

OA.No.170/01540-01543/2018/CAT/Bangalore Bench

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01540-01543/2018

DATED THIS THE 28th DAY OF NOVEMBER, 2018

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

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

1. D.N.Paramesha
S/o.Late.Nanjundappa K.N.
Aged: 34 years
Working as Clerk-cum-Typist
All India Institute of Speech and Hearing
Manasagangothri, Mysuru-570 006.
R/o.MIG 937, 2nd Stage
B.Block, J.P.Nagar, Mysuru-570 005.

2. M.Prasad
S/o.Late.Maraiah S.
Aged: 33 years
Working as Clerk-cum-Typist
All India Institute of Speech and Hearing
Manasagangothri, Mysuru-570006.
R/o.No.79, A Block
Jalapuri Police Quarters, Mysuru-570 019.

3. M.R.Chethan
Aged: 36 years
Working as Administrative Assistant
All India Institute of Speech and Hearing
Manasagangothri, Mysuru-570006.
R/o.No.544, Dewan's Road
Chamaraja Mohalla, Mysuru-570 004.

4. G.Kumar
S/o Gurusiddaiah M.C.
Aged: 35 years
Working as Administrative Assistant
All India Institute of Speech and Hearing
Manasagangothri, Mysuru-570006.
R/o No.2, LIG, 15th Cross
3rd Stage, 3rd Main, Gokulam, Mysuru-570 002.

....Applicants

(By Advocate Sri Ranganath S.Jois)

Vs.

1. Union of India
Represented by its Secretary
Ministry of Health and Family Welfare
Nirman Bhavan
New Delhi-110108.
2. The All India Institute of Speech

and Hearing
"Naimisham" Campus
Manasagangothri, Mysuru-570006
Represented by its Director.

...Respondents

(By Advocates Sri K.Ananda for R2)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicants have filed the present OA seeking the following relief:

- a) Issue such writ, order or direction to the respondents, to continue the services of the applicants No.2 to 4 in the present status and the posts held by them till the completion of 10 years of service and not to terminate their services on expiry of the contract, as the same is arbitrary, illegal, malafide and violative of Articles 14, 16(1) and 21 of the Constitution of India;*
- b) Issue a consequential direction to the respondents in particular the 2nd respondent to regularize the services of all the applicants on the date they complete 10 years of service in their respective posts and to extend all the consequential benefits including monetary benefits of pay and emoluments.*

2. The applicants are all similarly situated persons working on contract basis in Group-C posts of LDC/Typist/Administrative Assistant in the 2nd respondent Institute i.e. All India Institute of Speech and Hearing(AIISH) which is an autonomous body of the Ministry of Health and Family Welfare Services, Govt. of India(1st respondent). The copies of the initial appointment orders of the applicants and service certificates are produced as Annexures-A1 to A4. Before being renewed their appointment in the year 2017, they were issued letters dtd.7.9.2017 & 12.9.2017(Annexures-A5 & A6) asking them to appear for General English/Typewriting Skill Test. Since they succeeded in the said tests, they were issued the latest orders of appointment on 10.10.2017, 2.1.2017 & 3.10.2017 respectively renewing their appointments for a further period of 12 months and 11 months(Annexure-A7, A8, A9 & A10). The 1st applicant has completed 10 years of service as on 23.06.2018 as his date of

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joining the service being 23.6.2008. The 2nd applicant joined service on 20.11.2008 and thus he completes 10 years of service on 20.11.2018. The 3rd applicant will complete 10 years of service by 09.11.2019 as his date of joining the service is 09.11.2009. Likewise, 4th applicant will also complete 10 years of service by 10.11.2020 as his date of joining is 10.11.2010. The applicants submit that the respondents to make regular appointment to certain other posts newly sanctioned, issued a notification vide Advertisement No.15/2016(Annexure-A11) wherein 7 posts of LDC, one post of Clerk-cum-Typist and other posts were called for. The applicants had applied for the same but were not given weightage for the long service rendered by them though they were qualified for the posts. Therefore, they filed OA.No.458/2017 seeking weightage in the fresh appointment. But the same was dismissed by the Tribunal on the ground that there is no provision for weightage and the applicants reserve their right to file a review as regards the said decision. Hence, they filed the present application urging their right to be considered for regularization and continuation of service as an independent right, particularly having regard to the threat of termination of their services during the month of Nov.2018.

3. They further submit that similarly situated persons like the applicants in the same Institute have filed OA.No.282-286/2018 wherein an interim order dtd.17.4.2018(Annexure-A12) has been granted to continue their services and not to replace their services by any outsourcing or otherwise. The 2nd respondent had on earlier occasion regularized several contract employees who have rendered short service of 3-6 years viz. Sri K.T.Narasimha Prasad, A.R.Keerthi who are earlier working on contract basis have been regularised by the Institute. Hence, non-regularisation of their services who have rendered more than 8 to 10 years of service amounts to discrimination and in

violation of Article 14 and 16(1) of the Constitution of India. Further they have become age barred to compete with other new candidates for selection at this stage. Before renewing their contract during Sept. 2017, they have been once again subjected to skill test/typing test in which they have succeeded. The Hon'ble Apex Court in Umadevi's case including the decision in Sheo Narain Nagar vs. State of UP & others decided on 13.11.2017 has held at para-8 that the judgment in Umadevi's case cannot be used to deny and exploit the contract employees even after 13 years of the judgment. Since their appointments were made after the judgment in Umadevi's case and their services have been used for nearly 10 years, they are entitled to be considered for regularization.

4. The 2nd respondent has filed reply statement wherein it is submitted that All India Institute of Speech and Hearing(AIISH), Mysore is an autonomous body under the Administrative control of Ministry of Health and Family Welfare and is wholly funded by the Govt. of India. The Director of the Institute carries out the functions under the guidance of the Executive Council and Bye-laws and Rules and Regulations framed by the Executive Council of the Institute.
5. All the applicants were engaged on contract basis for various posts for temporary period against contract posts and not against regular sanctioned posts and they joined the Institute after having accepted the terms and conditions of contract appointment. The terms of contract appointments are clear and unambiguous wherein it is stipulated that 'the appointment is purely temporary and may be terminated at any time without assigning any reason by the competent authority and this offer does not confer any right or title to claim permanent appointment at AIISH, Mysuru. Admittedly, all the applicants accepted these terms and conditions and reported for duty in the 2nd

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respondent Institution. The copies of offer of contract appointment and the
declaration of the applicants are produced as Annexures-R1 to R4.

6. The 2nd respondent in his reply stated the details of procedure for sanction of a post according to which, “the requirement of various posts is submitted through a proposal to the Standing Finance Committee which after looking into the financial outgo and justification provided by the Institution will either recommend or seek further clarification from the Institute. Once the Standing Finance Committee recommends the proposal, the recommendations are placed before the Executive Council of the Institute which is headed by the Union Minister of Health & Family Welfare and the proposal for creation of posts are recommended by the Executive Council to be examined by the Ministry at its Head Quarters. The Ministry after examining the proposal will forward the proposal to the Finance Ministry who will then give clearance. The post becomes sanctioned posts only when the Finance Ministry gives its approval and is cleared for filling by the Ministry of Health and Family Welfare”. Therefore, in respect of the contract posts held by the applicants, the above procedure was not followed and no sanctioned posts of Administrative Assistants exist in the 2nd respondent Institution and therefore, the contention of the applicants that they were appointed on contract basis in Group-C posts are false and not sustainable in the eye of law. The list of sanctioned posts to the 2nd respondent institution is produced as Annexure-R5. The applicants were subjected to English Typewriting/Skill Test only to establish that the 2nd respondent Institute wants to check their suitability for the said contract post and it is not to be deemed as renewal of the existing contract. Whenever the applicants were appointed on contract, it was only through fresh contract terms and it is not termed as renewal. Therefore, the claim of the applicants that they have been continued in the service for

several years is not correct and there is intermittent break between any two spells of contract period. The number of years cannot be cumulative effect of several contracts, as with each fresh contract, they joined the 2nd respondent institution afresh.

7. The respondents further submit that the applicants had in fact applied for the regular posts advertised by them in Advt.No.15/2016, but were not found eligible for consideration as they did not fulfil the eligibility criteria as fixed for the regular appointment and therefore, the OA.458/2017 filed by one Smt.Sindhu and by all the applicants was rightly dismissed by this Tribunal. Regarding regularization of two contract employees, the respondents submit that Sri K.P.Narasimha Prasad was initially appointed on contract basis on a permanent sanctioned post of LDC and thereafter he was regularly appointed to the said post. Further Ms.A.R.Kirthi was initially on contract basis and thereafter she had participated in the Direct Recruitment Process and got selected to the post of Public Information Officer and therefore, the set of facts of these two employees are entirely different with the present case. The appointment of Sri K.P.Narasimha Prasad and Ms.A.R.Kirthi was against the sanctioned posts of the 2nd respondent Institution whereas the appointment of the applicants was not against the regular sanctioned posts and therefore, they cannot derive any benefits by citing the above cases which are not similar to the applicants' case. The claim of the applicants that they have completed more than 8 & 9 years of contract service and 10 years in the case of 1st applicant is not a ground for regularization as they have been appointed for a specific period and have been issued with fresh contract appointment every time with fresh terms and conditions and it cannot be treated that they have completed several years of service continuously and therefore, the applicants are not entitled for regularization. The applicants had several

opportunities to seek job elsewhere and 2nd respondent institute never stopped them seeking job. In fact, during the contract service, the applicants have applied for regular posts in some other institutions and filed a representation before the 2nd respondent for issuing the Experience Certificate and on the request of the applicants, the 2nd respondent institution issued No Objection Certificates and also Experience Certificates(Annexures-R6, R7, R8, R9, R10 & R11) to enable them to get job in other institutions where they have applied for. Since they were not selected and appointed to the said posts where they have applied, they have continued their contract service in the 2nd respondent Institute by accepting the terms and conditions of the contract appointment and now their claim that they are age barred is not sustainable in the eye of law as they knew well the terms and conditions of their contract appointment. Every time they were provided fresh offer of contract and they accepted the same.

8. The respondents further submit that the Hon'ble Supreme Court has categorically held in the case of Umadevi that if any person appointed against the regular sanctioned post and continued for long years then only the question of regularization will arise. In the instant case, the applicants have not been appointed against the regular sanctioned posts and therefore, the applicants are not entitled to seek regularization as per the law laid down by Hon'ble Supreme Court in Umadevi's case and other subsequent judgment. As per para-44 of the judgment in Umadevi's case, the term of the contract employee will end on the day of completion of contract period and contract employees have no right to seek extension of their contract service after completion of their contract appointment period. The term of 1st applicant has already expired on 01.10.2018 and the term of 3rd & 4th applicants has also expired on 01.10.2018 itself and the term of the 2nd applicant will expire on

05.12.2018 and therefore, the applicants 1,3 & 4 have no right to continue in the contract posts even after expiry of their contract period. Likewise, the 2nd applicant also has no right to continue in the contract service after completion of his contract period. In view of regular appointments have been made in the 2nd respondent Institution, their services are not required to the Institution as they were appointed on contract basis. It is submitted that the 2nd respondent institution has already got instructions from the Ministry not to resort to continued engagement of contract staff after the proposal of the institute for upgradation of the post is approved. In view of the decision of the Ministry, continuation of the applicants on contract basis cannot be acceded to. Continuing the persons on contract service when the institute does not require their services will only be a drain on the exchequer and therefore, the 2nd respondent institute cannot afford to make un-gainful expenditure by retaining the persons when their services are not required and therefore, the OA is liable to be dismissed.

9. The applicants have filed rejoinder reiterating the submissions already made in the OA. They submit that though their initial appointment is termed as 'contract appointment', the fact remains that they were appointed against sanctioned posts as is evident from the order of appointment itself. The posts were created and are in existence in the Department. Even though they were continued from time to time, on renewal of contract, there are posts which are called 'Plan' posts, but continued from time to time for nearly 10 years and now they are sought to be terminated only on the ground that their appointment is on contract basis. They are entitled for regularisation having regard to the long service rendered by them and their initial appointment, being irregular in the sense that it was on contract, but it was against sanctioned posts and the requirement of selection have been complied with

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including the educational qualification. The 1st applicant was appointed on 23.6.2008 after due paper publication and the 2nd applicant was appointed on 20.11.2008 through Employment Exchange Notification and as per the judgment of the Hon'ble Supreme Court in *UOI vs. N.Haragopal reported in 1987 (3) SCC P.308*, the said appointment is in compliance with Articles 14 & 16(1) of the Constitution. The 3rd applicant was appointed on 9.11.2009 and is working as such as he was subjected to the process of selection at the time of appointment. The 4th applicant joined service on 10.11.2010 in pursuance of a notification published in the newspaper. Thus, all the applicants have been duly selected and therefore, their appointment is legal except that it is 'contract' and the same required to be continued.

10. The applicants further submitted that the similar matters have already been decided by this Tribunal and the contract employees cannot be replaced by another set of contract employees and therefore entitled to be continued till the regular appointment is made as per the decision of the Principal Bench of CAT in *Dinesh Kumar Goutham vs. UOI in OA.No.1405/2011* decided on 21.11.2011(Annexure-A13). They submit that the appointment to the Institute is made only at local level by the Institute itself and not UPSC or SSC. When the procedure followed by the authority who issues the appointment orders as the Director of the Institute and the said procedure has been followed at the time of appointment of the application, rejection of the claim of the applicants for regularisation is not proper. Under similar circumstances in the case of three officials namely K.P.Narasimha Prasad, A.R.Keerthi and another official, even though they were appointed on contract for 3 years, their services have been regularised and there is no justification not to consider the case of the applicants. In case of Shri K.P.Narasimha Prasad, respondents submit that he was appointed on contract basis, but later regularly appointed. But they have

not produced the orders as to how he was appointed. So far as Keerthi is concerned, they said that she was allowed to participate in the recruitment and was selected. If that is the case, the applicants are also entitled for similar selection, particularly when they have put in 8 to 10 years of service. The respondents by showing discrimination are only trying to harass them by taking advantage of their position as 'contract' employees and denying them the right of livelihood and the benefit of the judgment of the Hon'ble Apex Court regarding regularisation.

11. We have heard the Learned Counsel for both the parties. The Learned Counsels for the applicants and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA, reply statement and rejoinder.

12. We have gone through the main contentions of the applicants and reply of the respondents in detail. The applicants have contended that they have been appointed after following a due process of selection to sanctioned posts. The respondents categorically state that the appointments were purely on contract basis and the applicants were not selected by following the process of selection prescribed by the Govt. of India and DOPT guidelines with regard to the age, reservation policy, open advertisements and other selection processes. The respondents also state that the category of Administrative Assistant post does not exist in the organisation and that the applicants were given a fixed salary as per the contract and not a scale of pay as would be done in the case of regular posts. We are unable to accept the contention of the applicants that they have been appointed to regular sanctioned posts. There are no sanctioned posts of Administrative Assistant in the organisation and in the case of posts of Clerk-cum-Typists, there is only one post which is

OA.No.170/01540-01543/2018/CAT/Bangalore Bench sanctioned and that has already been filled up. Further, they have been given a fixed term of appointment along with fixed salary and have not been brought to the category of temporary status etc. so as to draw support from the judicial pronouncements cited by them viz. Sheo Narian Nagar vs. State of UP & others etc. The respondents have also categorically stated that other cases cited by the applicants are not the same inasmuch as one person has been appointed on a permanent sanctioned post of one Lower Division Clerk initially on contract basis and thereafter was regularly appointed. And in another case, the person who is taken on contract basis initially had participated in a direct recruitment process and got selected to the post of Public Information Officer and therefore these cases will not be of any help to the case of the applicants. It is also clear that the respondents have not appointed another set of contract employees replacing the applicants. The applicants are entitled for engagement only as per the contract agreed to by them.

13. We therefore find no merit in the application. The OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicants in OA.No.170/01540-01543/2018

- Annexure-A1: Copy of the certificate in respect of 1st applicant
- Annexure-A2: Copy of the experience certificate in respect of 2nd applicant
- Annexure-A3: Copy of the certificate in respect of 3rd applicant
- Annexure-A4: Copy of the experience certificate in respect of 4th applicant
- Annexure-A5: Copy of the OM dtd.7.9.2017
- Annexure-A6: Copy of the OM dtd.12.9.2017
- Annexure-A7: Copy of the order dtd.10.10.2017 in respect of 1st applicant
- Annexure-A8: Copy of the order dtd.2.1.2017 in respect of 2nd applicant
- Annexure-A9: Copy of the order dtd.3.10.2017 in respect of 3rd applicant
- Annexure-A10: Copy of the order dtd.3.10.2017 in respect of 4th applicant
- Annexure-A11: Copy of the advertisement notification dtd.25.10.2016

Annexure-A12: Copy of the interim order dtd.17.4.2018 in OA.No.282-286/2018

Annexures with reply statement:

Annexure-R1: Copy of the Contract Appointment order of the applicant No.1
Annexure-R2: Copy of the Contract Appointment order of the applicant No.2
Annexure-R3: Copy of the Contract Appointment order of the applicant No.3
Annexure-R4: Copy of the Contract Appointment order of the applicant No.4
Annexure-R5: Copy of the List of Sanction posts to the 2nd respondent Institute
Annexure-R6: Copy of the representation dtd.25.07.2012 filed by the applicant No.1
Annexure-R7: Copy of the representation dtd.31.07.2012 filed by the applicant No.2
Annexure-R8: Copy of the No Objection Certificate dtd.13.02.2017
Annexure-R9: Copy of the Certificate dtd.25.01.2018
Annexure-R10: Copy of the No Objection Certificate dtd.13.02.2017
Annexure-R11: Copy of the No Objection Certificate dtd.13.02.2017

Annexures with rejoinder:

Annexure-A13: Copy of the OA.No.1405/2011 decided on 21.11.2011
Annexure-A14: Copy of the creation of posts
