

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 420/91
~~KXXV6.~~

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DATE OF DECISION 18.12.1991

S Ayyappan Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

The Sub Divisional Officer,
Telegraphs, Alapuzha and
others. Respondent (s)

Mr George Joseph, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

and

The Hon'ble Mr. AV Haridasan, 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. To be circulated to all Benches of the Tribunal?

JUDGEMENT

Shri SP Mukerji, Vice Chairman

We have heard the learned counsel of both the parties.

2 In this application, the applicant has prayed that the impugned order dated 26.2.1991 at Annexure-I rejecting his request for regularisation be set aside and the applicant declared to be entitled for regularisation considering his continuous service as casual mazdoor and that he is entitled to his service being terminated only in accordance with Chapter ~~V~~A of the Industrial Disputes Act.

3 According to the applicant, he has been working as a casual mazdoor since January, 1988 and the applicant apprehends that because of the impugned Annexure-I order in which his

representation for regularisation was rejected, his services may be terminated at any time in violation of the Industrial Disputes Act. According to him, he had been engaged by various Linemen^{as} named by him in para-2 of the application @ Rs 20 per day for about two years of continuous service. He has also mentioned that several casual labourers similarly situated are being regularised in Group D posts.

4 According to the respondents, the applicant was never selected at the Sub Divisional level as a regular casual mazdoor. According to them, the Linemen named by the applicant had no authority to engage any casual labourer~~y~~ because no work order had been given to ~~him~~^{them} from the Sub Divisional Office. It is stated ~~that~~^{that} there is no available record, nor has the applicant produced any document to prove his previous casual employment. The question of regularisation can be taken up only after the persons initially selected as casual mazdoors~~are~~ declared as approved casual mazdoors.

5 In the rejoinder the applicant has produced certificates dated 5.7.91, 6.7.91 and 2.7.91 issued by the various Linemen at Pulinkunnu stating that the applicant had been engaged for line work as per the orders of J.T.O since 1988 for various works in the Pulinkunnu Telephone Exchange. In one certificate

it has been stated that he has worked since 1988 as unapproved casual mazdoor on bill work.

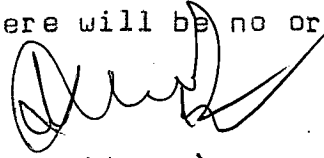
6 Though we are not quite happy about the manner in which the applicant has presented this case without mentioning the number of days or dates of ^{his}~~the~~ casual employment, in view of the certificates produced by him, the authenticity of which ^{has}~~have~~ not been specifically challenged by the respondents, we cannot dismiss the application summarily. The fact remains that if the applicant had been engaged as a casual labourer even unapproved, but paid daily wages, the origin of the employment whether by the Sub Divisional Officer or by the Linemen is not germane so far as the applicant's ^{as 'workman'} status ^a is concerned. Master-servant relationship ^a must have existed during the period of the applicant's employment by the Linemen and accordingly, the provisions of the Industrial Disputes Act cannot be written off altogether so far as the applicant's engagement is concerned.

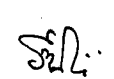
7 In the conspectus of facts and circumstances, we close this application with a direction to the respondents to verify by referring to the concerned Linemen, the nature, period and ^a dates of employment of the applicant and if the ^{factum}~~factum~~ of employment is established, we direct ^a ~~that~~ the respondents to continue the applicant in casual employment so long as any person ^a

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junior to the applicant ^{is} ~~are~~ continued to be employed as casual mazdoors. In that light the question of regularisation also should be taken up by the respondents in accordance with the scheme of regularisations which have been launched by the Department under the directions of the Hon^{ble} Supreme Court. If the decision of the respondents is not favourable to the applicant, the same should be communicated to him by a speaking order and the applicant shall be at liberty to seek redressal of his grievance, ⁴ ~~as~~ advised, in accordance with law. We also direct that so long as any decision on the basis of this order is ^{not} taken by the respondents, the applicant's services shall not be terminated and if at all ^{the termination} ~~it~~ should be in accordance with the provisions of the Industrial Disputes Act.

8 There will be no order as to costs.


(AV Haridasan)
Judicial Member


(SP Mukerji)
Vice Chairman

18-12-1991.