

UNION OF INDIA

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v.

DINESH KUMAR SAXENA AND ORS. ETC. ETC.

FEBRUARY 24, 1995

[S.C. AGRAWAL AND MRS. SUJATA V. MANOHAR, JJ.]

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Service Law—Directorate of Census Operations—Appointments on contract basis for a limited and fixed duration on a fixed pay—No scheme for regularisation can be framed—May be considered for appointment in regular vacancies available to direct recruits if qualified and eligible—Length of temporary service may be considered for relaxing the age bar—Staff selection board may consider giving weightage to previous service and service record.

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For the purpose of the census conducted in the year 1981, approximately 932 temporary class C and D posts were created in the Directorate of Census Operation, U.P. Temporary appointments were made to such class C and D posts. These posts included the posts of Compilers, Loaders, Checkers and Supervisors. These posts were continued upto 30-6-1984 when all these appointment were terminated as the work connected with the 1981 census was over. Some of the persons whose services were thus terminated filed a writ petition in the High Court challenging their termination and for other reliefs. The High Court observing that the employment of these employees working in the census Department was time bound and came to an end on 30-6-1984 and that the posts to which these employees were appointed had also stood abolished and there was no budgetary sanction for those posts beyond 30-6-1984, held that the petitioners could not be granted the relief prayed for. However, in order to safeguard the interest of the retrenched employees, it ordered the respondents to make any fresh recruitment in the Census Department or for its allied work only from amongst the retrenched employees. A special leave petition against this order was dismissed. Thereafter just before the 1991 census, an Association of these retrenched employees filed a writ petition before the High Court.

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The High Court passed an interim order directing the State Government to appoint these retrenched employees in the Census Department if they were found eligible and fit for the job. 465 employees who were

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A retrenched on 30-6-1984 and who had applied and found eligible, were re-engaged on a fixed pay for a fixed period on contract basis in the Regional Tabulation Offices. The work of the Tabulation Offices was temporary in nature, being connected with the 1991 Census. On completion of work, the Regional Tabulation Offices were closed down on 31-12-1992. The engagement of employees who were re-engaged also came to an end.

B Some of the affected employees in the Census Department made an application in 1992 before the Central Administrative Tribunal for their re-employment/absorption/adjustment in the Census Department or in any other Government Department. The Tribunal directed the Union of India to consider continuing the applicants in their present posts in case the census work remains incomplete, in preference to outsiders.

C Another application was filed by some ex-employees of the Census Department before another Bench of the Central Administrative Tribunal. The Tribunal directed the Union of India to frame a scheme within three months for giving regular appointment to 900 and odd employees who had been temporarily appointed for the 1981 census, as and when vacancies arose and to consider their case for regularisation and that these persons should be given 'priority' over the staff subsequently appointed. Coding and Editing Cells were opened in March 1993 for the 1991 Census operations. The employees retrenched on 30-6-1984 and 31-12-1992 were engaged on a fixed pay contract basis for this work. The Coding and Editing Cells were closed down on 28-2-1994 on completion of work. The employees who were engaged for the Coding and Editing Cells for the Coding and Editing Cells for the 1991 census operation were also retrenched on 28-2-1994.

F The Union of India filed these appeals against the judgments of the Tribunals.

G The respondents, who were the retrenched employees, urged that they had worked in the Census Department for six years and hence their appointment should be regularised.

Partly allowing the appeals, this Court

H HELD : 1.1. In the instant case, there was no regular work available in the Census Department. The additional work which was available was

periodic in nature, available only at the end of each decennial when census operations are carried out. The additional work lasts for a period of about 2 or 3 years. Hence additional hands were required only for this periodical increase in work and while the work subsisted. They were, therefore, engaged for a fixed period (during which the additional work existed) and they were paid a fixed salary. [348-E-F]

These employees, who had been engaged on a contract basis for a limited and fixed duration and on a fixed pay, could not be directed to be absorbed in any other department of the Government. [349-F]

1.2. Ends of justice will be met if the Directorate of Census Operations U.P. is directed to consider those respondents, who had worked temporarily in connection with 1981 and/or 1991 census operations, and who had been subsequently retrenched, for appointments in any regular vacancies which might arise in the Directorate of Census Operation and which could be filled by direct recruitment, if such employees were otherwise qualified and eligibel for these posts. For this purpose the length of temporary service of such employees in the Directorate of Census Operations should be considered for relaxing the age bar, if any, for such appointment. Suitable rules may be made and conditions laid down in this connection by the appellant. The appellants and/or Staff Selection Commission may also consider giving weightage to the previous service rendered by such employees in the Census Department and their past service record in the Census Department for the purpose of their selection to the regular posts. [349-G-H, 350-A-B]

Daily Rated Casual Labour etc. v. Union of India and others, [1988] 1 SCC 122; *Karnataka State Private College Stop-Gap Lectureres Association v. State of Karnataka and others*, [1992] 2 SCC 29; *Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and others v. State of Karnataka and others*, [1990] 2 SCC 396; *Director, Institute of Management Development U.P. v. Puspa Srivastava (Smt.)*, [1992] 4 SCC 33 and *Sandeep Kumar and others etc. v. State of Uttar Pradesh and others etc.*, [1993] Suppl. 1 SCC 525, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 731-69 of 1994 etc. etc.

From the Judgment and Order dated 26.2.93 of the Central Ad-

A ministrative Tribunal, Lucknow Bench in O.A. No. 385, 491/91, 38/93, 46/91, 84/93, 493/91, 82/93, 116/91, 208/91, 374, 304, 375/91, 45/92, 494, 371, 420, 421, 422/91, 49, 60/93, 471, 436, 434, 433, 435/92, 57/93, 351/91, 88/91, 77, 22/93, 676/92, 31, 23, 27, 63, 61, 15, 62 and 64 of 1993.

B Altaf Ahmed, Additional Solicitor General, N.N. Goswami, K.V. Sinha, I.C. Sharma, Hemant Sharma, W.S. Qadri, A.S. Rawat, P. Parmeswaran, L.P. Dhir, M.M. Kashyap, R.K. Bhat, P.S. Jha, Subhash Sharma, Shakeel Ahmed Syed, R.C. Srivastava, Rani chhabra, and E.C. Vidya Sagar for the appearing parties.

C Respondent in person.

The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. Delay condoned.

D Leave granted in all the special leave petitions.

Applications for intervention are allowed as the applicants are in a position similar to that to the respondents in these appeals. Some of the applications for intervention were made after the hearing of these appeals was over and the judgment was reserved. Normally, we would not have allowed such applications. But in view of the fact that the applicants in these applications are also similar situated and would, in any case, be governed by the ratio of the judgment, we have allowed these application also as a special case.

F A Census is conducted in the country ever 10 years under the Census Act of 1948, under the directions of the Registrar General and Census Commissioner of India. For the purpose of conducting the census, Directorates of Census Operations have been established in each State and Union Territory of India. The Directorates of Census Operations work under the Registrar General and Census Commissioner of India.

G For carrying on the normal functions of the Directorate of Census Operations in the State of U.P. certain permanent posts have been sanctioned. At the time, however, of each decennial census, which is an exercise carried out on a gigtic scale every 10 years, a large number of extra temporary posts are required to be created for a short period. Some of these posts are in connection with the manual tabulation and processing of

data collected during the field operations. The extra work being limited in duration, such posts are created for a fixed period and carry a fixed pay. Once the period specified is over, these posts are abolished and the temporary staff appointed against these temporary posts is disengaged. The appointments to such temporary posts are only made for a fixed period and on the clear basis that these appointments are purely short-term. The incumbents would not be entitled to any regular appointment on the basis of such a fixed term appointment.

For the purposes of the census conducted in the year 1981, approximately 932 temporary Class C and D posts were created in the Directorate of Census Operations, U.P. Temporary appointments were made to such Class C and D posts. These posts included the posts of Compilers, Coders, Checkers and Supervisors. These posts were continued upto 30.6.1984 when all these appointments were terminated as the work connected with the 1981 census was over.

Some of the persons whose services were thus terminated filed a writ petition, being Writ Petition No. 3235 of 1984 before the Lucknow Bench of the Allahabad High Court challenging their termination and for other reliefs. The Allahabad High Court in its judgment and order dated 16.7.1984 noted the stand taken by the Union of India that the employment of these employees working in the Census Department was time-bound and came to an end on 30.6.1984. It also noted that the posts to which these employees were appointed had also stood abolished and there was no budgetary sanction for these posts beyond 30.6.1984. The High Court, therefore, held that the petitioners before it could not be granted the relief prayed for. However in order to safeguard the interest of the retrenched employees, it ordered the respondents to make any fresh recruitment in the Census Department or for its allied work only from amongst the retrenched employees. This order was made in connection with the 900 and odd employees whose services had been dispensed with on 30.6.1984. A special leave petition against this order was dismissed.

Thereafter just before the 1991 census, an Association of these retrenched employees filed a Writ Petition No. 3748 of 1990 before the Lucknow Bench of the Allahabad High Court in which the High Court gave an interim order dated 18.12.1990 in which it gave a direction to the State Government to appoint these retrenched employees in the Census Depart-

A ment if they were found eligible and fit for the job.

B In May 1991, Regional Tabulation Offices were opened for the 1991
 C census operations. In view of the above order of the Allahabad High Court,
 D such of the employees who were retrenched on 30.6.1984 and who applied
 E and were eligible, were re-engaged on a fixed pay for a fixed period on
 contract basis in the Regional Tabulation Offices. The work of the Tabula-
 tion Offices was temporary in nature, being connected with the 1991
 census. As a result, 465 retrenched employees were re-employed in the
 Regional Tabulation Offices. On completion of work, the Regional Tabula-
 tion Offices were closed down on 31.12.1992. Thereupon the engagement
 of employees who were re-engaged in the Regional Tabulation Offices also
 came to an end. No budgetary sanction for the posts in Regional Tabula-
 tion Offices existed beyond 31st of December, 1992. However, Coding and
 Editing Cells were opened in March 1993 for the 1991 census operations.
 As per the above orders, the retrenched employees of 30.6.1984 and of
 31.12.1992 were engaged on a fixed pay contract basis for this work. The
 Coding and Editing Cells were closed down on 28.2.1994 on completion of
 work. The budgetary sanction for Coding and Editing Cells also lapsed on
 28.2.1994. Consequently, the employees who were engaged for the Coding
 and Editing Cells for the 1991 census operations were also retrenched on
 28.2.1994. It is necessary to note that 465 posts were created in March 1993
 for Coding and Editing Cells and these posts were filled entirely by the
 previously retrenched employees.

F Some of the affected employees in the Census Department made an
 application being OA No. 1493 of 1992 before the Central Administrative
 Tribunal, Principal Bench, New Delhi for their re-employment/absorp-
 G tion/adjustment in the Census Department or in any other Government
 Department. The Tribunal, by its order dated 6.1.1993, directed the
 respondents i.e. Union of India to consider continuing the applicants in
 their present posts in case the census work remains incomplete, in
 preference to outsiders. It was in the context of this order that when the
 Coding and Editing Cells were opened in March 1993, re-employment was
 given to 465 retrenched employee as set out above.

H Around the same time, another application was filed by some ex-
 employees of the Census Department who were similarly situated being
 OA No. 385 of 1991 before the Lucknow Bench of the Central Administra-

tive Tribunal. The Lucknow Bench of the Central Administrative Tribunal, by its order dated 26.2.1993, directed the respondents to frame a scheme for giving regular appointments to 900 and odd employees who had been temporarily appointed for the 1981 census, as and when vacancies arose and to consider their case for regularisation. The respondents were directed to frame a scheme within three months which would contain the appointment of 900 or remaining employees and their absorption and regularisation in the Census Department or in any other department. In the meanwhile. The posts were not to be filled by outsiders. It was further directed that these persons would be given "priority" over the staff subsequently appointed. The Lucknow Bench of the Central Administrative Tribunal in another OA No. 491 of 1991 passed on order dated 12.3.1993 in which it once again directed the framing of a scheme for absorption of these retrenched employees of the Census Department in the Central or State Government Departments, giving them "priority" over new-comers or subsequently appointed or other retrenched persons. Once again, the respondents were directed to frame a scheme within a period of three months. Being aggrieved by these two orders of the Lucknow Bench of the Central Administrative Tribunal, the Union of India has filed the present appeals before us.

It is urged on behalf of the respondents, who are the retrenched employees, that they have worked in the Census Department for six years and hence their appointments should be regularised. They have relied upon a decision of this Court in the case of *Daily Rated Casual Labour etc. v. Union of India and others*, [1988] 1 SCC 122. In this case, in the Posts and Telegraphs Department there were daily rated casual employees who were working in that capacity for a least 10 years. It was found that they were doing the same work in the unskilled, semi-skilled or skilled category, as the case may be, as regular workers - though at much lower pay. This Court held that temporary employees or casual labourers should not be engaged in that capacity for long periods of time and that a scheme should be prepared on a rational basis for absorbing casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department.

Similarly, in the case of *Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka and others*, [1992] 2 SCC 29 teachers who were appointed on a temporary basis on a fixed salary were

A continued with breaks for 8 to 10 years. But they were not considered for regular appointments on the ground of such appointments being contrary to the reservation policy of the State. Having regard to these circumstances, this Court directed their regularisation and payment of emoluments to them on a par with the regular teachers.

B In the case of *Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and others v. State of Karnataka and others*, [1990] 2 SCC 396 daily rated and monthly rated employees were continued for long periods of time and were not given parity of pay with regular employees doing similar work. The Court directed regularisation of service of workers who had completed 10 years of service immediately; and for regularisation of the remaining workers in a phased manner.

D In all these cases work of a permanent or semi-permanent nature existed in the Government Departments concerned which was got done through casual employees at lower or fixed salaries. The very fact that these casual employees had continuously worked in the concerned department for long periods like 8 to 10 years in each of the above cases showed that there was enough work available in the department on a permanent or long-term basis which, the Court held, should be done through regular employment and not through engaging casual workers. In these circumstances, this Court directed either regularisation of daily-rated workers or preparation of a scheme for the regulation of these workers in the concerned department. In the present case, however, the additional work which is available is periodic in nature, available only at the end of each decennial when census operations are carried out. The additional work lasts for a period of about 2 or 3 years. Hence additional hands are required only for this periodical increase in work and while the work subsists. They are, therefore, engaged for a fixed period (during which the additional work exists) and they are paid a fixed salary. It is difficult to see how such employees can be regularised since there is no regular work available in the department for them.

G This Court has not directed regularisation of employees if work is not available for them. Thus, in the case of *Director, Institute of Management Development U.P. v. Pushpa Srivastava (Smt.)*, [1992] 4 SCC 33 the appointment of the respondent was purely contractual and on an *ad-hoc* basis on a consolidated pay for a fixed period. The period of contract was

extended for one year and thereafter the post was abolished. This Court held that looking to the nature of appointment, since the contractual period had expired, the respondent had no right to continue.

In the case of *Sandeep Kumar and others etc. v. State of Uttar Pradesh and others etc.*, [1993] Suppl. 1 SCC 525 daily-rated Junior Engineers were employed by the City Board, Ghaziabad in a temporary project known as the Slum Clearance Project. The project was financed partly by the State of Uttar Pradesh and partly by the World Bank funds. These Junior Engineers were employed on a daily-rated basis. This Court held that the scheme under which these petitioners were working was of a very specific nature. The work was not permanent in character. Since the project was for a particular purpose, it was not possible to direct that the petitioners may be regularised in service. The Court, however, clarified that the petitioners were entitled to regularisation of their services by recruitment through the State Public Service Commission for vacancies other than those on which they were employed. It directed that as and when such vacancies arise and are duly notified, the claim of the petitioners for appointment to such vacancies should be considered subject to their satisfying the requisite qualifications prescribed therefor under the rules. This Court further observed that it was open to the State Public Service Commission to consider giving any weightage to the services rendered by these employees but the Court declined to give any direction in this regard. The Court further said that continuity of service of the petitioners may be taken into account for overcoming the age bar.

The facts of the present case are closer to those of *Sandeep Kumar and others etc. v. State of Uttar Pradesh and others etc.*, (supra) than the other cases cited earlier. Here also the respondents have been temporarily employed to handle work which is of a limited duration. It is not possible, therefore, to direct the framing of any scheme for their being regularised in the Census Department since there is not enough work of a permanent nature to keep these extra employees busy throughout. We also do not see how these employees, who have been engaged on a contract basis for a limited and fixed duration and on a fixed pay, can be directed to be absorbed in any other department of the Government. Ends of justice will be met if the Directorate of Census Operations, U.P. is directed to consider those respondents, who have worked temporarily in connection with 1981 and/or 1991 census operations, and who have been subsequently

- A retrenched, for appointments in any regular vacancies which may arise in the Directorate of Census Operations and which can be filled by direct recruitment, if such employees are otherwise qualified and eligible for these posts. For this purpose the length of temporary service of such employees in the Directorate of Census Operations should be considered for relaxing the age bar, if any, for such appointment. Suitable rules may be made and conditions laid down in this connection by the appellants. The appellants and/or the Staff Selection Commission may also consider giving weightage to the previous service rendered by such employees in the Census Department and their past service record in the Census Department for the purpose of their selection to the regular posts. It is directed accordingly. The appellants have, in their written submissions, pointed out that as of now, 117 posts are vacant to which direct recruits can be appointed. They have also submitted that out of these posts, there were 88 vacant posts of Data Entry Operator, Grade B, which had been advertised for being filled up only from amongst the retrenched of 1981, 1984 and 1991. As per recruitment rules, only those retrenched were eligible to apply who were graduates and had a speed of 8000 key depressions per hour of data entry. Although approximately 800 retrenched applied, only 476 appeared in the test conducted by the NIC of the Lucknow Unit and only two applicants qualified. Out of these, only one could be appointed, since the other person was over-age even after allowing for age relaxation.
- E Whatever may be the difficulties in giving regular appointments to such retrenched employees in the past, the appellants, namely, the Union of India and the Directorate of Census Operations, U.P. are directed to consider these retrenched employees for direct recruitment to regular posts in the Directorate of Census Operations, U.P. in the manner hereinabove stated. The retrenched employees will, however, have a right to be considered only if they fulfil all other norms laid down in connection which the posts in question under the recruitment rules and/or in other departmental regulations/circulars in that behalf.

The appeals are accordingly partly allowed. In the circumstances of the case, however, there will be no order as to costs.

R.A.

Appeals partly allowed.