

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(3)

Regn. Nos. (1) OA 2752/90
(2) OA 2730/90
(3) OA 47/91 &
(4) OA 143/91

Date of decision: 15.02.1991.

(1) OA 2572/1990

Shri Shyam Sunder Verma & OthersApplicants
Vs.

U.O.I. through Secretary, Ministry ...Respondents
of Labour & Others

(2) OA 2730/1990

Shri Trilok Chand & OthersApplicants
Vs.

U.O.I. through Secretary,
Ministry of Labour & Others ...Respondents

(3) OA 47/1991

Shri Ishwar SinghApplicant
Vs.

U.O.I. through Secretary,
Ministry of Labour & Others ...Respondents

(4) OA 143/1991

Ms. Meena Rana & OthersApplicants
Vs.

U.O.I. through Secretary,
Ministry of Labour & Others ...Respondents

For the Applicants in (1) to
(4) above

...Shri G.D.
Bhandari,
Counsel

For the Respondents in (1) to
(4) above

...Shri D.P.
Malhotra, Counsel

QUESTION:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K.Kartha,
Vice Chairman(J))

The question whether Lower Division Clerks appointed

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on casual or ad hoc basis are entitled to regularisation or whether they should give way to the nominees of the Staff Selection Commission is in issue in these applications filed under Section 19 of the Administrative Tribunals Act, 1985. It is proposed to deal with the same in a common judgment.

2. The practice of engaging persons on casual or ad hoc basis against sanctioned regular posts has been in vogue in various Ministries/Departments of the Govt of India for several years, notwithstanding the various instructions issued from time to time against such practice. Pending the allocation of the nominees of the Staff Selection Commission and their joining the Ministry/Department concerned, the sanctioned regular posts are manned by casual or ad hoc employees who are usually nominees of the Employment Exchange and who are engaged after holding a selection out of several candidates who apply for the same. Do they have any enforceable right in a court of law is the issue before us.

3. In the instant case, the employer is not the Union of India but the Employees State Insurance Corporation (hereinafter referred to as the 'ESIC'). According to the ESIC (Recruitment) Regulations, 1965, as amended in 1983, 75% of the posts is to be filled up by direct recruitment on the basis of the written competitive examination and the remaining 25% is ear-

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marked for Group 'D' employees. The Rules are silent as to who should hold the written competitive examination. Till 1984-85, the ESIC itself used to conduct the examination. On 6/7.11.1985, the Director General of ESIC wrote to the Secretary, Staff Selection Commission requesting them to take over this work, as the ESIC was not equipped for conducting the examination for which there used to be a very large number of applicants. Pursuant to this, it appears that the Staff Selection Commission conducts the examination and nominates the candidates to the ESIC for appointment as Lower Division Clerks.

4. In these four applications, there are eleven applicants before us who had been engaged as Lower Division Clerks on casual basis since September, 1989 and who have continued as such till the filing of these applications in the Tribunal in December, 1990 - January, 1991. By interim orders passed in these cases, the respondents have been directed not to terminate the services of the applicants in case vacancies are available. The interim orders were continued till the cases were heard finally on 28.1.1991 and orders were reserved thereon.

5. The engagement of the applicants were in different spells, each time for a period of 89 days, with one days break. However, extension from 15.6.1990 was without any break and it was so stated in the order dated 15.6.90.

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The order of extension dated 8.10.1990 stated that it was for a further period of 89 days or till such time Staff Selection Commission sponsors the names of candidates, whichever is earlier. By the impugned order of termination dated 26.12.1990, the respondents have sought to give to the applicants daily wages upto that date One months' wages in lieu of notice of termination and retrenchment compensation. The applicants do not appear to have received the notices or the compensation or offered to them, as their very employment is at stake.

6. The contesting parties have taken extreme positions in their pleadings. According to the applicants, after having worked for over 240 days, they have acquired temporary status and have a prescriptive right for regularisation. According to the respondents, the appointment of the applicants is purely by way of stop gap arrangement and till regularly appointed candidates join.

7. We have gone through the records carefully and have considered the rival contentions. The purported termination of services of the applicants is not on account of their unsatisfactory work or performance or conduct. Nothing to that effect has been brought out in the pleadings. The applicants had also undergone a process of selection at the time of their appointment.

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Their services are sought to be replaced by the nominees of the Staff Selection Commission.

8. Admittedly, the applicants have worked in the post of L.D.C. for more than one year. The ESIC has adopted the general rules and instructions issued by the Govt. applicable to Government servants. According to OM NO.49014/16/89-Estt.(C) dated 16.7.1990 issued by the Department of Personnel on the subject of "Regularisation of casual workers recruited to perform duties of Group 'C' posts", casual workers who have been engaged for performing duties of Group 'C' posts, may, as a one time measure, be allowed age relaxation to the extent of period of service rendered as casual worker in a Central Government Ministry/Department or its attached/subordinate offices to enable them to appear along with other candidates in the regular examinations to Group 'C' posts. The relaxation in the upper age limit on the above lines will be subject to the following conditions:-

- (i) The casual worker must be in employment in a Govt. office on the date of issue of these instructions.
- (ii) He/She must have completed 240 days (206 days in offices observing 5 days' a week) of service in the immediately two preceding calendar years.
- (iii) He/she must be educationally qualified for the post for which appointment is sought.

The casual workers who are working against any Group 'C' posts other than that of Stenographer and who satisfy the conditions as laid down in para 2 above shall be eligible to appear in the examination conducted by the Staff Selection Commission for recruitment for the post

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of Lower Division Clerk.

The services of those casual workers who do not appear in the examination/selection test inspite of age relaxation or who are not successful in the examination/test, will be terminated immediately after the declaration of the result of the test.

9. In our view, the applicants are not outside the pale of protection altogether, as has been contended by the respondents.

10. In Jacob M. Puthuparambil & Others Vs. Kerala Water Authority & Others, JT 1990 (4) SC 27, the Supreme Court had considered a similar issue relating to the regularisation of persons who had been appointed on ad hoc basis for several years. The Supreme Court had directed the respondents to regularise the services of such employees who have put in continuous service of not less than one year, as a separate block in consultation with the Kerala Public Service Commission. In doing so, the Kerala Public Service Commission has been directed to take the age factor as waived. In arriving at this conclusion, the Supreme Court relied upon its earlier decision in Smt. P.K. Narayani & Others Vs. State of Kerala & Others, 1984 Suppl. SCC 212 and in Dr. A.K. Jain & Ors. Vs. Union of India & Others, 1987 SCC 497. In Narayani's case, the Supreme Court directed that the petitioners and all others similarly placed should be allowed to appear at the next examination that the

Public Service Commission may hold without raising the question of age bar; till then they may be continued in service provided there are vacancies. The Court, however, clarified that this will not confer any right on the employees to continue in service or of being selected by the Commission otherwise than in accordance with the extant rules and regulations. The Court gave the above directions describing the case as "a human problem which has more than one facet". In Dr. A.K. Jain's case, the services of ad hoc Assistant Medical Officers who were initially appointed for six months but were continued for periods ranging upto 4 years, were sought to be terminated to accommodate the candidates selected by the U.P.S.C. The petitioners claimed that their services should be regularised. The Supreme Court directed the regularisation of the services of all members appointed upto October 1, 1984 in consultation with the U.P.S.C. on the evaluation of their work and conduct based on the confidential reports in respect of the period subsequent to October 1, 1982.

11. The Supreme Court also relied upon its earlier decision in Daily-rated casual labour employed under P&T Department vs. Union of India & Others, 1988(1)

12. Keeping the above trend of the judicial decisions of the apex Court, we are of the opinion that the respondents should take steps to regularise the services of the applicants in consultation with the Staff Selection Commission. While doing so, they should relax the upper age limit for appointment as LDCs in case the applicants were within the prescribed age-limit at the time of their initial appointment. Till the applicants are so regularised, the services of the applicants shall not be dispensed with. The applicants should also be given the minimum of the pay-scale of L.D.C.s till they are regularised, with effect from the date of this order.

13. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order. There will be no order as to costs.

(D.K. CHAKRAVORTY)
ADMINISTRATIVE MEMBER

15/12/1971
(P.K. KARTHA)
VICE CHAIRMAN (J)