

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. Q.A.230 of 1996

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman.  
Hon'ble Mr. M.S. Mukherjee, Administrative Member.

SUBHASISH SARKAR & ORS.

... Petitioners

Vs.

1. Union of India through the Secretary, Ministry of Information & Broadcasting, Govt. of India, Shastri Bhawan, New Delhi-110 001.
2. Station Director, All India Radio Calcutta, Eden Garden, Calcutta-700 001.
3. Assistant Station Director (Station-in-Charge), All India Radio, Murshidabad Unit.

... Respondents

For the petitioners : Mrs.Uma Sanyal, counsel.  
Ms.S.Banerjee, counsel.

For the respondents : Mr. Madhusudan Banerjee, counsel.

Heard on : 12.9.1997

Order on : 29.9.1997

ORDER

A.K.Chatterjee, V.C.

These four petitioners contend that they are working as casual labourers on contract basis in All India Radio at Murshidabad Unit and performing jobs like script writing, interviewing, editing, recording, etc., etc. They claim that they are working since 1989<sup>or God without being regularised</sup> despite the fact there is always a need for additional workers for performing various kinds of job. They made representation for regularisation

of the service, which, however, proved fruitless. In such circumstances, the instant application has been filed inter alia for a direction upon the respondents to absorb the petitioners permanently on the ground that the inaction of the respondents in the matter of their regularisation is wholly illegal.

2. The respondents in their counter have stated that the petitioners were never engaged as casual labourer, but they were booked on assignment basis and <sup>acted?</sup> ~~fitted~~ as casual Artistes on specific fees per day, based on the nature of work. It was stated that on such basis they are not booked for more than six days in a month and are paid fees @ Rs.150 for each day assigned. They accept assignment on contract basis which suit them during their spare time and are not posted to do any work of perennial nature and as such, they cannot be absorbed.

3. We have heard the 1d.counsel for the parties and perused the record before us.

4. In order to decide the question of absorption, it is necessary to come to a finding regarding the nature of the work performed by the petitioners. In the application, particularly paragraphs 4(b) and 4(c) thereof, it has been stated that <sup>they are</sup> their working as casual labourers on contract basis for jobs like script writing, interviewing, etc., etc., as already indicated, ~~on contract basis~~ and they have annexed to the application, a copy of the form of agreement. This annexure at page 18 of the application shows that one Shri Sanjay Sengupta, who is not one of the petitioners, was invited by the authorities to take part in a <sup>certain</sup> ~~sudden~~ programme of inauguration by an Hon'ble Minister at a fee of Rs.150/- for 20 mins. duration, which was to be broadcast on a specified date and hour. Now if this is regarded as a specimen form of agreement, then it is sensible to conclude

that similar agreements were entered into between the petitioners and the authorities. This does not fit in with the case of the petitioners made out in another place of the application, namely, paragraph 4(f) wherein it has been averred that they were engaged by the respondents for 10-14 days in a month and paid only a fixed amount of Rs.900/- per month at the maximum. This was no doubt denied by the respondents in their reply and they have produced a copy of a communication made by the Murshidabad Unit of All India Radio to the Director General, stating the number of days on which each of the petitioners' had worked in the three preceding years. This reveals that each of the petitioners' had worked between 60 days and 84 days in each of the three preceding years, which works out to roughly 6 days in a month, as stated by the respondents in their reply. No rejoinder has been filed and, therefore, on the basis of records, it can be held that the petitioners had worked for about 6 days in a month on contract basis for short term durations on each day.

5. Now the petitioners claim regularisation on the basis of an office memorandum dated 26th October, 1984, of Department of Personnel & A.R. which conveys a decision of the Government that in organisations observing five day week, casual workers may be considered for regular appointment to Group-D post, if otherwise eligible, if they have put in 2 years of service as such, with 206 days of work in each year in case of five day week and 240 days of work in case of six day week. Clearly, the case of the petitioners do not fall within the purview of this office memorandum and accordingly they cannot claim regularisation or absorption on its basis.

6. The 1st.counsel for the petitioners' has then tried to support ~~their~~ <sup>their</sup> <sub>case by stating</sub> the decision of the Supreme Court in Union of India vs. Dinesh Kumar Saxena & Ors. (AIR 1995 SC 1565)



In this case, their Lordships were considering the question of regularisation of temporary employees in the Directorate of Census Operations in Uttar Pradesh, who were engaged on contract basis for limited and fixed duration on fixed pay. Their Lordships did not see how these employees who have been engaged on a contract basis for a limited and fixed duration on a fixed pay can be directed to be absorbed in any other department of the Government and took the view that ends of justice could be met if the Directorate of Census Operations was directed to consider only those employees who worked temporarily in connection with 1981 and/or 1991 census operations and subsequently retrenched, for appointment in any regular vacancy which may arise in the said Directorate and which can be filled up by direct recruitment, if such employees are otherwise qualified and eligible for this post. On behalf of Union of India it was also submitted in writing that there were 117 vacant posts. It is further found that in that case the casual workers had worked for long period while in the present case, the petitioners had worked barely for six days in a month. There is also nothing before us to show that any vacant permanent post is available to absorb them. It is, therefore, difficult to hold that the petitioners' can claim regularisation or absorption on the basis of the aforesaid decision of the Hon'ble Supreme Court.

7. The 1d.counsel for the petitioners' has also tried to derive support from another decision of the Supreme Court in Dharwat District PWD Literate Daily Wages Employees Association & Ors. vs. State of Karnataka & Ors. (AIR 1990 SC 883). In that case several writ petitions were filed by two trade unions, a society of Law students of University College and some individuals for directions to confirm the daily rated and monthly rated employees as regular Govt. servants and other appropriate reliefs. It was pleaded that there were about 50,000 such workers employed in different Govt. establishments and though they have put in 16 to 20 years of continuous service, they have not been regulari-

eed in their service. Their Lordships observed that the very fact that they have put in 16 to 20 years of service go to prove that there is permanent need for the jobs they perform. A draft scheme was also filed by the State Govt. and their Lordships gave some further directions for giving a final shape to the scheme. Here again, the petitioners cannot be said to be similarly circumstanced as the writ petitioners, because of enormous difference in the length of service respectively put in by them. Since the present petitioners have rendered only about 6 days of service in a month and if any order is passed for their regularisation or absorption, it is just possible that there may be other workers, call them casual labourers or casual Artistes, who have worked for similar periods. If all these workers are directed to be absorbed, the department would be burdened with a work force much in excess of its requirement. In such circumstances, the only direction which can be given to the authorities is to consider the petitioners for appointment to regular posts at the time of selection to such post alongwith other eligible candidates, with due regard to their previous experience.

8. The O.A. is, therefore, disposed of with a direction upon the respondents that if and when appointments are made to posts for discharge of such duties as the petitioners are now performing, the petitioners will be considered along with other eligible candidates with due regard to the experience they have already acquired.

9. No order is made as to costs.

29/9/57  
(M.S. Mukherjee)  
Administrative Member

A.K. Chatterjee  
(A.K. Chatterjee)  
Vice-Chairman