

(5)

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos.:

Date: 8.2.1991.

1. OA- 894/90
2. OA-2322/90; &
3. OA-1775/90

1. Shri Vasudev and Others	} Applicants
2. Shri Suresh Kumar Sharma		
3. Shri Manoj Chadha		

Versus

Union of India through the
Director General, Doordarshan
and Another. Respondents

For the applicants in 1&2 Shri T.C. Aggarwal,
Advocate

For the Applicant in 3 Shri K.N.R. Pillai,
Advocate.

For the Respondents in 1-3 Shri M.L. Verma,
Advocate.

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. D.K. Chakravorty, Administrative Member.

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

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

In a large number of applications filed in this
Tribunal by the so-called 'Casual Artists' or 'Artists
booked on Assignment basis', the applicants have called
in question the policy followed by the Doordarshan all
over the country under which the contractual engagement,
if and when made, will be only for a maximum duration of
α

.....2....

10 days in a month, with no security of service, with wages termed as "fees" at rates much lower than those of regular employees and with no other service benefits. They belong to several job descriptions such as Floor Assistants, Film Projectionists, Film Editors, Production Assistants, Property Assistants, General Assistants, Sound-recordists, Lighting Assistants, Graphic Assistants, Carpenters, Painters, Cameramen, Make-up men, Scenic Designers, Tailors, etc. The exact number of persons engaged in Delhi Kendra and other Kendras spread all over the country has not been made available to us but it appears to be quite considerable. All of them make their contribution in production of various programmes though they work behind the scene.

2. Can the State which is the employer of the applicants before us and those similarly situated who are not before us, take the stand that such contractual engagements are legally sound and sustainable on the ground that they voluntarily entered into the bargain? In our view, such a stand is out of tune with the authoritative pronouncements of the Supreme Court in a catena of decisions.

3. The Government and its agencies and instrumentalities provide the largest employment in the country. In

Central Inland Water Transport Corporation Vs. Brojo Nath Ganguly, 1986 SCC (L&S) 429 at 488, the Supreme Court, after reviewing the judicial decisions in the United States and the United Kingdom, observed that "at least in certain areas of the law of contracts, that there can be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within the control or as a result of situations not of their creation." We have no doubt in our minds that in the instant case, there is lack of fairness and reasonableness in the contractual engagements which the respondents are seeking to defend before us.

4. The standard form of contract adopted by the respondents for engagement of Staff Artists is as follows:-

"We invite you to take part in the capacity factor performer/producer and production to be telecast below upon the conditions printed overleaf we shall be obliged if you kindly sign and x return the attached confirmation chart duly completed within three days of the date of their letters:

TITLE To work on assignment as casual artist(F.A.)
DATE OF ENGAGEMENT 22nd to 31st March 1990.Except
22nd, 25th and 26th March
TIME OF ENGAGEMENT As & when required.
DATE OF RECORDING as reqd.
TIME OF RECORDING -do-
DURATION -do-
FEE RS. 490/- Four hundred ninty only.

Place of telecast: Doordarshan Kendra, New Delhi.
The stamp duty if any will be borne by the Govt."

.....4..,

5. The conditions referred to in the offer of engagement are as follows:-

"CONDITIONS REFERRED TO IN THE PROCEEDING LETTERS"

1. In the event of, signed acceptance not being received by the date stated, Doordarshan Kendra reserves the right to withdraw the offer.
2. The contract is subject to acceptance of the final manuscript (s) by the Station Director and the manuscript(s) should be in the hands of the Station Director not less than ten days before the date fixed for the broadcast. Manuscript(s) if accepted, shall be the property of the Doordarshan Kendra.
3. The programme as broadcast shall be confirmed with the manuscript(s) as approved by Doordarshan.
4. The fee for the contract included the broadcasting right in English and Indian language, the right to make a mechanical reproduction and right to relay or allowed to be relayed the programme from any broadcasting organisation as well as exclusively right to publication in English and Indian Languages for the distribution in India and overseas or other part of whole of the talk(s) or abridgement translation.
5. The talker(s) warrants that he is the owner of the copy right in said talk and that copyrights subject there in and that no other person, firm or company has any interest in the rights hereby granted may that the said talks not or is any part of it if any, whatsoever, a violation or the in the arrangement or any subsisting copyright of the whole and the talker undertaking to identifying Doordarshan Kendra against all adverse claims and demands whatsoever.
6. Doordarshan Kendra shall have the right to determine the contract any time subject only to the payment of fee in proportion to work already done at the date of termination or to offer in alternative or to offer in alternative engagement and Doordarshan along shall decide. In the event of the speaker being unable to broadcast the talker(s) subject to payment to the talker of such proportion the fee as Doordarshan may decide.
7. In the event of the talker being a Government servant, the broadcast of the talk(s) and the payment to him of the fee shall be subject of his obtaining the manuscript(s) of the Head of the Department's of his office or this effect and this sanction should be forwarded to the Station Director along with the manuscript(s) of the talk(s)."

6. Evidently, the respondents have resorted to the above mentioned mode of making contractual engagements so as to ensure that the persons concerned do not develop any right to claim regularisation, though in all fairness, it must be observed that they have regularised similar persons in the available vacancies upto 1980. The respondents have stated in their counter-affidavit as follows in this regard:-

"The Government had decided in respect of only those casual artists who had become eligible for regularisation either in AIR or Doordarshan on the basis of a formula evolved in 1979-80 i.e. who had completed 365 days in 3 consecutive financial years 1974-75, 1975-76, 1976-77, and 1975-76, 1976-77, and 1977-78 or 240 days in any of the financial year but could not be regularised, to be given contracts of 14 days after a break of 1 or 2 days pending their regularisation and not in favour of all casual artists being engaged. (The Government formula for regularisation of casual artists was further liberalised as 200 days in any financial year or 365 days in 3 consecutive financial years during the years 1974-80 upto 31st March, 1980). The Government did not extend the formula beyond 1980."

7. The respondents have, however, stated that a scheme to regularise the services of such of the casual Artists who are working in Doordarshan since long, is under the consideration of the Government and cases of applicants will also be considered if covered by the scheme as and when it is finalised.

8. The respondents have further stated that the regularisation formula evolved earlier was only one time

~

10

measure. The decision to book artists on casual assignment basis for a period not exceeding 10 days in a month has been introduced to attract more qualified and talented persons and to give employment to many unemployed.

9. The case of the applicant is that the policy followed by the respondents is highly arbitrary and discriminatory and violative of Articles 14, 15 and 16 of the Constitution and that there is an element of pick and choose in the pursuit of their policy. They contend that their services should be regularised and that they should be paid the same pay and allowances, leave and other service conditions as enjoyed by the regular staff. They have also drawn our attention to the following order dated 5.10.1990 passed by the Tribunal in a batch of similar cases:-

".....We, therefore, direct the Union Government as well as its subordinate office, i.e., the Director General, Doordarshan, respondent no.1, to frame rational scheme (a) for regularisation of the daily rated casual workers (described as casual artists) in regular cadres; and (b) terms and conditions for engagement of daily rated casual employees in future and their absorption in due course. We further direct that no recruitment on the aforesaid posts shall take place till such a scheme is submitted or accepted by the Court as far as possible unless the recruitment is confined only to daily rated casual workers (called casual artists by the Doordarshan Kendras) as engaged in the past. These cases shall stand adjourned by three months. Meanwhile, the respondents shall frame a scheme as directed above and submit to us for acceptance. These cases need not be treated as part-heard."

Q

10. We have carefully gone through the records and have considered the rival contentions. In our view, the non-regularisation of the Casual Artists of Doordarshan for over a decade from 1980, when the scheme evolved by them was discontinued, militates against the law laid down by the Supreme Court within the current decade. This should be viewed with serious concern.

11. In Rattan Lal and Others Vs. State of Haryana and others, 1985 (4) SCC 43, the Supreme Court disapproved of the policy of the State Government of Haryana in appointing teachers on an ad hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer season, or earlier, to appoint them again on an ad hoc basis at the commencement of the next academic year and to terminate their services before the commencement of the succeeding summer vacations or earlier and to continue to do so year after year. Deprecating the "hiring and firing" policy, the Supreme Court observed that "the policy of 'ad hocism' followed by the State Government for a long period has led to the breach of Articles 14 and 16 of the Constitution." The Supreme Court directed the State Government to fill up the vacancies on a regular basis and allow the teachers who were holding the posts on ad hoc basis to remain in the posts till the vacancies were duly filled. The Court also issued directions regarding the question of relaxation

Q

of maximum age prescribed for appointment, payment of salary and allowances for the period of summer vacation and for grant of maternity or medical leave in accordance with the rules.

12. The Supreme Court has directed the Government to prepare schemes for regularising casual workers in the Railways, the Posts & Telegraphs Department, the Income Tax Department, the Delhi Municipal Corporation, Nehru Yuvak Kendras, C.P.W.D. and P.W.D. Daily-wage Employees in Karnataka (vide Inder Pal Hadav Vs. Union of India, 1985 SCC (L&S) 526 relating to the Railways; Daily Rated Casual Labour Employed under P & T Vs. Union of India, 1987 (2) SCALE 844 relating to P & T Department; U.P. Income Tax Department Vs. Union of India, 1988 (2) SLJ (SC) 38; Delhi Municipal Corporation Karamchari Ekta Union Vs. P.L. Singh, 1987 (2) SCALE 1370; Dhirendra Chamoli Vs. State of U.P., 1986 SCC (L&S) 187 relating to Nehru Yuvak Kendras; Surinder Singh Vs. Engineer-in-Chief, C.P.W.D.; 1988 SCC (L&S) 189; and the Dharward District P.W.D. Literate Daily Wage Employees Vs. State of Karnataka). Referring to the leading decisions on the subject, the Supreme Court made the following pertinent observations in the Karnataka case, mentioned above:-

"We have referred to several precedents

all rendered within the current decade - to emphasise upon the feature that equal pay for equal work and providing security of service by regularising casual employment within a reasonable period, have been unanimously accepted by this Court as a constitutional goal to our policy. Article 141 of the Constitution provides how the directions of this Court are to be treated and we do not think there is any need to remind the instrumentalities of the State - be it of the Centre or the State, or the public sector - that the Constitution makers wanted them to be bound by what this Court said by way of interpreting the law."

13. In the light of the aforesaid legal position, the framing of a suitable scheme for regularising the Casual Artists of Doordarshan is a constitutional imperative and long overdue.

14. In our considered view, the respondents should frame a scheme for absorption of Casual Artists who have worked for a period of one year and more, keeping in view the following aspects:-

- (i) Casual Artists who have been engaged for an aggregate period of 120 days, may be treated as eligible for regularisation. The broken periods in between engagement and disengagement, are to be ignored for this purpose.
- (ii) The respondents shall prepare a panel of Casual Artists who had been engaged on contract basis, depending on the length of service. The names of those who have not been regularised so far, specially

114

from 1980 onwards, though they may not be in service now, are to be included in the panel. Persons borne on the panel, are to be considered for regularisation in the available vacancies.

(iii) For the purpose of regularisation, the upper age limit has to be relaxed to the extent ^{of 2} ~~for~~ service rendered by the Casual Artists. 120 days' service in the aggregate shall be treated as the service rendered in one year for this purpose.

(iv) Till all the Casual Artists who have been engaged by the respondents have been regularised, the respondents may not resort to fresh recruitment of such Artists through Employment Exchange or otherwise.

(v) Till the Casual Artists are regularised, the wages to be paid to them should be in accordance with the scale of pay of the post held by a regular employee in an identical post. The amount of actual payment would be restricted to the actual number of days worked during a month.

15. The respondents shall formulate and implement the scheme within a period of four months from the date of receipt of this order.

There will be no order as to costs.

Let a copy each of this order be placed in OA 894/90, OA 2322/90 and OA 1775/90.

D.K. Chakravorty
(D.K.CHAKRAVORTY)
MEMBER 8/2/91

P.K. Kartha
8/2/91
(P.K.KARTHA)
VICE CHAIRMAN