of appointment dated 12.06.2012 of applicant No. 6

Annexure A7 Copy of the order of appointment dated 13.06.2012 of applicant No. 7

Annexure A8 Copy of the order of appointment dated 13.06.2012 of applicant No. 8

Annexure A9 Copy of the order of appointment dated 13.06.2012 of applicant No. 9

Annexure A10 Copy of the order of appointment dated 13.06.2012 of applicant No. 10

Annexure A11 Copy of the order of appointment dated 30.08.2012 of applicants No. 11 to 17

Annexure A12 Copy of the order of appointment dated 30.08.2012 of applicant No. 18

Annexure A13 Copy of the order of appointment dated 18.03.2013 of applicant No. 19

Annexure A14 Copy of the representation dated 29.06.2016

Annexure A15 Copy of the Office Order dated 05.07.2017

Annexure A16 Copy of the letter dated 11.07.2017

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