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CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH

**Original Application No. 93 of 2008
Jodhpur, this the 18th day of Sept., 2009.**

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CORAM :
Hon'ble Dr. K.B.Suresh, Member (Judicial)

Vijesh Kumar S/o Shri Jawari Lal, aged 34 years, caste Harijan, R/o Harijan Basti, Nainu Ji Ka Mandir, Udaimandir, Jodhpur (Presently working as Sweeper at Kacheri Post Office, Jodhpur).

Applicant.

[By Advocate : Mr. S.P. Sharma]

-Versus-

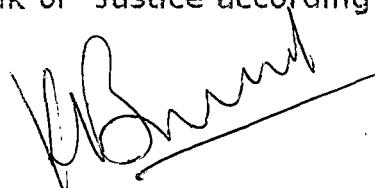
- (1) Union of India through the Secretary, Department of Post & Telegraph, Ministry of Communication, Government of India, Dak Bhawan, New Delhi.
- (2) The Assistant Post Master General, Rajasthan West Region, Head Post Office, Railway Station Road, Jodhpur.
- (3) The Senior Superintendent of Post Offices, Rajasthan West Region, Head Post Office, Jodhpur.
- (4) The Sub Post Master, Post Office Kacheri, Jodhpur.

Respondents.

(By Advocate :Mr. M.Godara for Mr.Vineet Mathur)

: O R D E R :
[BY THE COURT]

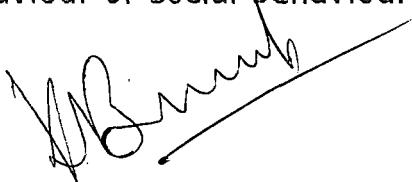
- 1- Justice is incapable of determination by the human mind. Whether the question is the relation of individuals one to the other or of individuals to the community, the issue can be solved only in all knowledge which is vouchsafed to no man or body of men. When, therefore, we speak of "Justice according to law" we know that we are



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not administering justice in its full sense, but only "justice" based upon certain and severely limited principles which at least in the past had some, if inadequate, moral content. On the other hand to speak of "social justice" or "democratic justice" is to employ a vague generality incapable of determination since there are no clearly defined and logical rules determining either "social" or "democratic" behaviour. The history of social and political science, in both theory and practice, is a story of conflicting views of the right and wrong method of social and political behaviour. Nor can it be said that any society has resolved these conflicts. The same appears generally to be true in the field of economics.

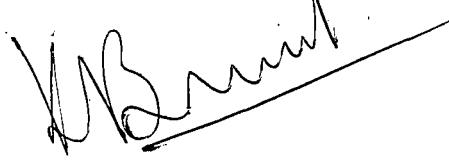
Law as I have tried to describe it, and independently of the decision of "administrative tribunals", follows in large measure a coherent pattern, upon recognizable principles applied in a recognizable and more or less logical form. At least some of the premises are both defined and mutable only by destruction independently of law, as by the Act of a legislative authority. "Democracy" itself is merely a term covering a number of conceptions, some almost mutually exclusive, and consequently no common code of behaviour can in any event be derived from it. Furthermore, in my experience even if limited to a particular form of democracy, such as English or American democracy, we do not find in its exponents any fundamental agreement. So, for example, the Victorians probably assented to Lincoln's "government of the people by the people for the people", but they would have denied that England in their day was far from being a democracy. Unless the basic conceptions determining either democratic behaviour or social behaviour are agreed and certain



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so that argument can proceed from common ground in any dispute concerning their application, it is entirely fallacious to speak of "social justice" as a proven principle. In my mind these are not matters of justice but of hypothesis. In so far as they are divorced from a moral code they have little validity at all, since the relevant data are too involved and too unscientific to provide a common ground. In so far as they are ultimately responsible to a moral code, it is this code which is the arbiter of "justice" and the terms "democratic" or "social" have no true significance. For example, the question whether or not the ratepayer should subsidise council house tenants is primarily a political one, though it may be determined by a combination of social, economic and moral forces. Some of these forces may have little or no moral content - for instance, the determining factor may be the desire of an individual politician to acquire popularity with a particular class of the community. But such factors are irrelevant to justice. The determination may be no less just than the motive, which guided it, was wholly irrelevant, or even, indeed, contrary to the aims of justice.

Yet whether or not the decision is just, that is, whether "it is truth in action", can only be determined in accordance with truth and in this connection it is convenient to describe truth as morality (j). There is little in history to justify the belief that political expediency and morality are natural bedfellows, and this alone should expose the fallacious cries of "social" and "democratic" justice and the specious pleas made for the extension of political discretion; but with the expediency of political discretion we are not here concerned except to demonstrate its remoteness from justice and its inconsistency with the notion of law. But even if morality is the basis of these conceptions,



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how then? Thus, spoke; Justice Benjamin Cardozo and which is applicable in this case.

2- Therefore unless, we assume that morality is to be the basis for judicial determination as well as for law enforcement, I will fail in my duties. The applicant, who is paid a sum of Rs. 734/- per month for being a Part-Time Sweeper for the last 23 years by the respondents, had approached this Tribunal earlier also vide OA No. 125/2005 which was allowed on 15.2.2006 and the respondents were directed to convert the status of the applicant from Part-Time Casual Labour to Full Time Casual Labour. Reliance on the decision relied in OA No. 184/2004 which was affirmed by the Hon'ble Rajasthan High Court. But, even thereafter, for the reasons not fully explained, the applicant was denied the benefit of this order. Thereupon, the applicant filed a C.P. however, the same was dismissed. As apparently, the impugned order had explained the reason for non-implementation.

But, now, the applicant has produced before us Annex. A/8 issued by the Director General of Posts, New Delhi, which states as follows :

"Part time Casual Labourers are not covered by the Scheme, they may, however, be brought on the strength of full time Casual Labourers, subject to availability of work and suitability. For this purpose work requirements of different types and at neighbouring units can be pooled.

Therefore, the applicant would say that he is entitled for such consideration. The Union of India had challenged the decision relating to the applicant to the Hon'ble High Court of Rajasthan through D.B. Civil Writ Petition No. 3104/2006 at Jodhpur. The fundamental portion of the said judgement dated 12.10.2006 is quoted below :-

"This writ petition by the Union of India is directed against the order of the Central Administrative Tribunal, Jodhpur Bench dated 15.2.2006 in OA No. 125/2005 and MA No. 59/2005 directing the petitioners to consider



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"converting the status of the applicant from part-time casual labourer". The respondent was engaged as Sweeper on daily wages part-time bases on 1.2.1986 and he has been serving as such for over twenty years by now. He approached the Tribunal seeking direction to grant him temporary status as per Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1991, the relevant part of which runs as under :-

"Part time casual labourers are not covered by the Scheme. They may, however, be brought on the strength of full time casual labourers, subject to availability of work and suitability. For this purpose work requirements of different types and at neighbouring units can be pooled."

The Tribunal took the view that the respondent stands at par with one Raju whose Original Application (OA no. 184/2004) was disposed of with favourable direction, and accordingly disposed of the application of the respondent with similar direction as quoted hereinabove. Counsel for the respondents stated that the order of the Tribunal was challenged in this Court in D.B. Civil Special Appeal (W) no. 580/2006 but this Court declined to interfere. We find no ground to pass a different order.

We accordingly dismiss this writ petition with the clarification that the case of the respondent is to be considered in the light of the aforesaid Scheme dated 16.8.1991 in accordance with law."

 The C.P. No. 17/2007 having been dismissed on 21.9.2007, on the ground that it is beyond the purview of this Tribunal to look into the correctness or not of an order, while holding that the proper course is to approach the Tribunal for fresh consideration. Thereupon, the applicant had approached this Tribunal again. The respondents would contend that the Kacheri Post Office is having a Total of 2550 Sq. Ft. covered area and, therefore, the work is of two yours 25 minutes per day. I have already seen in the Annex. A/16 that the neighbouring Units can also be pooled but such information is not forth-coming even though in the impugned order a mention is made that the neighbouring Units may also be looked into to find out the extent of work available to the applicant.



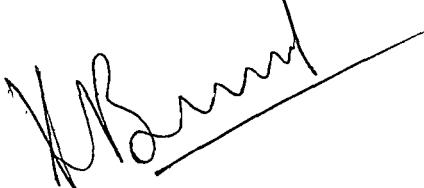
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5- The applicant had mentioned the names of several people whom he alleged were discriminately treated while favouring them even though, the same was denied to him. But, the respondents denied it and submitted that these are different in matter and content. They maintained that a Tea Maker and a Tiffin Boy renders 8 hours work a day and therefore, there is no relation whatsoever, to the case of the applicant. Relating to the case of Raju at Bikaner, who was regularized, the respondent would aver that total hours of work are 17 hours. The counsel for the applicant brought to my notice Annex. A/16 wherein, the Post Master at Bikaner H.P.O. had given a Memorandum dated 10.5.2006 in which it is stated that the working hours for the Sweeper at Bikaner was 5 hours and it is being enhanced to 8 hours to provide him full time employment. Therefore, I have to come to a conclusion that the respondents are factually incorrect when they says that the total working hours at Bikaner were 17 hours and which necessitated the regularization of Raju, whereas, in the case of the applicant which is of 2 hours and 25 minutes. Whether this omission is deliberate or casual, I am unable to say. But, Para 5 (c) of the reply, the respondents states that there was apparently a preliminary inquiry for some or other infraction against the applicant and to the effect that he had not paid Rs. 400/- to somebody. The significance or not of this is not explained by the respondents but, it appears that there appears to be some malafides lurking behind the principles doled out by the respondents.

6- The counsel for the applicant took us through the list of Post Offices as is available in Annex. R/2 and it was discussed at the Bar. It was found that taking the Kachery Post Office as a focal point, within



the distance of 2 Kms., there are ⁷ 6 other Post Offices also. If the pooling can be done then, these Post Offices in nearby proximity will well serve the purpose. Therefore, on a cumulative assessment of all these factors including assumption of a negative feeling against the applicant, seen displayed by the respondents for whatsoever reason. I have to find that the non implementation of the order of this Tribunal may not be because of actual situational reasons but might be because of active malafides. The Scheme of 1991 is squarely applicable to the applicant. Therefore, I hold that the applicant is entitled to be regularized as a Full Time employee. The impugned order at Annex. A/2 is quashed and appropriate orders will be issued to the applicant by the respondents regularizing him as a Full Time employee, within three months from the date of receipt of a copy of this order. As I have found that there is some deliberate suppression of truth in computation of the working hours of the above said Sh. Raju, which was actually 5 hours and mentioning it as 17 hours in the reply filed by the respondents, I have found in it a gleam of malafides in the breast of the respondents, therefore, the O.A. is allowed with a Cost of Rs. 250/-.


 (Dr.K.B.Suresh)
 Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

MISC APPLICATION NO. 64 OF 2010 IN OA/CP/RA/MA/Nos 93/2008

Applicant(s) V.O.P. GOS Respondent(s) Vijay Kumar

Advocate for Applicant(s) Mr. Vinod Mehta Advocate for Respondent(s) —

This is a misc application filed by Applicant / Respondent through counsel
under Section / Rule 22 of AT Act 1985, for Extension of time

For Complying the order of D. 18/09/2008

O.D. No. 93/2008

It is a DB / SB case & pertains to the jurisdiction of Jodhpur Bench.

Copy of MA ^{no} ~~already~~ given to the opposite counsel.

But, EA ~~also~~ sent 2 M.D.
for Respo~~ts~~ ~~already~~, ~~sent~~
with envelope

On Scrutiny it has following defect / no defects

26/09/2010
Vijay Kumar

13/10/10

13/04/2010
Mr. Vinod Mehta, Adm. Counsel for Opp. Counsel

register. Put up in Court for order
admission on 20/04/2010, along with O.D.

13/04/2010
REGISTRAR
C.A.T., JODHPUR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

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ORDER SHEET

APPLICATION NO.....OF

Applicant(s)

Respondent(s)

Advocate for

Advocate for

Applicant(s)

Respondent(s)

Notes of the Registry

Orders of the Tribunal

MA No. 64/2010 in OA No. 93/2008
(Union of India & Ors. vs. Vijesh Kumar)

Date of Order: 20.04.2010.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for applicants.

This Misc. Application No. 64/2010 has been filed on behalf of the Union of India & Ors., who were respondents in OA No. 93/2008, seeking further time for compliance of the order dated 18.09.2009 passed in OA No. 93/2008.

Heard learned proxy counsel, Mr. M. Godara, appearing on behalf of the applicants in this M.A. He, while arguing, assured the Court on behalf of the original respondents now applicants in MA that by the end of June, 2010, the respondents shall positively comply the order of this Tribunal dated 18.09.2009.

Considering his submission, this Misc. Application is disposed of with a direction to the original respondents now applicants in this Misc. Application to comply the order of this Tribunal dated 18.09.2009 passed in O.A. No. 93/2008 by 30.06.2010. Accordingly, this M.A. stands disposed of.

S.M. Alam
(Justice S.M.M. Alam)
Judicial Member

nlk

Part II and III deposited
in my presence on 08/07/2015
under the supervision of
Section Officer (Recs) as per
order dated 07/07/2015

Section officer (Recs)

W.B.S.