

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **19.08.2016**

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

**W.P.No.23355 of 2013,
M.P.Nos.1 to 4 of 2013
and M.P.No.1 and 2 of 2014**

1. F.Andrews Dinakaran
2. J.Senthil Kumar
3. K.E.Sivakumar
4. P.Latha
5. K.Prabhakaran
6. S.Balamurugan
7. J.Gunasekaran
8. C.Hemamalini
9. R.Anitha
10. M.Arunraj
11. J.Jayasundar Mithunraj
12. M.Shanmuga Sundaram

.... Petitioners

Vs.

1. Union of India
Rep. by its Secretary,
Ministry of Communication &
Information Technology,
New Delhi - 1.
2. Society for Applied Microwave Electronics
Engineering and Research (SAMEER)
Rep. by its Director,
IIT Campus, Powai,
Mumbai - 400 076.

3. Society for Applied Microwave Electronics
Engineering and Research (SAMEER)

Rep. by its Programme Director,
CIT Campus,
2nd Cross Road, Taramani,
Chennai - 600 113.

4. Central Administrative Tribunal

Rep. by its Registrar,
Chennai - 600 104.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking an order to issue a writ of certiorarified mandamus, calling for the records relating to the common order, dated 30.07.2013 passed by the fourth respondent in O.A.Nos.1324 to 1329, 1331 to 1333, 1335 to 1337 of 2012, quash the same and consequently, to declare that the divestment of the petitioner's services by 2nd respondent's orders, dated 13.08.2013 as illegal and the petitioners are entitled to be continued as permanent employees in the services of the respondents 2 and 3, with effect from the dates of their completion of 480 days of continuous service with continuity of service and consequential arrears of salary and other attendant benefits.

For Petitioners : Mr.Balan Haridass
for M/s. Anna Mathew

For Respondents : Mr.Su.Srinivasan, ASG-I for R1

Mr.V.Karthik, Senior counsel
for R2 and R3

R4 - Tribunal

ORDER

(Order of the Court was made by **P.KALAIYARASAN, J**)

This writ petition has been filed, seeking to issue a writ of certiorarified mandamus, calling for the records relating to the common order, dated 30.07.2013 passed by the Central Administrative Tribunal (Madras Bench) in O.A.Nos.1324 to 1329, 1331 to 1333, 1335 to 1337 of 2012 and quash the same and also consequently, to declare the order of the second respondent, dated 30.08.2013 as illegal and the petitioner are entitled to continue as permanent employees in the service.

2. The averments of the petitioners in writ petition, in nutshell are as follows :

(i) The petitioners were employed as Scientific Assistant-A or Tradesman-A or as Project Technician for period ranging from 5 to 10 years. The respondent organisation, Society for Applied Microwave Electronics Engineering and Research (For brevity SAMEER) is one of its kind in the country under the Ministry of Communication and Information Technology of the Central Government, catering to Defence Research, Indian Satellite Research Organisation (ISRO), Intelligence Bureau of India, the

Indian Meteorological Department, the Army, Navy and Air Force. It fabricates, develops and tests to evaluate satellites and space transponders, whose life span lasts for decades and for which specialised Scientists and Technicians are necessary. The petitioners are among such personnel, for which they have been giving intense training in ISRO and defence organizations. It is submitted that all these work is continuous and perennial in nature.

(ii) All the petitioners herein were recruited as per Rule 6.3(c) of the Recruitment Rules through Advertisements given in open Employment News by the Central Government and by a properly constituted selection committee. All the appointments have been made as against regular posts as is clear from the appointment orders. Even though the petitioners have been appointed from June 2002 for a period of two years in a consolidated wages and extended for a period of another 2 years and again extended further till 03.12.2007 and thereafter from 04.12.2007, they were brought on scale of pay. The respondent has threatened the severance of employment w.e.f 03.12.2012. The respondent is also insisting that the employee should attend the interview for consolidated pay to continue in the service.

(iii) Even contractual appointees are recruited as per Rules. The appointment order also says that the petitioners are liable to be posted or transferred to any other centres of the activities of SAMEER or abroad. The petitioners were all appointed against sanction post and for permanent work. There is distinct between an illegal appointment and irregular employment. All the petitioners were recruited, as per Rules and Bye-laws of SAMEER through a rigorous selection process. Though they were appointed on contract for a tenure, the conditions of appointment treated them on par with regular employees for the purpose of pay scale and other conditions of service. Despite the legal obligation of SAMEER to regularise the petitioner's service, an order, dated 06.11.2012 called "tenure ending notice" were issued to the petitioner.

(iv) The petitioners fulfilled their requirements of (a) satisfactory past performance and (b) availability of sanctioned posts. They are to be appointed as permanent employees as per Bye-laws 24 and 25. Similar employees in Bombay have been appointed as permanent employees. The failure of the respondent to regularise the petitioners amounts to violation of Article 16 of

the Constitution.

(v) The continuous engagement of the petitioners as contract employees without considering them for regular absorption amounts to unfair labour practise. The petitioners are entitled to permanency as per Section 3 of the Tamil Nadu Industrial Establishments (Conferment of permanent Status to Workmen) Act, 1981, as they have completed more than 480 days continuous service in the period of 24 calendar months. The service of the petitioners cannot be terminated without following the provisions of Section 25 (N) of Industrial Disputes Act, 1947. The Tribunal, without addressing the argument based on Articles 14 and 16 of the Constitution of India and without considering the legal right of the petitioners for regularisation as per Bye-laws 24 and 25 dismissed the application.

3. The averments of the respondents in their counter affidavit before the Tribunal are as follows :

(i) The respondents inter-alia contended before the Tribunal that SAMEER was involved in both research and execution of sponsored projects and the sponsored project have limited time frame and are funded by the concerned Government Departments, PSUs and other agencies. The Scientists both for research and

projects are appointed against sanctioned post for the society. The petitioners are the additional manpower required exclusively for projects and their engagement is restricted to the period of the project. The salary payable to the petitioners appointed on contract is met from funding from the sponsoring agencies. The petitioners were not appointed against any sanctioned posts. Even at the time of appointment also, the petitioners were duly informed of project, for which, they were appointed and the appointment is for a fixed period. Therefore, they have no right to demand employment beyond the contractual period or the expiry of the project period, whichever is earlier. Once the project is completed or the period of the contract is over, the concerned candidate may have been accommodated in new project or in another existing project depending on similar technical requirement, but not as a regular employment in the service of the society.

(ii) As far as the Tamil Nadu Industrial Establishments (Conferment of permanent Status to Workmen) Act, 1981 is concerned, which covers only temporary, casual, badli or apprentice workmen and since the petitioners are contractual appointees, they are not covered under the Act.

(iii) The benefits extended to the contract employees are distinctly different from the benefits given to regular employees. The appointment of the petitioner and the terms and conditions of the appointment are all done in transparent manner and having accepted the terms thereof; it is not permissible for the petitioners to term it as unfair labour practise. The contractual appointment for the specific projects sponsored by other agencies cannot be called as violative of Articles 14 and 21 of the Constitution of India.

4. The Central Administrative Tribunal, after considering the divergent contentions on either side, while rejecting the contentions of the petitioners, disposed of the Original Applications with observation suggesting the authorities concerned to consider to engage the petitioners with reference to their eligibility / qualifications and suitable / merit wherever opportunity is available at present or which may arise in future.

5. The learned counsel appearing for the petitioners contend in vehemence that the petitioners were recruited as per Rules, by making public advertisement and by a selection committee and that though the petitioners were appointed on contract basis, they continued in the service for many years

varying from 5 to more than 10 years; that they are entitled to be made permanent under Tamil Nadu Industrial Establishments (Conferment of permanent Status to Workmen) Act, 1981; that non-regularisation by keeping the petitioners as temporary workers amounts to unfair labour practise and that it is clear violation of Articles 14 and 16 of the Constitution of India.

6. The learned Senior counsel appearing for the respondents 2 and 3 inter alia contends that the petitioners were appointed for the projects on contract basis and the petitioners having accepted the terms of the appointment are not permitted to ask for regularisation. It is further contended that Tamil Nadu Industrial Establishments (Conferment of permanent Status to Workmen) Act, 1981 does not apply to the petitioners. Absolutely there is no unfair labour practise, as the appointment of the petitioners is purely contractual and temporary one. There is also no violation of Articles 14 or 16 of the Constitution of India.

7. There is no dispute that Society for Applied Microwave Electronics Engineering and Research (SAMEER), a Government of India undertaking is carrying on fabrication work and design transmitter and receiver for micro wave frequency and it is a form

of a radio frequency power and thereby transmits power. This organisation SAMEER under the Ministry of Communication and Information Technology of the Central Government is catering to Defence Research, Indian Satellite Research Organisation (ISRO), Intelligence Bureau of India, the Indian Meteorological Department, the Army, Navy and Air Force. The organisation takes sponsor projects from Government Departments / user agencies and the projects are meant for obligation of research with specific system and sub-system, hardware output with a limited / specified time frame. For such projects, the organisation makes appointment calling for application through advertisements and selection by a specially constituted selection committee. One such advertisement issued in 2005 reads thus :

"Advertisement No.01/2005

Special Recruitment Drive for SC/ST

SAMEER is a leading R&D institute of Department of Information Technology, Ministry of Communications & Information Technology, Government of India, engaged in a large number of time bound projects of National importance as also in active research relating to RF / Microwave Electronics, EMI/EMC, Antenna, Millimeter wave etc. The laboratory is well equipped with infrastructural facilities like good library, workshop besides

having modern sophisticated instruments for carrying our R&D tasks.

Applications are invited in the prescribed form from Indian nationals for the following posts for our Chennai & Kolkatta Centres :

1. Scientist 'B'.....
2. Scientific Assistant 'C'.....
3. Scientific Assistant 'A'....."

8. The appointment order to one of the petitioners is as follows :

"This has reference to the interview you had at SAMEER, Chennai for the post of Scientific Assistant 'A'. In this connection, I am to inform you that it has been decided to offer you the post of a Scientific Assistant 'A' in the grade of Rs.4500-125-7000 on initial basic pay of Rs.4500/- pm, plus allowances as per Central Government Rules on the following terms and conditions :

1. Your appointment is subject to production of medical fitness certificate which you will have to bring from a Medical Officer of a Government Hospital in your locality.
2. You are required to produce a character certificate from two referees (Gazetted Officers / Professors of reputed academic institutions / Chief Executive of Public sectors) at the time

of joining.

3. Your appointment will be on contract basis for a period of three years from the date of your joining duty and you will be given continuing appointment thereafter, depending on your performance. Though your appointment is for a period of three years, your services are liable to be terminated at 90 days notice without assigning any reasons. If you intend to resign your appointment during this period or thereafter you will be required to give 90 days notice of your intention to do so. In the event of failure to failure to give such notice, you will not be entitled to receive your dues from SAMEER, which may have accrued and due to you. If such dues fall short of your salary for 90 days, the amount by which they fall short shall be payable by you to SAMEER on demand.

4. You will become a member of contributory Provident Fund from the date of your joining duty to which your subscription and SAMEER's matching contribution would be as per CPF (CCS) rules. Presently your subscription would be 10% of basic pay."

9. Recruitment Rules and Career Progression Policy for Scientific & Technical, Administrative and support staff in SAMEER

was formulated in exercise of powers conferred under Rule 19 of the Rules & Regulations. Clause 3 of the same is as follows :

"3. Creation of posts :

A post to be created may be permanent post or a temporary or a tenure post. Permanent post means a post carrying a definite rate of pay sanctioned without limit of time. Temporary post means a post carrying a definite rate of pay sanctioned for a limited time, whereas tenure post means a permanent post which an individual employee may not hold for more than a limited period.

The general provision relating to creation of posts will be as per orders issued by the Administrative ministry from time to time."

Thus, as per Rules there is provision for contractual appointment and as per those Rules, the petitioners were appointed through selection for a specified period.

10. Thus, it is clear that petitioners were appointed for the projects on contract basis and on the date of appointment itself, the petitioners were made known that the appointment is purely on contract basis for a specified period and they will be given continuing appointment thereafter depending on their performance.

11. The learned counsel appearing for the petitioners cited several Judgments of the Hon'ble Supreme Court for the proposition that the service of the persons in any department cannot be kept as temporary for more than a certain limited period.

12. In **Union of India v. Vartak Labour Union (2)**, reported in **(2011) 4 SCC 200**, the Hon'ble Supreme Court has held as follows :

"22. Therefore, in the facts and circumstances of the instant case, where members of the respondent Union have been employed in terms of the Regulations and have been consistently engaged in service for the past thirty to forty years, of course with short breaks, we feel, the Union of India would consider enacting an appropriate regulation / scheme for absorption and regularisation of the services of the casual workers engaged by the BRO for execution of its ongoing projects."

13. The learned Senior counsel appearing for the respondents 2 and 3 brought to the notice of this Court, the following Supreme Court Judgments as to the exercise of power

under Article 226 of the Constitution of India, in issuing directions for regularisation or absorption :

(i) In **State of Rajasthan v. Daya Lal**, reported in **(2011) 2 SCC 429**, the Hon'ble Supreme Court held as follows :

"We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be

regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right."

(ii) In **State of Karnataka v. KGSD Canteen Employees' Welfare Assn.**, reported in **(2006) 1 SCC 567**, the Hon'ble Supreme Court held as follows :

43. Keeping in view of the facts and circumstances of this case as also the principle of law enunciated in the above referred decisions of this Court, we are, thus, of the opinion that recourse to writ remedy was not apposite in this case.

REGULARISATION

44. The question which now arises for consideration is as to whether the High Court

was justified in directing regularization of the services of the Respondents. It was evidently not. In a large number of decisions, this Court has categorically held that it is not open to a High Court to exercise its discretion under Article 226 of the Constitution of India either to frame a scheme by itself or to direct the State to frame a scheme for regularising the services of ad hoc employees or daily wages employees who had not been appointed in terms of the extant service rules framed either under a statute or under the proviso to Article 309 of the Constitution of India. Such a scheme, even if framed by the State, would not meet the requirements of law as the executive order made under Article 162 of the Constitution of India cannot prevail over a statute or statutory rules framed under proviso to Article 309 thereof. The State is obligated to make appointments only in fulfilment of its constitutional obligation as laid down in Articles 14, 15 and 16 of the Constitution of India and not by way of any regularization scheme. In our constitutional schemes, all eligible persons similarly situated must be given opportunity to apply for and receive considerations for appointments at the hands of the authorities of the State. Denial of such a claim by some officers of the State times and

again had been deprecated by this Court. In any view, in our democratic polity, an authority howsoever high it may be cannot act in breach of an existing statute or the rules which hold the field.

45. It is not necessary for us to dilate further on the issue as recently in *State of U.P. v. Neeraj Awasthi and Ors.* [2005 (10) SCALE 286], it has been clearly held that the High Court has no jurisdiction to frame a scheme by itself or direct framing of such a scheme by the State.

46. In *Mahendra L. Jain and Others v. Indore Development Authority and Others* [(2005) 1 SCC 639], it was categorically held:

"19. The question, therefore, which arises for consideration is as to whether they could lay a valid claim for regularisation of their services. The answer thereto must be rendered in the negative. Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalised by taking recourse to regularisation. What can be regularised is an irregularity and not an illegality. The constitutional scheme which the country has adopted does not contemplate any back-door appointment. A State before offering public service to a person must comply with the constitutional requirements of Articles 14 and

16 of the Constitution. All actions of the State must conform to the constitutional requirements. A daily-wager in the absence of a statutory provision in this behalf would not be entitled to regularisation. (See *State of U.P. v. Ajay Kumar and Jawaharlal Nehru Krishi Vishwa Vidyalaya v. Bal Kishan Soni.*)"

(iii) The Hon'ble Supreme Court in case of **S.M.Nilajkar v. Telecom District Manager**, reported in **(2003) 4 SCC 27** at paragraph 11, held as follows :

"11...the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer-State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such

schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting-in onerous obligations entailed upon it by extended application of the labour laws. Sub-clause (bb) in the definition of retrenchment was introduced to take care of such like-situations by Industrial Disputes (Amendment) Act, 1984."

14. It is discernible from the above Judgments that even while exercising discretion under Article 226 of the Constitution, the Court is bound to see whether the Government can fulfill its constitutional obligation, as laid down in Articles 14, 15 and 16 of the Constitution of India and the Courts should not issue direction, which would be violative of Constitutional scheme.

15. In this case on hand, for a project work, the petitioners were appointed on contract basis and any direction to regularise those employees may act as an disincentive to the State for floating such a scheme, as pointed out by the Hon'ble Supreme Court in the case of *S.M.Nilajkar* (cited supra).

16. The learned counsel for the petitioners contend that

as per Bye-law the employees appointed on contract basis are to be regularised after 3 years. Clause 24 and 25 of the Bye-law read thus :

"24. Appointments :

All appointments are initially on temporary basis. All categories of staff of the Society shall initially be appointed on contract basis for a period of 3 years, whose services may be considered for regularisation in the services of the Society in due consideration to the past performance and subject to availability of vacancy. Regularisation could be considered by duly constituted Committee.

25. Regularization in Service :

All fresh appointments to the Society shall initially be on contract for a period of 3 years."

As per these clauses of Bye-laws, employees appointed on contract basis may be considered for regularisation and for such regularisation, their past performance will be considered. This does not confer any automatic right of regularisation. Regularisation will be subject to availability of permanent posts in SAMEER. The petitioners have not shown any material fortifying that they were not considered in spite of vacancies in sanctioned permanent posts.

17. The learned counsel appearing for the petitioners

contend that the petitioners are to be made permanent as per Section 3 of Tamil Nadu Industrial Establishments (Conferment of permanent Status to Workmen) Act. As per the Act, employees who have been put in work continuously for 480 days in 24 months are to be made permanent. Form-I annexed to the Rules requires employer to say whether workman is temporary, casual, badli or an apprentice. The contractual workers does not come under the coverage of the said Act.

18. Another contention of the learned counsel appearing for the petitioners is that termination of the employment of the petitioners amounts to retrenchment, which falls under Section 25 (F) of the Industrial Disputes Act and retrenchment cannot be more without following the provisions of Section 25(N) of the Act.

19. The learned Senior counsel appearing for the respondents 2 and 3 brought to the notice of this Court to Section 2(oo) (bb) of the Industrial Act, which reads thus :

"2(oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -

(a)...

(b)...

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or."

Thus, termination of the service of the contractual workman as a result of non-renewal of the contract does not come within the definition of "retrenchment". Therefore, the contention of the learned counsel appearing for the petitioners is not sustainable.

20. Yet another contention of the learned counsel appearing for the petitioner is that after putting long service, terminating the petitioners from their employer is nothing but unfair labour practise.

21. Unfair labour practise is defined under Section 2(r)(a) of the Industrial Disputes Act, 1947 as : "unfair labour practise" means any of the practices specified in the Fifth Schedule. None of the grounds mentioned in the Fifth Schedule of the Industrial Disputes Act is attracted in this case. Therefore, the above

contention also does not hold good.

22. In this case, though the initial appointment is as per Rules of SAMEER, the petitioners were appointed only on contract basis for a specified period but with a clause to provide that their employment will be continuous depending on their performance, it is pertinent to note that their appointment were not on substantive permanent vacancies. They were appointed for the posts required for the project. Therefore, the Central Administrative Tribunal, while rejecting the plea of the petitioners made observation to engage the petitioners continuously by the authorities.

23. For the aforesaid reasons, this Court is of the considered view that the Central Administrative Tribunal has rightly disposed of the Original Applications and there is no merit in the writ petition and accordingly, the same is liable to be dismissed.

In fine, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

(A.S., J.) (P.K., J.)

19.08.2016

Index : Yes / No

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To

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**A.SELVAM, J.
AND
P.KALAIYARASAN, J.**

tsvn

**Pre-Delivery Order in
W.P.No.23355 of 2013**

19-08-2016