IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 457/91

DATE OF DECISION 28.9.1992

Mr P Ponnappan — Applicant

Mr K. Ramakumar — Advocate for the Applicant

Versus

Chairman, Industrial Canteen, Base Repair Organisation, Kochi & another. — Respondent (s)

Mr VV Sidharthan, ACGSC — Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman
&
The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant Shri P Ponnappan, has prayed that the order dated 7.3.1991 (Annexure C) of the 2nd respondent terminating the services of the applicant as Assistant Saleman in the Industrial Canteen with effect from the same date may be quashed, that it may be declared that the applicant is eligible to be regularised as Salesman with effect from the date from which his juniors have been regularised and for a direction to the respondents

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to reinstate him in service as Assistant Salesman Casual and retain him in service till such time he is regularised as Salesman. The material averments in the application can be briefly stated as thus:-

2. The applicant was appointed as Assistant Salesman on a casual basis in the Industrial Canteen on 26.7.1982 under the Base Repair Organisation in the Naval Base, Kochi. So far, in the past, the vacancies of Salesman were being filled by absorption of casual Asstt Salesmen based on their seniority in the casual service. While so, as against this practice, when the Naval authorities decided to fill up the posts of Salesman through Employment Exchange by notification, the applicant along with 4 others filed OAK 324/87 for a declaration that they are entitled to be permanently absorbed in service and for a direction to regularise them. OAK 324/87 was disposed of by order dated 30.10.89 allowing the application to the limited extent of directing the respondents that the applicants therein should also be considered like those sponsored by the Employment Exchange for the post of Salesman in view of the long and continuous service though in a casual capacity put in by them and in view of the Government of India's declared policy of absorption of casual employees through decasualisation scheme provided they apply for the post within a period of one month and provided they are otherwise eligible for appointment to the posts of Salesman. It was further directed that as far as

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age restriction was concerned, the period of service put in by them as casual Assistant Salesmen should be deducted from their age as on the crucial date notified for appointment as Salesmen. Though the respondents filed RA 12/90 for a review of the above order, the Review Application was dismissed. On the basis of the direction contained in the judgement of the Tribunal in OAK 324/87, the applicant submitted an application to the 2nd respondent praying for regularisation. On 7.3.1991, the applicant and others were called upon to attend an interview. The applicant attended it. On the very same date, without declaring the result of the interview, the 2nd respondent issued the impugned order at Annexure C terminating the services of the applicant while other employees similarly situated like him and who had entered into service later than the applicant, were retained in service. As there is no shortage of work in the establishment warranting the termination of the services of the applicant, the termination of his services after such a long period without compliance with the provisions of the Industrial Disputes Act retaining his juniors is arbitrary, illegal and opposed to the provisions of Articles 14,16 & 21 of the Constitution of India. Since the vacancies in the post of Salesman were filled under decasualisation scheme, the applicant cannot be discriminated under any circumstance imposing any new conditions of eligibility other than the question of medical fitness. The Hon'ble Supreme Court has in 1990 (1) SCC 361 held that once

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appointments were made as daily rated workers and they were allowed to work for a considerably long time, it would be unjust to deny them confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In 1990 (2) SCC 396 also the Hon'ble Supreme Court has held that "no examination but physical infirmity shall mainly be the test of suitability" for regularisation after long years of service. In view of the above decision of the Hon'ble Supreme Court, the applicant contend that termination of his services refusing regularisation and retaining his juniors in service without compliance with the provisions of the ID Act is wholly unjustified. It is in this background that the applicant has filed this application.

3. In the reply statement, the respondents have raised mainly the following contentions:-

4. As the applicant was not appointed to any post sanctioned by the Government and as he was not paid from the Government funds, but from the contributions from supervisory staff, the applicant has no right to approach this Tribunal for any relief. The applicant is not entitled to invoke the jurisdiction of this Tribunal for the alleged violation of the provisions of ID Act as the Full Bench of this Tribunal had held that the Administrative Tribunal xxxx not being substitute of the authority constituted under the ID Act, the Tribunal does not

exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act and that those who are aggrieved by infringement of the provisions of the ID Act have to first exhaust the remedy provided under the said Act before the forum prescribed under the Act. The direction contained in the final order in OAK 324/87 was that the applicants should be considered like those sponsored by the Employment Exchange for the post of Salesman provided they applied for the post giving all their particulars within a period of one month from the date of the order and provided also that they were otherwise eligible for appointment to the post of Salesman. Pursuant to the above direction all the 5 applicants in OAK 324/87 were called for an interview and considered along with the candidates sponsored by the Employment Exchange and xxxx the applicant was not selected because he did not posses the requisite educational qualification prescribed in the Recruitment Rules. The remaining applicants in OAK 324/87 were appointed as Salesmen as they were qualified and were found fit in all respects in accordance with the Rules. Therefore, there is no merit in the contention of the applicant that he has been discriminated against. As per the Recruitment Rules dated 23.8.85, the educational qualification prescribed is 8th standard while the applicant has studied only upto 2nd standard. Therefore, the applicant is not eligible to be appointed as Salesman. As the applicant was not qualified for appointment to the post, his services had to be terminated and accordingly

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by the impugned order, the services of the applicant were terminated issuing necessary notice and offering due compensation. Therefore, the contention in the application that the termination of the applicant's services is in violation of the provisions of ID Act and Articles 14 & 16 of the Constitution, is baseless. The application which is devoid of any merits, therefore, to be dismissed.

5. In the rejoinder filed by the applicant, it has been contended that the qualification prescribed for the post of Salesman in the Recruitment Rules framed only in the year 1985 cannot be insisted upon in his case since he has been taken in as a casual mazdoor in the year 1982 and as the practice which was followed in the establishment was to fill the regular vacancies of Salesman by absorbing the casual mazdoors without considering their educational qualification. He has also contended that as following the direction issued by the Hon'ble Supreme Court in several rulings, the Government of India has been absorbing casual labourers engaged in various Departments in regular service even though they did not possess the educational qualification prescribed in the Recruitment Rules, the decision of the 2nd respondent that the applicant cannot be so absorbed, is unsustainable.

6. We have carefully perused the pleadings and documents and have also heard the arguments of the learned counsel

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on either side. The learned counsel for the respondents argued that as the applicant was never appointed to a post and was never paid out of the Government funds, he is not entitled to invoke the jurisdiction of this Tribunal. In support of this argument, the learned counsel invited our attention to the decisions of this Bench of the Tribunal in OA 170/86 and in OA Nos.308/90, 309/90 and 312/90. In these cases it was held that as the applicants therein were not paid from the Government funds, they could not be considered as employees of the Government and that they were not entitled to make applications before this Tribunal. But the facts of this case are entirely different from the cases referred to by the learned counsel for the respondents. The impugned order at Annexure C itself would indicate that the applicant was an employee, an Assistant Salesman, in the Industrial Canteen. If, as contended by the respondents, in the reply statement, the applicant was engaged by the Chairman of the Canteen Committee on his own as private servant and was paid from the funds collected from the supervisory staff, the 2nd respondent would not have described the applicant as Assistant Salesman in the Industrial Canteen in the impugned order at Annexure C. No material has been produced before us to show that the payments to the applicant were made from out of the contributions and not from the Government funds. That apart, this very same Bench of the Tribunal had in OAK 324/87 to which the applicant and the respondents were parties, considered the

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question of jurisdiction and the maintainability of the application and held in favour of the applicant. Therefore, the contention of the respondents that the applicant has no right to invoke the jurisdiction of the Tribunal has to be rejected.

7. The learned counsel for the respondents further argued that in Padmavalley etc etc v. CPWD and others, 1991 (1) SLR 245, a Full Bench of this Tribunal has held that as the Administrative Tribunal is not a substitute for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by the Act and that the applicants who seek relief under the provisions of the ID Act must ordinarily exhaust the remedies available under the Act and, therefore, this application challenging the termination of the services of the applicant on the ground of violation of the provisions of the ID Act is not maintainable. But in the same decision, the Full Bench had observed that the powers of the Administrative Tribunal are the same as those of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of ROHTAS Industries. Challenging the termination of the services of the applicant, it would have been open to the applicant to approach the conciliatory machinery under the ID Act and ultimately the Labour Court if the appropriate

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government had chosen to refer the dispute under Section 10 of the ID Act. This, in the facts and circumstances of the case where the applicant has been abruptly thrown out of employment which he was holding for nearly a decade is not an equally efficacious remedy. Therefore, in these circumstances, we are of the view that this Tribunal had rightly admitted the application considering the peculiar circumstances of the case and that the contention of the respondents that this Tribunal has no jurisdiction to entertain the application has only to be rejected.

8. The applicant has challenged the validity of the order at Annexure C terminating his services with effect from the date of the order on the ground that the provisions of the ID Act have been grossely violated in terminating his services without paying him compensation and notice pay as required under Section 25F of the ID Act. Section 25F of the ID Act reads as follows:-

> "No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--
>
> (a) the workman has been given one months's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice;
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
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> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

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It is evident from the pleadings that the applicant has been continuously in service since 26.7.1982 till 7.3.91 on which date his services were terminated. The impugned order at Annexure C reads as follows:-

> "You are hereby informed that your services as Assistant Salesman in the Industrial Canteen will stand terminated with effect from PM 07 Mar. 1991.
>
> 2. You will be paid compensation as notice pay as admissible under Section 25F of the Industrial Disputes Act, 1947."

Referring to paragraph 2 of the impugned order, the learned counsel for the respondents argued that as the respondents have offered to pay compensation and notice pay, as required under Section 25F of the ID Act, the contention of the applicant that the provisions of Section 25F have been violated,, is baseless. Though it is stated in the 2nd para of the impugned order at Annexure C that the applicant would be paid compensation as notice pay as admissible under Section 25F of the ID Act, there is no indication as to when the amount would be paid and what amount would be paid. A statement that the applicant would be paid compensation and notice pay is not the same as paying the compensation and notice pay as required under Section 25F. The amount of compensation calculated as mentioned in clause (b) of Section 25F and the notice pay should be actually tendered along with the order of retrenchment. That has not been done in this case. Therefore, we are of the view that the impugned order at Annexure C has been issued without strictly

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complying with the mandatory provisions of Section 25F of the ID Act. On that ground, the impugned order at Annexure C is liable to be quashed.

9. The applicant has averred in the application that the action of the respondents in not regularising him as Salesman while persons who are junior to him have been regularly appointed, amounts to hostile discrimination and has prayed that it may be declared that he is eligible to be regularised as Salesman on the date on which his juniors were regularised. It is an admitted case that four other persons who were working as Assistant Salesmen like him and who were also co-petitioners with him in OAK 324/87 have been regularly appointed as Salesmen. The averment made in the application that those who were so regularised were junior to the applicant as casual labourers also is not specifically disputed. The respondents seek to justify the non-selection of the applicant on the ground that he does not possess the educational qualifications prescribed in the Recruitment Rules for the post of Salesman. The selection and appointment of other persons mentioned in the application is sought to be justified on the ground that they satisfied the eligibility criteria and were found suitable for appointment. Annexure R2 is a copy of the Recruitment Rules for the post of Salesman/Vendor published on 23.8.85. The educational qualification prescribed for the post is 8th standard. Admittedly, the applicant had studied only upto 2nd standard. The contention of the

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respondents, therefore, that the applicant does not possess the educational qualification prescribed in the Recruitment Rules, is found to be true. But the learned counsel for the applicant argued that as the applicant has been discharging the duties of Salesman though actually called Assistant Salesman, like the other three persons xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx right from the year 1982, considering the practical experience gained by him by discharging the functions of the post and the fact that at the time when he was initially engaged as a casual Assistant Salesman, the lack of educational qualification was not considered as an ineligibility. The respondents should have relaxed the standard of educational qualification in his case and appointed him on a regular basis. In this connection, the learned counsel for the applicant invited our attention to the following observation of the Hon'ble Supreme Court in Bhagwati Devi and others v. Delhi State Mineral Development Corporation, (1990) 1 SCC 361;-

> "The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that

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> they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondents, in the circumstances, would be sufficient for confirmation."

Relying on the above observation, the learned counsel argued that the fact that the applicant has been satisfactorily discharging the duties of Salesman ever since 1982 though actually called Assistant Salesman taking into account the fact that the duties of Salesman involve only vending food materials in the canteen, the respondents should have considered his long experience as a substitute for the educational qualification and regularised him. The learned counsel invited our attention to Annexure C and D, the minutes of the proceedings of the JCM meetings dated 29th September, 1984 and 22nd September, 1985 respectively in which the question of absorption of casual employees in the Industrial Canteen were discussed. It is seen from Annexure D that the Government had approved absorption of 5 casual employees in the Industrial Canteen who were employed prior to 25th July, 1981. The learned counsel submitted that till the Recruitment Rules were framed in 1985, the formal education upto 8th standard was not considered as an essential qualification for appointment to the post of Salesman and that while framing the Recruitment Rules, a provision which would make persons serving on casual basis ineligible to hold the post should not have been made. There is no merit in this argument because it is the prerogative of the Department to prescribe the educational qualification necessary for a post. But the Government has got the

authority and power to grant relaxation in favour of any specified class of persons and it is open for the Government to relax the educational qualification in their case if the Government are satisfied that it is necessary to do so. The Chairman, Industrial Canteen, the 1st respondent or the 2nd respondent, the Canteen Superintendent, may not probably be vested with this authority. So, the non-selection of the applicant for the reason that he did not possess the educational qualification cannot be considered to be arbitrary, but the 2nd respondent should have in the peculiar circumstances of the case and considering the long experience of the applicant, addressed the Government seeking clarification as to whether the requirement of educational qualification in the case of the applicant who has been serving the establishment as a casual Assistant Salesman for a considerably long time can be relaxed. Therefore, we are of the view that the interest of justice would be met if the respondents are directed to refer the matter to the appropriate authority for consideration of relaxation of the required standard of educational qualification in the case of the applicant and if concurrence is obtained to consider the applicant for regular appointment as Salesman.

10. In the result, the impugned order at Annexure C terminating the services of the applicant without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947, is quashed. The respondents are directed to

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reinstate the applicant in service as casual Assistant Salesman forthwith and to pay him full back wages for the period for which he was kept out of service. The respondents are also directed to refer the question whether the requirement of prescribed educational qualification in the case of the applicant can be relaxed in view of the fact that he has been serving the establishment as casual Assistant Salesman from 1982 onwards and if the appropriate authority is pleased to grant such a relaxation, to consider the applicant for regular appointment as a Salesman in an existing vacancy and if no vacancy exists, in the next arising vacancy. Action on the above lines may be completed within a period of three months from the date of receipt of a copy of this order.

11. There is no order as to costs.

28/9/92

(AV HARIDASAN)
JUDICIAL MEMBER

28.9.92

(SP MUKERJI)
VICE CHAIRMAN

28.9.1992.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Contempt Petition (Civil)
No.88/1993
in
O.A. 457/1991

Date of Decision: 22.6.93

P.T. Ponnappan .. Petitioner

M/s K.Ramakumar &
VR Ramachandran Nair... Advocate for petitioner

Versus

1. A.V.Varghese, Chairman
Industrial Canteen, NSRY.

2. Commodore T.I.Punnan
Commodore Superindent
Naval Base, Cochin-4. .. Respondents

Mr. George CP Tharakan, SCGSC .. Advocate for respondents

CORAM

THE HON'BLE MR.JUSTICE C. SANKARAN NAIR, VICE CHAIRMAN

THE HON'BLE MR. R.RANGARAJAN, ADMINISTRATIVE MEMBER

O R D E R

C. Sankaran Nair (J), Vice Chairman

Applicant alleges disobedience of the judgment of this Tribunal dated 28.9.92. Several directions were issued. Applicant admits that except one direction, the rest have been complied. That direction is to "refer the question whether the requirement of prescribed educational qualification can be relaxed..." Applicant is not in a position to say whether the respondents have made a reference

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or not. He could have ascertained this fact from the respondents before alleging contempt. The basic ingredients must be satisfied before an application in contempt is filed.

2. We dismiss the application as premature without expressing any opinion on the merits.

R.RANGARAJAN
ADMINISTRATIVE MEMBER

C. SANKARAN NAIR (J)
VICE CHAIRMAN

Dated 22nd June,1993 .