

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 470 of 1987
~~XXXXXXX~~

DATE OF DECISION 30-11-1987

Smt. Maniben C. Vaghela Petitioner

Shri J. H. Yagnik Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri 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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

(8)

JUDGMENT

OA/470/87

30/11/1987

Per : Hon'ble Mr P H Trivedi : Vice Chairman

The petitioner is working as part-time sweeper cum water server in the office of Deputy Salt Commissioner, Ahmedabad for several years. It is sought by respondents to appoint a full time sweeper to this post and Employment Exchange has sent some names in which the petitioner has not been included. The petitioner has sought relief in terms of directing the respondent to regularise her services and to treat her on regular establishment of the respondents and to declare the respondents' action in calling for other candidates for interview and selection as illegal. The petitioner's contention is based upon (1) There being no occasion for a full time new appointment as there is no such post in the office in which she is working. (2) The sweeper's post does not require a middle standard level of educational qualification for eligibility and if the petitioner does not have this qualification, she is not rendered ineligible thereby. (3) The post of sweeper cannot be grouped with other Group 'D' posts and therefore the Recruitment Rules under Article 309 notified on 4-7-1980 do not apply in her case. Even if these Rules apply they should be relaxed in her case on account of her being Schedule Caste. The petitioner says that she is a casual employee and contends that she is under the protection of Section 25 of the Industrial Disputes Act. The instructions dated 2-2-1977, 16-1-1976 and 9-11-1977 referred to by the petitioner prescribe primary school standard pass qualification for the posts of Chowkidar, Watchman, Sweeper, Scavenger, Gardner and Mali and thus the educational qualification of the petitioner is not deficient and is, therefore, eligible to this post. These rules are applicable only when the appointment is against a clear vacancy. The proposed appointment is not on regular vacancy but in a temporary post which is renewed year after year. Against these contentions the respondents have taken the plea that all these years the petitioner was paid as a part-time employee from contingency funds and is, therefore, not entitled to the status of casual employee and, therefore, the question of Industrial

Industrial Disputes Act being applied to her does not arise. By virtue of transfer of one regular post to Ahmedabad Division a vacancy in regular post has arisen and this is sought to be filled as required under the rules by getting the names recommended by the Employment Exchange and selecting a suitable person from amongst such names. The petitioner admittedly is deficient in educational qualifications of middle standard and, therefore, cannot be considered to be appointed on regular basis. The candidates to be selected on full time basis would also be of the Scheduled Castes and the petitioner has no special advantage over them on that ground. The rules have been subsequently modified and are superseded by the Recruitment Rules notified dated 4-8-1980. Respondent has relied upon SLR 1979, Vol.I ~~page~~ 222.

2. After hearing the learned advocates and perusing the record we find that the petitioner is not a casual employee but only a part-time employee paid from the contingency fund. Whether the Employment Exchange should have recommended her case would depend upon whether the petitioner was registered with them. The petitioner claims that she was so registered but that does not give her a right to be included in the list sent by the Employment Exchange. The Recruitment Rules published by notification dated 4-7-1980 apply in the case of filling up a regular post and this clearly shows that middle school standard is a requirement and the petitioner admittedly is deficient in this educational qualification. The Department of Personnel's instructions and the rules dated 4-8-1970 are to that extent not applicable insofar as they cannot modify the Rules under Article 309 which are subsequent. The sole question is whether the post of sweeper cum water server has to be filled on a part-time or full-time basis. This is a matter of purely an administrative decision and not to be decided by courts. When the post on regular basis is available and has to be filled under the rules and the rules require educational qualifications and the Employment Exchange has not forwarded the name of the petitioner, there is no escape from

the position that the petitioner has no right to being considered for the post. She cannot also claim that the respondent authorities are not within the rights in filling up the posts according to the rules if a regular post is available. There is some doubt regarding the post being available on regular basis because the sanction for the post is for the limited period and there is no sanctioned strength attached to the cadre with reference to which the respondents can substantiate their claim that it is a regular post which is sought to be filled. However, even if the post is held not be regular, there cannot be any doubt that the respondent, have to fill up the post by calling for the names from the Employment Exchange, for selection of those who fulfil educational qualifications so that they can be regularised later.

3. No doubt the petitioner has a claim for consideration on the ground of her having worked for several years and also due to her being Schedule Caste. Insofar as the respondent chooses a Schedule Caste person on a regular basis this factor cannot be taken into account in favour of the petitioner because the person selected would have better qualifications.

4. In the light of the above observations, we find that the petition does not have any merit and fails. Interim relief earlier given stands vacated. No order as to costs.

Prerna
(P H TRIVEDI)
VICE CHAIRMAN

Joshi
(P M JOSHI)
JUDICIAL MEMBER