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(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 42 OF 1986

~~Ex. No.~~

DATE OF DECISION 26-11-1986

KIRAN B. DESAI & ORS. Petitioners.

V.M. DHOTRE Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*.
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *NO*

J U D G M E N T

O.A. No. 42 OF 1986.

Date: 26-11-1986

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioners, viz; (1) Kiran B. Desai, (2) Dilipkumar K. Bhadoria, (3) Bharat J. Shah, (4) Saiyed Mustaq Ali Fakruddin and (5) Suresh M. Brahambhatt, working as Extra-Departmental Mailman (for brevity - E.D.M.M.) in Ahmedabad R.M.S., claim regularisation on the said post and seek orders directing the respondents from terminating their services. According to them, they have joined the service in the year 1982 and they are continuously working on the said post. They challenge the recruitment made by the respondents by calling the names of the candidates from the Employment Exchange and holding their examination, for the same. The stand taken by the respondents is that the petitioners are appointed purely on adhoc basis and therefore they have no right to hold the post. In view of the plea of the respondents, this Tribunal vide its order dated 1.5.1985 vacated the interim order passed on 18.3.1986, with the observation that this would not come in the way of respondents to process the regular appointment except making such appointment.

2. Mr. V.M. Dhotre, the learned counsel for the petitioners, has straneously urged that when the petitioners are discharging the duties efficiently and satisfactorily for the last more than 4 years and when they are otherwise qualified for the said post in question, they cannot be denied regularisation simply because their names are not sent by the Employment Exchange. In support of his submission

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he has relied on the guidelines laid down in Office Memorandum dated 7th May 1985 and the case of Dr.Chamanlal Malhotra (1975(2) Service Law Journal,806) and the case of Dhirendra Chamoli & Ors (1986(1) S.C. p.637). It is however contended by Mr. J.D. Ajmera, the learned counsel for the respondents, that their appointment of E.D.M.M. are governed by "Extra-Departmental Agency (Conduct and Service) Rules 1964" and when the petitioners have accepted the provisional appointment stipulating termination when regular appointment is made and when their names are not sponsored by the Employment Exchange, they are not entitled to be regularised. According to him, the termination of the petitioners would be a mere consequence of appointing the regular persons and such action therefore can not be challenged by the petitioners

3. The crucial question to be decided is whether the petitioners are entitled to claim the relief of regularisation as prayed for ? The answer in our opinion is in the negative.

4. It is pertinent to note that the officials appointed as E.D.M.M. are governed by Extra-Departmental Agent (Conduct and Service) Rules 1964. The applicants were initially offered appointment purely on adhoc basis for the post of E.D.M.M. and they have accordingly accepted the conditions stipulated in the appointment orders. Mr. J.D. Ajmera has placed on record several appointment orders passed in respect of the petitioners. It is borne out from the said orders that every year the adhoc appointments were renewed. Most of them were required to do the work for either three, four or five hours during different months as per the requirement

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of the Postal Department. The following terms and conditions are stipulated in the appointment order.

- (1) The following candidates are offered the provisional appointment and they should clearly understand that the provisional appointment will be terminated when regular appointment is made and they will have no claim for appointment to any post.
- (2) The appointing authority also reserves the right to terminate the provisional appointment at any time before the period mentioned below without notice and without assigning any reason.
- (3) Following candidates will be governed by the Extra departmental agent (control & service) Rules 1964 as amended from time to time and all other rules and orders applicable to ED Mailman.

5. It is, therefore, undisputed that the petitioners are appointed purely on adhoc basis. It is the plea of the petitioners that since they have rendered service for more than four years on the said post, their services should be regularised and the same can not be terminated and the respondents should be restrained from holding any examination for recruiting candidates on their post. On reading the terms and conditions of the appointment order as a whole it can be very well said that there was hardly any merits in this plea. It is clearly stipulated in the order of the appointment that their appointment are made purely on adhoc basis and do not confer upon them any claim for appointment to any post. It is clearly stipulated that their services can be terminated at any time and that too without notice and without assigning any reason.

6. It is conceded that the names of the petitioners are not sponsored by the Employment Exchange and they were ordered to work as E.D.M.M. by the Respondents No.2 against the vacant post of E.D.M.M., purely on a provisional basis. Now as per the Rules of recruitment, the appointment of E.D.M.M. is to be made of those

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persons whose names are sponsored by the Employment Exchange and qualified the prescribed conditions in terms of the instructions contained in the orders of the Director General, P & T, New Delhi. Accordingly, the respondents No.2 had called for the names from the Employment Exchange for filling up for the post of 16 E.D.M.M. and after screening them the candidates who fulfill other qualifications under requirement have to be appointed on regular basis. Thus if there is any termination of the services of the petitioners, it would be a mere consequence of appointing the regular persons and the same would be in accordance with their terms of appointment.

7. The reliance sought on the Office Memorandum of 7th May, 1985 (Annexure 'B') does not help the petitioners. The instructions issued therein are applicable in the case of casual workers only and that to they are not obligatory. In the case of Chamanlal (Supra), he was appointed on regular basis, it is, therefore, not understood how his case is applicable to the present case, wherein the petitioners are engaged only on adhoc basis. Even the rationale adopted the case of Dharendra (Supra) can not help the petitioners.

8. In our finding, when persons qualified to be appointed to a post in accordance with the rules, are available, it is neither just nor proper to continue adhoc appointees who are not qualified to hold the post. In this view of the matter, we find no merits in this petition. The petition, accordingly, stands dismissed with no order as to costs.

*P.H. Trivedi*  
(P.H. TRIVEDI)  
VICE CHAIRMAN

*P.M. Joshi*  
(P.M. JOSHI)  
JUDICIAL MEMBER.

M.A./206/86

in

O.A./42/86

(17)  
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CORAM: HON'BLE MR.BIRBALNATH : ADMINISTRATIVE MEMBER  
HON'BLE MR.P.M.JOSHI : JUDICIAL MEMBER

29-12-1986

Heard Mr.V.N.Dhotre, the learned counsel for the applicants. Issue notice to the respondents returnable on 28-1-'87. The respondents should file the reply before the said date with a copy to the other side.

29/12/86

(BIRBALNATH)  
ADMINISTRATIVE MEMBER

*[Signature]*

(P.M.JOSHI)  
JUDICIAL MEMBER

\*J/er

MA/206/86

in

OA/42/86

14 (18)

CORAM : HON'BLE MR P H TRIVEDI :: VICE CHAIRMAN  
HON'BLE MR P M JOSHI :: JUDICIAL MEMBER

28/1/1987

Learned advocate Mr P N Ajmera for Mr J D Ajmera for the respondents files his reply and is taken on record. The case is adjourned to 18th March, 1987 for hearing.

*Phemr*

( P H TRIVEDI )  
VICE CHAIRMAN

*Smj*

( P M JOSHI )  
JUDICIAL MEMBER

MA  
TA/CA/ 206 /86 in OA/42/86.

CORAM : HON'BLE MR. P.H. TRIVEDI : VICE CHAIRMAN  
HON'BLE MR. P.M. JOSHI : JUDICIAL MEMBER

Dt : 13.3.87

The case is adjourned to 18/5/87

\_\_\_\_\_ for hearing.

*P.H. Trivedi*  
(P.H. Trivedi)  
Vice Chairman

*P.M. Joshi*  
(P.M. Joshi)  
Judicial Member

M.A./280/87

in

M.A./206/86

in

O.A./42/86

Coram : Hon'ble Mr P H Trivedi .. Vice Chairman  
Hon'ble Mr P M Joshi .. Judicial Member

17/7/1987

Heard learned advocate Mr VN Dhotre for the petitioner. Although we consider the steps could have been taken immediately after default regarding appearance on 18.5.1987 and in fact there are no circumstances justifying that default in appearance on 18.5.1987, in the interest of justice, Application is allowed and the case No. MA/206/86 is restored. Registry to do the needful. Mr PN Ajmera for Mr JD Ajmera for the respondent present. With this direction MA/280/87 is disposed of. The case is adjourned to 25th September, 1987 for final hearing.

*Prinir*  
( P H Trivedi )  
Vice Chairman

*Joshi*  
( P M Joshi )  
Judicial Member

M.A./206/87

in

O.A./42/86

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CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman  
Hon'ble Mr. P.M. Joshi .. Judicial Member

30/11/1987

Mr. V.M. Dhotre, learned advocate for the applicant requests for time to which Mr. J.D. Ajmera for the respondents has no objection. Allowed. The case be posted on 16th February, 1988 for further directions.

  
( P H Trivedi )  
Vice Chairman

  
( P M Joshi )  
Judicial Member

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M.A./206/86

in

O.A./42/86

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CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman  
Hon'ble Mr. P.M. Joshi .. Judicial Member

16/02/1988

Learned advocate Mr. V.M. Dhotre for the applicant requests for adjournment to which Mr. J.D. Ajmera for the respondents has no objection. Time allowed. The case be adjourned to 9th March, 1988 for final hearing.

  
( P H Trivedi )  
Vice Chairman

  
( P M Joshi )  
Judicial Member

\*Mogera

MA/206/86


in

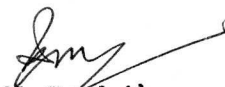
OA/42/86

Coram : Hon'ble Mr. P.H. Trivedi : Vice Chairman  
Hon'ble Mr. P.M. Joshi : Judicial Member

9/3/1988

Mr.J.F.Sheth for Mr.V.M.Dhotre learned advocate for the applicant requests for adjournment on account of illness of Mr.V.M.Dhotre. Allowed. The case be posted on 19th April, 1988 for final hearing. (For Review)

  
(P.H.Trivedi)  
Vice Chairman

  
(P.M.Joshi)  
Judicial Member

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MA/206/86  
in  
OA/42/86

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CORAM : HON'BLE MR. P. H. TRIVEDI : VICE CHAIRMAN  
HON'BLE MR. P. M. JOSHI : JUDICIAL MEMBER

5-5-1988

Learned advocate Mr. V. M. Dhotre for the applicant files an application requesting withdrawal. Mr. J. D. Ajmera for the respondents present. Application for withdrawal allowed. The case stands disposed of as withdrawn.

  
( P. H. TRIVEDI )  
VICE CHAIRMAN

  
( P. M. JOSHI )  
JUDICIAL MEMBER

Shah/-

Central Administrative Tribunal  
Ahmedabad Bench  
Inward No 657  
Date 08.05.91

D.NO. 381/87/Sec./IX  
SUPREME COURT OF INDIA  
NEW DELHI  
DATED: 29th April, 1991.

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FROM:

THE REGISTRAR  
SUPREME COURT OF INDIA  
NEW DELHI-110001.

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TO:

- The Registrar  
~~High Court of Gujarat~~  
~~at Ahmedabad~~  
Central Administrative Tribunal,  
Ahmedabad Bench, Ahmedabad

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 2830 OF 1987.  
(Under Article 136 of the Constitution of India from the  
Judgment and Order dated the 26th November, 1986 of the  
High Court of Gujarat at Ahmedabad in Central Administrative  
Tribunal Ahmedabad Bench, Ahmedabad in O.A. No. 42 of 1986.

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Kiran B. Desai & Ors.

...PETITIONERS

VERSUS

Union of India & Ors.

...RESPONDENTS

Sir,

I am directed to inform you that the petition above-mentioned for Special Leave to appeal to this Court was filed by Mr. N.S. Das Bahl, Adv. on behalf of the Petitioners above-named against the Judgment and Order of the ~~High Court~~ <sup>Tribunal</sup> noted above and that the same was dismissed by this Court on the 26th April, 1991. A certified copy of the record of proceedings of this Court dated the 26th April, 1991 is enclosed herewith for your information and necessary action.

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Respectfully submitted for  
kind perusal to:-

Yours faithfully,

Judg.

6/5/91  
sh. c.o.  
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4/6/91

- 1) REGISTRAR 4/6
- 2) Hon. Vice chairman FOR REGISTRAR.
- 3) Hon. Member (A) 4/5/6/91
- 4) Hon. Member (J) 4/6
- 5) Hon. Member (J) 4/6

4/6/91  
4/6  
11/6

7/6/1

**SUPREME COURT OF INDIA**  
RECORD OF PROCEEDINGS

After notice

Petition(s) for Special Leave to Appeal (Civil/Cr) No. (s) 2930/87

(From the judgment and order dated 26.11.86 of the High Court of  
CAT, Ahmedabad in OA No. 42/86

Kiran B. Desai &amp; Ors.

Petitioner (s)

Versus

Union of India & Ors.  
(with Office Report)

Respondent (s)

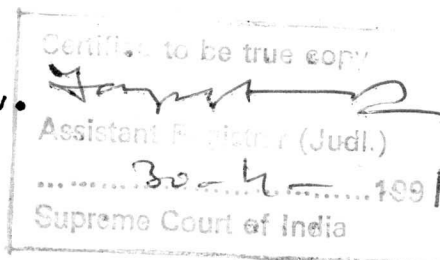
Date: 26.4.91

This/these petition (s) was/were called on for hearing today.

CORAM:

Hon'ble Mr. Justice K.N. SINGH  
Hon'ble Mr. Justice P.B. SAWANT  
Hon'ble Mr. Justice

For the petitioner(s): Mr. NS Das Behl, Adv.



For the respondent(s): Mr. Tapas Ray, Sr. Adv. (✓) Mr. RB Misra, Adv.  
Ms. Sushma Suri, Adv.

UPON hearing counsel the Court made the following

## ORDER

Having regard to the special facts and circumstances of the case we dispose of the petition by the following order:

We are informed by the learned counsel for the respondents that petitioner Nos. 2, 3 and 4 namely, Dilipkumar K. Bhadoria, Bharat J. Shah and Saiyed Mustaq Ali Fakruddin have already been regularised but respondent Nos. 1 and 5 Kiran B. Desai and Suresh M. Brahambhatt have not been regularised. If petitioner Nos. 1 and 5 get themselves registered with the Employment Exchange and if there is any vacancy available the respondents will consider the cases of petitioner Nos. 1 and 5 for employment in their turn. With these observations the SLP is disposed of.

*[Signature]*  
(SUNITA TALWAR)  
COURT MASTER

*[Signature]*  
(VINOD KUMAR)  
COURT MASTER

*Send a copy of the order to the petitioner  
27/4/91*