

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 27 OF 1992

~~Ex.No.~~

DATE OF DECISION 27-9-1993.

Christian Stalin Mathew, Petitioner

Mr.M.S.Trivedi for Mr.N.M.Kapadia, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr. M.R.Kolhatkar, Admn. 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 ? ✗

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Christian Stalin Mathew,
Small Industries Service Institute
Harsiddh Chamber, IVth Floor,
Ashram Road,
Ahmedabad.

..... Applicant.

(Advocate: Mr.M.S.Trivedi for
Mr.N.M. Kapadia)

Versus.

1. Union of India, through
The Development Commissioner
Cum - Secretary,
Small Scale Industries,
Ministry of Industry
Nirman Bhavan,
New Delhi.

2. The Director
Small Industries Service Institute,
Harshiddh Chambers, IVth floor,
Ashram Road,
Ahmedabad.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

ORAL ORDERO.A.No. 27 OF 1992

Date: 27-9-1993.

Per: Hon'ble Mr.R.C.Bhatt, Judicial Member.

Heard Mr.M.S.Trivedi for Mr. N.M.Kapadia,
learned advocate for the applicant and Mr. Akil Kureshi,
learned advocate for the respondents.

2. This application under section 19 of the
Administrative Tribunal's Act, 1985, ^{is} ~~was~~ filed by the
applicant seeking the following reliefs:

..... 3/-

"7. Relief(s) sought:

In view of the facts and circumstances mentioned above, the applicant prays for the following reliefs:

(A) The termination order No.A-12012/1/91/1062 dated 31.12.1991, terminating service w.e.f. 31.12.1991 is illegal and void, ab initio.

(B) To confirm and regularise to the applicant as English Stenographer in the Office of Respondent No.2 by avoiding him all consequential benefit like deem date of seniority, Annual Increments, at par with a regular employee at his cadre.

(C) Pending hearing and Final disposal of this application respondents be directed not give any further artificial break or terminating services of the petitioner.

(D) Pending hearing and final disposals of this application respondents be restrain from recruiting as appointing any other person to the same post of Stenographer which present applicant hold since more than a year's.

(E) Any other relief or reliefs deem fit in the facts and circumstances of the case be avoided."

3. The case of the applicant as pleaded in the application is that the respondent No. 2 had called the applicant for an interview for the post of Junior Stenographer on 24th September, 1990 and he was offered the said post on adhoc basis for the period from 25th September, 1990 to 23rd November, 1990 for census work vide Annexure A-3 dated 26th September, 1990. On 22nd March, 1991 the respondent No.2 issued a termination order, a copy of which is produced at Annexure-A-4.

vide Ann.A-5

Thereafter, on 4th April, 1991/ the applicant was appointed as Stenographer on adhoc basis for a further period of 85 days from 26th March, 1991 till 19th June, but 1991/ vide Annexure A-6 dated 17th June, 1991 his services were terminated again.

after

Thereafter, the gap of three days, the

was

applicant/ once again appointed on adhoc basis on 21st

vide Ann.A-7

June, 1991/ for 89 days till 17th September, 1991 and

vide Ann.A-8

again he was appointed on 20th September, 1991/ for 103

days upto 31st October, 1991 and was further extended

upto 31st December, 1991 vide Annexure A-9. The

applicant's case is that he was terminated on 31st

December, 1991 by written order, but the same is not filed.

4. The applicant has alleged in the application that the applicant was appointed as a Stenographer purely on adhoc basis for Census work and was continued from time to time after artificial breaks, but the nature of duties performed by him during the above period would show that the respondent No.2 was in actual need of the service of an English Stenographer not only for census work but for respondent No.2. The casual gaps given to the applicant were nothing but artificial breaks according to the applicant. The applicant has alleged

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that he should be considered as a person as regularly appointed and the termination of his services on 31st December, 1991 is illegal and the same be quashed and he should be reinstated in service with backwages.

5. The respondents have filed detailed reply contending that in the Small Industries Service Institute, Ahmedabad, by order issued by the Development Commissioner "SSI" New Delhi, the Steno Typist were to be appointed through the Employment Exchange. It is the case of the respondents that regular vacancies of Steno-Typist are required to be filled in by the candidates sponsored by the Staff Selection Commission and for which the Commission conducts periodical examination tests and interviews after duly notifying the posts and the Commission also prepares waiting list of the candidates who was selected by the Commission.

6. According to the respondents, the post of the applicant was purely a temporary post for a definite period and the Government of India decided to fill it through the Employment Exchange and accordingly one Jayesh Kharadi and the present applicant were appointed on the sanctioned posts of steno-typists for census work purely on adhoc and temporary basis and they were relieved and their services were terminated after the

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work was over. The respondents have denied that artificial breaks were given to the applicant during the course of his services as Stenographer. It is contended that the applicant was appointed for a specific work and for a specific time. The respondents have contended that the applicant's services came to an end on 31st December, 1991 as he was appointed upto that date. The respondents have also contended that the applicant in his letter dated 9th July, 1991 has written as under:

"I have come to understand that the Census Cell work will be over by October, 1991 and thereafter I will be automatically terminated from the service."

The respondents have contended that this letter clearly shows that the applicant was aware that he was appointed for specific work for specific time and on completion of his work, his services could come to an end. It is contended that the order was legal and proper.

7. We have perused the documents on record and pleadings also. The first order Annexure A-3 dated 26th September, 1990, shows that the applicant was appointed as Stenographer on adhoc basis for the period mentioned therein. It also shows that the same will not confer any right on him to continue in the post indefinitely or to claim regular appointment on the basis

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of this adhoc appointment and his services would be terminated at any time without assigning any reasons. His services were terminated thereafter and after few days he was again given a similar appointment orders on adhoc basis. The respondents have terminated the services of the applicant after a short interval four or five times upto 31st December, 1991. Thus, it appears that during the period from September 26, 1990 upto ^{i.e.,} 31st December, 1991, ~~thus~~ within the period of one year and four months, the applicant had worked at interval ~~with~~ the respondents as Stenographer on adhoc basis.

8. The learned advocate for the applicant submitted that the breaks were given thrice or four times to the applicant which were artificial break and it was an arbitrary action violative of Article 14 & 16 of the Constitution of India. He submitted that though the appointment was on adhoc basis, the respondent No. 2 has taken ^{work} / regularly and the applicant has not only worked for census but for other work also and he should be regularised.

9. The learned advocate for the applicant, in support of his submission, ~~was~~ relied on the decision in Ghanshyam M. Pandya V/s. State of Gujarat & Ors.,

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1985 G.L.H. (U.J) 51. This decision will not apply in the instant case because in that case the State of Gujarat was not giving appointment during holidays but frequent breaks were there in the appointment and the applicant in that case was in continuous service of the respondents from 1980 to 1984. It was not an appointment on adhoc basis. The modus operandi of the respondents in that case was to give appointment for 29 days ~~every~~ time with an intention to give artificial break. There were as many as 42 appointment orders in that case and therefore, the Hon'ble High Court came to the conclusion that the respondents were giving the petitioner's appointment for only 29 days thinking that he would acquire any right over the post to which he was appointed and hence it was arbitrary and violative of Articles 14 & 16 of the Constitution of India. This case can not ^{be} compared with the present case because the appointment was absolutely on adhoc basis and as the respondents have contended in the reply that the regular appointment of the Stenographers were to be made through the Staff Selection Commission for which the periodical examination test and interviews are taken and then the waiting list of the candidates, who are selected by the Commission is prepared. The next

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decision relied on by the learned advocate for the applicant is Dineshkumar Himatlal Nimavat V/s. State of Gujarat & Anr., 28(2) G.L.R. page 1146. In that ^{case} also the State Government was employing persons for 28 or 29 days every month vide separate order. ^{such action was} It was held that / without authority of law and an unfair practice.

The applicant in that case was appointed for 28 or 29 days every month for a period of about 4 years with the artificial breaks. The above decision does not help the applicant. It is important to keep in mind that the applicant's appointment was purely on adhoc basis for the purpose of census work and the regular appointment was to be made by Staff Selection Commission. Therefore, it can not be said that the applicant is entitled to be regularised in that post of a Stenographer nor can it be said that the breaks given about four times during the period of one year and four months were artificial breaks, nor the action of the respondents in not continuing him after 31st December, 1991 could be regarded as violative of Articles 14 & 16 of the Constitution of India.

10. The next decision relied on by the learned advocate for the applicant is Dr. A.K.Jain & Ors. V/s. Union of India & Ors., reported in Vol.I S.C.C. Law Judgments, 1950 to 1988. The case of the applicants before the Hon'ble Supreme Court was that though they

were appointed as adhoc Assistant Medical Officers, they were replaced by freshly recruited Assistant Divisional Medical Officers and they prayed ^{that} their appointment should be considered as regular. The Hon'ble Supreme Court considered the contentions of the parties. The initial appointment in that case was for a period of six months but that period was extended from time to time. The respondents threatened the applicants to terminate their service as and when UPSC selected Assistant Divisional Medical Officers ^{were selected} and they joined their service. The Hon'ble Supreme Court held that the services of all doctors appointed either as Assistant Medical Officer or as an Assistant Divisional Medical Officer on adhoc basis upto 1.10.84 shall be regularised in consultation with the UPSC on the evaluation of their work and conduct on the basis of their C.R. In the instant case, the ratio of this decision can not be pressed into service because the appointment of the applicant was in census on a temporary basis on adhoc, meaning thereby that when the work of Census was over the services of the applicant had to come to an end. The reference to the regular appointment by Staff Selection Commission is an additional circumstance

The main feature of the appointment of the applicant and one another was that they were to be continued till

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the work in Census was over and hence after 31st December, 1991 as the census work was over they were not respondents is not contrary to continued. Thus the action of / either Article 14 or 16 of the Constitution of India nor the applicant is entitled to claim regular appointment.

11. The last decision relied on by the learned advocate for the applicant was All Manipur Regular Posts Vacancies Substitute Teachers' Association V/s. State of Manipur, reported in AIR 1991 SC 2088. The question which arose for consideration before the Hon'ble Supreme Court was that when the substitute teachers were working for several years on adhoc basis and when the State Government refused to regularise them and took steps for direct recruitments, it would create an enormous problems for the department to accommodate both the catagories of persons if substituted teachers are also directed to be regularised subsequently. The Hon'ble Supreme Court, therefore, by an earlier order had directed the State Government to consider the case of regularisation of the substitute teachers before making direct recruitments and a further order was made to implement the earlier order because the State Government did not take any action. Ultimately, the Hon'ble Supreme Court, having regard to the facts of that

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particular case in order to avoid further litigation gave directions that those substituted teachers who had put in five years of service or more as on October 1, 1990 shall be regularised without DPC and those who had such period not completed by that date shall be allowed to appear before DPC for selection. As to the seniority between the direct recruits and the regularised candidates, some direction was also given. In our opinion, this decision does not help the applicant at all.

12. Having considered all the aspects of the case, in our opinion, the respondents have not committed any illegality in not continuing the applicant after 31st December, 1991, we find no substance in any of the grounds in the application that the order of the respondents was illegal or void ab initio.

ORDER

Application is dismissed with no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

R.C. Bhatt

(R.C. Bhatt)
Member (J)

vtc.

MA/386/1992 IN OA/27/1992

Sh. C.S. Mathew

APPLICANT (S)

Sh. N.M. Kapadia

COUNSEL

VERSUS

The Dev. Comm. cum
Secy. to Anes.

RESPONDENT (S)

Sh. Akil Kureshi

COUNSEL

Date	Office Report	Orders
27/11 04/11/92	Final Hearing True copy is not signed by Adv.	Adv. copy is served on other side.
11/1/93	F/H	Objection has been removed.

22/2/93

125 1882 dt 28/10/82

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

MISC. APPLICATION NO. /386/ OF 1992

O.A. NO. 27/92.

CHRISTIAN STALIN MATHEW
Small Industries Service Institute
Harsiddh Chambers, IVth Floor,
Ashram Road
Ahmedabad - 380 014.

.. APPLICANT

Versus

1. The Development Commissioner-
Cum-Secretary,
Small Scale Industries
Ministry of Industry
Niram Bhawan
NEW DELHI - 110 011.

2. The Director
Small Industries Service Institute
Harsiddh Chambers, IVth Floor
Ashram Road
Ahmedabad - 380 014.

.. RESPONDENTS.

1. The Applicant most respectfully submits that he has filed the O.A. in the month of January, 1992. The said matter was put on Admission Board on 27-1-1992 and the appropriate order was passed by the Hon'ble Tribunal. The copy of the said order is annexed herewith and marked as Annexure 'A'. The Applicant further submits that as per the order of the Hon'ble Tribunal, the Respondents filed the reply. The Applicant also thereafter filed his reply in rejoinder. As per the order, the matter was required to be placed on final hearing Board after completion of pleadings which procedure is also over by this time.

Contd.....2.

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22/11

2. Under the aforesaid circumstances :

- I Your honour be pleased to place the matter on Final Hearing Board fixing the specific date.
- II Any other relief or reliefs as deemed fit in the facts and circumstances of the case be granted.

PLACE : AHMEDABAD

DATE : 15.10.1992

N.M. Kapadia
(N.M. KAPADIA)
Advocate for the Applicant.

Stalin Mahtew

V E R I F I C A T I O N

I, Christian Stalin Mahtew, aged about 23 years, working as English Stenographer, Small Industries Service Institute, Ahmedabad, resident at Block No.148/866, Opp: General Hospital, Bapunagar, Ahmedabad - 380 024 do hereby verify that the contents are true to my best of knowledge and I believe to be true & on truth and I have not suppressed any material fact.

PLACE : AHMEDABAD

DATE : 15.10.1992

Stalin Mahtew

Signature of the Applicant

Filed by Mr. N.M. Kapadia
Learned Advocate for Petitioners
who second set & *nil* copies
copies copy served/~~not served~~ to
other side *on the*

Joanna
By Registrar C. A.T. (J)
A'bad Bench
Dt. 22/10/92

Submitted.

The Appl has not been found in order, defect indicated as below.

1) True copy is not signed by Adv.

KP
04/11

S.O. (J) ~~Phinitam~~

4-11-92

Dy. Reg.

~~Phinitam~~
4-11-92

Submitted,

has been

Above objection ~~was~~ removed

by providing certified copy. we

may give regular number to

MA and hand over to conservator

fixing the date.

M. M. Porek
12/11/92

S.O. (J)

~~Phinitam~~
12-11-92

Dy. Reg.

~~Phinitam~~
12/11/92

Sub 1 of 1

O.A./27/92

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Shri Christian Stalin Mathew

..... Applicant

Shri N.M.Kapadia

..... Advocate

v/s.

Union of India & Ors.

..... Respondents

27.01.92

Heard Mr.N.M.Kapadiya learned advocate for the applicant. Read the application. Admit. No interim order is passed. Issue notice to the respondents to file reply on merits within four weeks. The applicant to file rejoinder within two weeks thereafter. The Dy. Registrar (J) to put the matter for final hearing after completion of pleadings.

Sd/-
(R.C.BHATT)
MEMBER(J)

C. A. T.
Ahmedabad Bench

- (a) Serial Number of the Application. 206/92
(b) Name of the Applicant Shri N.M.Kapadia
(c) Date of presentation of application for copy 11/9/92
(d) Number of copies ordered
(e) Copy fee charged
(f) Date of receipt of copy
(g) Date of deposit of copying fee
(h) Amount for charged at 7
(i) Date of receipt of record for copy
(j) Date of preparation of copy 01/09/92
(k) Date of Delivery of copy to the applicant. 21/9/92.

Prepared by : H 01/09/92
Compared by : KC 1/9
TRUE COPY

Section Officer (J)
Central Administrative Tribunal,
Ahmedabad Bench.

O.A./27/92

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Shri Christian Stalin Mathew

..... Applicant

Shri N.M.Kapadia

..... Advocate

V/s.

Union of India & Ors.

..... Respondents

27.01.92

Heard Mr.N.M.Kapadiya learned advocate for the applicant. Read the application. Admit. No interim order is passed. Issue notice to the respondents to file reply on merits within four weeks. The applicant to file rejoinder within two weeks thereafter. The Dy. Registrar (J) to put the matter for final hearing after completion of pleadings.

Sd/-
(R.C.BHATT)
MEMBER(J)

True copy
Kapadia
Adv. for Applicant

C. A. T.

Ahmedabad Bench

- (a) Serial Number of the Application. 206/92
(b) Name of the Applicant. Shri N.M. Kapadia
(c) Date of presentation of application for copy. 11/9/92
(d) Number of copies. one
(e) Copy fee charged.
(f) Date of order for deposit of copy fee.
(g) Date of deposit of copying fee.
(h) Amount fee charged if any.
(i) Date of receipt of record for copy.
(j) Date of preparation of copy. 01/09/92
(k) Date of Delivery of copy to the applicant. 21/9/92.

PS. S/-
OFFICE ONLY
Receipt
NO. 2491
dtd. 01/09/92

Prepared by : H
01/09/92
Compared by : KS, 1/9
TRUE COPY

Section Officer (J)
Central Administrative Tribunal
Ahmedabad Bench

1-1X92