

(2003) 01 GAU CK 0025

Gauhati High Court

Case No: Writ Petition (C) No"s. 7132, 7133, 7134, 7135, 7136 and 7137 of 2002

Registrar General and Census
Commissioner of India and
Others

APPELLANT

Vs

Ratna Bhattacharjee and Others

RESPONDENT

Date of Decision: Jan. 31, 2003

Citation: (2004) 1 GLR 250 : (2003) 2 GLT 131

Hon'ble Judges: P.P. Naoleker, C.J; P.G. Agarwal, J

Bench: Division Bench

Advocate: K.N. Choudhury, I. Choudhury, J. Phukan and A. Baruah, for the Appellant; B.K. Sharma, M. Pathak, D. Borah, J. Das, M. Pathak and H. Baruah, for the Respondent

Final Decision: Allowed

Judgement

P.G. Agarwal, J.

These writ petitions are directed against a common order passed by the Central Administrative Tribunal, Guwahati Bench on 19.8.2002 in Original Application Nos. 2/2002, 62/2002, 68,2002, 69/2002, 70/2002 and 151/2002.

2. Upon haring the learned counsel for both sides all these writ petitions are disposed of by this order as common question of law and facts are involved.

3. The undisputed facts are that the respondents/petitioners before the Central Administrative Tribunal were all appointed in various posts for the purpose of Census Operation, which commenced in the year 1991. At the completion of Census Operation and oh discontinuation of sanction of such temporary posts, the services of the respondents were terminated with effect from 31.12.1993.

4. The respondents along with other retrenched employees thereafter moved the Central Administrative Tribunal in Original Application No. 269/93. The application was dismissed by order dated 5.6.1998 with the direction to the authorities to act in accordance with the law laid down by the Apex Court in the case of [Union of India](#)

[and others Vs. Dinesh Kumar Saxena and others](#), The case of the petitioner Union of India is that the respondents never applied for any post for which advertisements were made by the Staff Selection Commission. It is further stated that due to austerity adopted by the Union of India, there was a ban on filling up vacant posts or creation of plan/non-plan posts.

5. When the Census work of 2001 commenced or was about to commence, a circular No. DCO(E)50/99/2172 dated 24.2.2000 was issued for filling up temporary posts created for 2001 Census operation by way of promotion or deputation basis. Feeling aggrieved, the respondents approached the Central Administrative Tribunal in Original Application No. 142/2000. In view of some interim orders passed on 8.5.2000 in the said Original Application, the respondents were re-engaged with effect from 3.10.2000 and in view of the various interim orders, the respondents continued in their service till 28.2.2002. The Union of India, thereafter, approached this court in writ petition Nos. 2531-2537/2001 and the said writ petitions were dismissed with these directions to carry out the orders given by the Central Administrative Tribunal. Thereafter, the Original Application No. 142/2000 was disposed of in the light of the decision rendered by this High Court in the above writ petitions. After the completion of work of the 2001 census and on discontinuation of the posts sanctioned for the above purpose, the services of the respondents were terminated with effect from 1.3.2002 vide order, dated 28.2.2002. Against the said order of termination, the present batch of Original Applications were filed before the Central Administrative Tribunal and by the impugned order the Tribunal gave the following directions and hence the present writ petitions :

"19. For all the reasons stated above we set aside the orders dated 28.2.2002 passed by the respondents in the above O.A.s and direct the concerned authority to take appropriate measure to absorb the applicants including the other retrenched employees as per the direction of the High Court expeditiously and preferably within four months from the date of receipt of the order."

6. On perusal of the impugned judgment, we find that the Tribunal has granted the above relief mainly on two counts (i) that the decision of the Tribunal in OA142/2000 got merged in the decision of this Court in WP(C) No. 2531-2537/2001 and the Union of India are bound to follow the said judgment; (ii) that the respondents are all retrenched employees of the Census department and as such they are entitled to all the benefits granted or directed to be granted to such employees of the State of Tamil Nadu, on the directions of the Apex Court in the case of [Government of Tamil Nadu and Another Vs. G. Mohammed Ammenudeen and Others](#),

7. So far the legal status of the earlier order of the Tribunal got merged with the decision of the High Court is concerned, the said decision is binding on the Union of India and the petitioner before us can not be allowed to set any appeal against the said decision or revise it in their own manner.

8. Mr. K.N. Choudhury, learned Sr counsel has, however, submitted that the Tribunal went wrong in interpreting the implication of the decision of this Court and thereafter extending the purview of the earlier judgment of this Court stating that the above observation of this Court were not meant for the petitioners who were before the Court but these were meant for all the employees, whether they had approached the Court or not. The Tribunal rejected the contention of the Union of India and held that the directions in the earlier writ petitions were not confined for vacancies of Census operation of 2001. The Tribunal observed as follows :

"9. Admittedly, the applicants in these applications were engaged by the respondents alone. The directions were issued for absorption of the retrenched employees. We find no justification for giving any narrow, constricted, rabid and abstruse restrictions to the judgment of the court. The respondents sought to mean as if the directions were confined for vacancies of Census Operation of 2001. Whatever misgivings could have been there was cleared by the decision of the High Court in WP(C) Nos. 2531, 2532, 2533, 2534, 2535, 2536 and 2537 of 2001. The High Court refereed to the decision of G. Mohamed Amenudeen and others (supra) and directed to offer vacancies to retrenches according to their length of service and only after exhausting retrenches if there were still vacancies available those could be filled as per the Recruitment Rules. Appointment by Recruitment Rules itself means regular appointment and not appointment by way of stops-gap arrangement. The contention of the respondents that the claim of the applicants was to be confined to the Census posts alone and therefor, the judgment was not meant to be used for regular absorption, in our view is an ultra-technical attitude."

9. We have gone through the judgment dated 7.6.2001 passed by this Court in WP(C) Nos. 2531-2537/2001. It may be mentioned here that the writ petitions were preferred against the consent order, dated 20.1.2000 passed by the Central Administrative Tribunal. The relevant portion of which reads as follows :

"Heard Mr. S. Sarma, learned counsel for the applicant and Mr. BS Basumatary, learned Addl. C.G.S.G. It is agreed by the learned counsel for the parties that as per the decision of the Apex Court in Government of [Government of Tamil Nadu and Another Vs. G. Mohammed Ammenudeen and Others](#), the applicant is entitled to get the appointment when the new vacancy will arise. As per the said decision, the learned counsel for the parties submit that the applicant may be absorbed in the vacancy that will occur for Census Operation of 2000 in a suitable post which he is entitled to follow the judgment of the Apex Court.

The application is accordingly disposed of."

10. We find sufficient force in the submissions of Mr. Choudhury, that the original application was for appointing the respondents against the temporary vacancies arising out of the Census Operation 2001 and accordingly the respondents were so engaged and after completion of the work of Census Operation 2001 their services

were terminated as no sanctioned posts were available to accommodate them.

11. Mr. B.K. Sarma, learned Sr counsel for the respondents, however, submits that as this Court gave the above direction following the dictum of the Apex Court in *G. Mohamed Amenudeen (supra)*, the case of the respondents were required to be considered for permanent absorption and as the Union of India failed to do so, the Central Administrative Tribunal rightly granted the present relief. Even before this High Court, the respondents (applicants before the Central Administrative Tribunal) stated that they were satisfied with the directions given by the Central Administrative Tribunal.

12. When the very applicants before the Central Administrative Tribunal sought for appointment against the 2001 Census vacancies, we are unable to comprehend as to how it can be said that all future vacancies arising in the census department are to be filled up by absorbing or regularising the services of the respondents.

13. On perusal of the impugned order passed by the Tribunal, we find that the Tribunal was of the opinion that the decision of the Apex Court in respect of retrenched employees of the Census department as laid down in [Union of India and others Vs. Dinesh Kumar Saxena and others](#), stands reviewed in view of the later directions given in *G. Mohamud Amenudeen (supra)*. In *Dinesh Kumar Saxena* the Apex Court held that at the time of each decennial census which is an exercise carried out on a gigantic scale every 10 years, a large number of extra temporary posts are required to be created for a short period. The appointments to such temporary posts are only made for a fixed period and on the clear basis that these appointments are short-term. The incumbents would not be entitled to any regular appointment on the basis of such a fixed term appointment. On such fixed term appointments the Apex Court further observed :

"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."

14. The law laid down in *Dinesh Kumar Saxena* has not been reviewed or modified by the Apex Court.

15. Mr. Sarma, learned counsel for the respondents, however, submits that the above decision stands modified in view of the subsequent directions of the Apex Court in the case of *G. Mohamed Amenudeen (supra)*.

16. It may be mentioned at this stage that conduct of census work all over the country is taken up by the Census Department, Govt. of India. But in Tamil Nadu the situation is different as a Census department works in the State of Tamil Nadu itself and it carries out the exercise. The State of Tamil Nadu had made certain rules for recruitment in respect of the retrenched employees of the Census department and when the matter came up before the Supreme Court, the State of Tamil Nadu offered to make certain concessions. The Supreme Court placing on record its appreciation of the State's reasonable stand held :

"Considering the special features of the case, it would be appropriate for the State Government to frame a scheme to absorb the respondents and other employees, who were similarly placed and who have been retrenched. On the commencement of the census operations, persons who have registered themselves in the employment exchange get jobs in that department. However, when the project is over, their employment would come to an end and they are retrenched thereby losing both the employment and their position in the queue in the employment exchange. Bearing this aspect in mind, the Government was asked to work out an appropriate scheme.

The retrenched employees of the Census Department should be placed in Group IV and the condition relating to the exclusion of three years from their age shall be deleted. Subject to this modification, the scheme proposed by the State Government may be worked out so as to absorb the respondents in services of the State Government or in any of the local authority or Government undertakings as may be feasible as expeditiously as possible."

17. In compliance of the above, the State of Tamil Nadu made a scheme, and it again came up before the Apex Court in the case of [N. Palani Vs. Thiru A.P. Muthuswami and Another](#), wherein Apex Court suggested certain rectifications and alterations in the above scheme of the State of Tamil Nadu.

18. In view of the above, we find that no principles of law, were laid down by the Apex Court in the case of G. Md. Amenudeen (supra) and the Apex Court gave directions when the State offered to make certain scheme. The relief or concessions, if any, was available under the said scheme and can it be said that the said scheme shall be applicable to the other employees all over the country or in the State of Assam. The scheme adopted by the State of Tamil Nadu cannot be made applicable to Assam or to the employees of the Union of India, unless the said scheme have been adopted by the State or by the Union of India. In support of the above, we may refer to the recent decision of the Apex Court in the case of [Bhupinder Singh Saini and Others Vs. State of Punjab and Others](#), wherein it has been stated that such retrenched employees of the census organisation shall be governed by the concerned/relevant circular of the State Government or the Union Government as the case may be.

19. In the present case, we find that the Tribunal gave directions for absorption of the respondents on the basis of the so-called earlier directions of this court. We held that no such direction was given by this Court and the petitioners were directed to be considered for appointment against the vacancies arising out of the work of Census 2001 as stated above and as submitted to the Bar, the respondents were duly engaged for the 2001 Census and once that work was over their services were terminated as they were fixed term appointments. The Government of India vide different office memorandums/circulars issued from time to time provided or offered concessions in favour of the retrenched Census employees and it is needless to mention that the respondents shall be entitled to above concessions as are available to other retrenched Census employees over the country. We would like to state here that the scheme of Tamil Nadu in respect of the Census employees of the State shall be applicable to their employees only and it cannot be applied to the employees of other State unless their scheme is adopted by the concerned State of by the Union of India.

20. In the result, the impugned order passed by the Central Administrative Tribunal is hereby set aside. The writ petitions stand allowed. The respondents are not entitled to any relief as claimed in the Original Application.