

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. No.434/95

Friday this the 26th day of July, 1996.

CORAM:

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR.P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

1. Venugopal.C.
Casual Labourer,
Passport Office,
Trivandrum.
2. Mohanakumar.K.
Casual Labourer,
Passport Office,
Trivandrum.
3. Rajan,
Casual Labourer,
Passport Office,
Trivandrum.
4. Suresh Kumar,
Casual Labourer,
Passport Office,
Trivandrum.
5. Lakshmi,
Casual Labourer,
Passport Office,
Trivandrum.
6. M.Lourd Jessy,
Casual Labourer,
Passport Office,
Trivandrum.
7. K.Mohan Kumar,
Casual Labourer,
Passport Office,
Trivandrum.
8. Deepa V.S.
Casual Labourer,
Passport Office,
Trivandrum.
9. Geetha Kumari.B.
Casual Labourer,
Passport Office,
Trivandrum.
10. A.T.Pushpadasan,
Casual Labourer,
Passport Office,
Trivandrum.

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. The Passport Officer,
Trivandrum.
2. The Chief Passport Officer, New Delhi.
3. Union of India represented by Secretary to
Government, Ministry of External Affairs,
New Delhi.

..Respondents

(By Advocate Mr. James Kurian, ACGSC)

The Application having been heard on 26.7.1996, the Tribunal on the same day delivered the following:

ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

Applicants who are casual employees with temporary status, challenge A-3 order by which temporary status granted to them was revoked, even without notice.

2. Applicants have been working as casual employees in the Passport Office under respondents since early 1992. By A-2 order they were granted temporary status with effect from 1.9.93, in accordance with a scheme framed by the Government of India (A-1). Schemes were framed in various departments presumably, taking inspiration from the observations of the Highest Court in the land in Inder Pal Yadav and others vs. Union of India and others, (1985)2 SCC 648 and Daily Rated Casual Labour employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch vs. Union of India and others, AIR 1987 SC 2342. The Apex Court noticed that a large number of labour force was kept in a state of uncertainty without any security of employment and indicated the need to ameliorate their plight.

3. Deprivation of a right acquired by conferment of temporary status is challenged on the ground that it was without notice and justification. According to respondents, grant of temporary status was improper, as temporary status could be granted only to those

employees recruited through Employment Exchanges. We must notice even at this stage, that this is not a requirement in the contemplation of the scheme. Likewise, we cannot accept the argument of respondents counsel to the effect that the 'post', can be filled up only through the Employment Exchange, for the reason that a casual employee is not appointed to a 'post'. A benefit or a right enuring to a person cannot be taken away without hearing him in his defence. The Apex Court has held consistently and for long, that an order to the detriment of a citizen cannot be made without hearing him. 'Audi alteram partem', has become an article of faith and a way of life, in our constitutional scheme of governance. Predecisional hearing, is part of adjudicatory process. The Highest Court in the land has highlighted this in a long line of decisions,- for example State of Orissa vs. Dr.(Ms) Bina Pani Dei & Ors(AIR 1967 SC 1269), Bhagwan Shukla vs. Union of India & Ors.(AIR 1994 SC 2480) and Divisional Superintendent, Eastern Railway, Dinapur & Ors vs. L.N.Keshri & Ors (1975) 3 SCC 1)and so on. The impugned orders pay scant respect to a principle so fundamental, that it cannot be sustained.

4. That is not the end of the matter. The impugned order is stamped with vice on its forehead, for other reasons as well. Arbitrariness runs warp and woof, through the entire fabric of the order. The scheme for grant of temporary status does not contemplate appointment through Employment Exchange. A requirement outside the scheme has been innovated, long after the benefit was conferred by issuing R-2 a 'clarification' to the effect that sponsorship by Employment Exchange, is a sine qua non of employment of casual labourer. It eludes comprehension how there was any occasion to issue a 'clarification'. For respondents, the expression 'clarification' has assumed new meanings. Something which was not in doubt, is 'clarified', by reading new meanings into A-1 scheme. Clarification cannot be assimilated to amendment. Again, there must be a measure of predictability and certainty even in administrative actions. We will remind ourselves

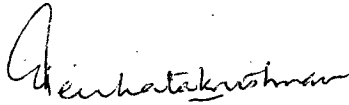
of the observations of the Constitution Bench of the Supreme Court in S.G.Jaisinghani vs. Union of India and others, AIR 1967 SC 1427:

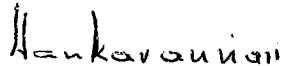
"The absence of arbitrary power is the first essential of the rule of law, upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means, that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is.. Law has reached its finest moments, when it has freed man from the unlimited discretion of some ruler.. Where discretion is absolute, man has always suffered."

5. This is a case where applicants deserve to be freed "from the unlimited discretion of a ruler" namely the one who issued R-2 clarification, out of context, without occasion and in effect changing the face of the scheme in A-1. Arbitrary exercise like this, taking away rights that have accrued to applicants, cannot be assented to.

6. A-3 and R-2 orders imposing a new requirement into the scheme, that too retrospectively, militates against Article 14. We allow the Original Application and quash A-3. Respondents will pay Rs.500 (Rupees five hundred) as costs to each of the applicants.

Dated the 26th July, 1996.


P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN