

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 48/2006**

**WEDNESDAY THIS THE 23<sup>rd</sup> DAY OF AUGUST, 2006**

**C O R A M**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

K.K.Ammalu  
Full time Sweeper  
Lakshadweep Public Works Department  
Willingdon Island, Kochi-682 003

**Applicant**

By Advocate Mr. N. Nagaresh

**Vs.**

1     Executive Engineer  
       Lakshadweep Public Works Department  
       Willingdon Island  
       Kochi-682 003

2     Union Territory of Lakshadweep  
       represented by its Administrator  
       Kavaratti, Lakshadweep.

**Respondents**

By Advocate Mr. Shafik

**ORDER**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

This Application is filed by a Full time Casual Labourer whose services are sought to be terminated by the impugned order on the ground that she has completed 60 years of age on 31.1.2006. She seeks the following reliefs:

(i) to call for the records relating to Annexure A-7 and to set aside the case

(ii) declare that the applicant being a Casual Labour, her services are not liable to be dispensed with for the only reason that she has attained 60 years of age, as long as there is no law or rule to retire the casual labours on attaining any age of superannuation.

(iii) direct the 1<sup>st</sup> respondent to permit the applicant to continue as Casual Mazdoor (Full time Sweeper) as long as she is physically fit and as long as she does not become ineligible to continue as Casual Mazdoor otherwise

and

(iv) issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case.

2 According to the applicant, she was sponsored by the Employment Exchange, Ernakulam and after a due process of selection she was appointed to a part-time post by Annexure A-1 order. She joined duty on 24.9.1982. As a part-time Sweeper she was expected to work only three hours but was made to work for 8 hours like any other full time employee. By Annexure A2 OM dated 12.10.1998 she was made a full-time Sweeper. Government of India issued OM NO. 51016/2/90-Estt dated 10.9.93 laying down a Scheme for grant of temporary status and regularisation of Casual Labourers working under Government of India and this Tribunal in O.A. 1494/97 filed by the applicant directed the respondents to consider her request for grant of temporary status under the said Scheme. However, she could not get the benefit of this order as she was not a full-time Casual Labourer on 10.9.1993, the cut off date prescribed under the scheme, though being a Casual Labourer she can continue in service till she is physically fit and there is no rule fixing the retirement age of a Casual Labourer. There is no executive order or precedent in any Department of Government of India for compulsory retirement of all Casual Mazdoor when they attain the age of 60 years. The applicant has produced Annexure A6

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letter of the Department of Posts clarifying that Casual Labourers as long as they are physically fit and capable of attending to the work assigned to them may be engaged even after 60 years. The applicant has now been served with Annexure A-7 OM stating that her services will stand dispensed with on the afternoon of 31.1.2006 as she has attained the age of 60 years as on that date. The various OMs issued by the Government of India will show that there is no restriction of age limit either for recruitment or retirement in respect of Casual Mazdoor. The applicant is from a poor family and the entire family of the applicant is depending on her income and if her services are terminated the family will be put to untold poverty and hardship.

3 In the reply statement, the respondents have admitted that the applicant has been working as a full-time Casual Mazdoor without temporary status from 10/1998. She attained the age of 60 years on 16.1.2006. As per DOPT instructions, the Casual Mazdoors could not be appointed beyond the age of 60 years for which they have relied on Ext. R-1 which is a copy of a telex message from the Ministry of Agriculture on the subject. According to the respondents the above instruction is applicable to the Lakshadweep administration which is based on a DOPT letter and the orders issued by the Ministry of Railways, etc. are not applicable to the UTs. They have relied on Annexure R-1 and R-4 clarifications on the subject and it is stated that the Department of Telecommunication may have a different set of rules and regulations and that the

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Government of India instructions are paramount and have to be followed.

4 Rejoinder was filed by the applicant contesting the above averments by stating that Annexure R-1 relates to grant of temporary status for Casual Mazdoors and have no application to the case on hand. In Annexures R-1 to R-4, the respondents have not been able to show that there is any executive instruction justifying the aforesaid retirement of the applicant at the age of 60 years.


5 Additional reply statement has been filed by the respondents submitting that there is no specific order of Government of India to engage a Casual Mazdoor beyond the age of 60 years and as per the DOPT direction on the basis of which a clarification order was issued by the Ministry of Agriculture, the respondents have issued the order terminating the employee. DOPT is the nodal Ministry to issue appropriate guidelines in this regard and all the directions of Government of India are applicable to the Departments under the UT Administration.

6 I have heard the learned counsel appearing on both sides. The service particulars of the applicant are admitted. She was a full-time Casual Mazdoor who was not granted temporary status. The short question that arises for consideration is whether there is any prescription of age limit for retirement of a Casual Labour who has not been granted temporary status. Admittedly there is no specific order or rule or direction regarding the retirement age of a Casual Labourer. The respondents have relied on Annexure R-1 on the

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ground that it is a direction based on the advice of the DOPT. However, it is seen that it is a communication from the Fisheries, Research and Investigation Officer, Ministry of Agriculture, Government of India New Delhi to the Director of Fisheries, Lakshadweep making an observation that it may not be proper to retain casual employees beyond the age of 60 years. Nowhere does it mention that it is issued as per the advice of the DOPT. The DOPT OM referred to in the Ministry's letter relates to grant of benefits as contained in the Scheme available at Annexure R-2. It does not contain any provision regarding retirement of a Casual Mazdoor, except for a provision that the services of such a Casual Mazdoor can be dispensed with after giving a notice of termination. None of the orders produced by the respondents from R-1 to R-4 relate to this issue or have adverted to any provision for prescription of a retirement age for Casual Labourers. The applicant on the other hand relies on Annexure A-6 which is a communication from the Department of Posts in which that Department have clarified that as long as a Casual Labourer is physically fit there may be no objection to engage him. This has also only limited application as it is not a common instruction from the Department of Personnel which is the nodal Department in this matter.

7 In the absence of any statutory instructions regarding retirement age, the termination of a Casual Mazdoor granted temporary status can be done only in accordance with the provisions of the OM of the Department of Personnel and Training dated



10.9.1993 according to which for termination of such a Casual Labourer, one month's notice in writing must be given. The respondents cannot terminate the service of the applicant by order dated Annexure A-7 on the ground that she has attained the age of 60 years. In the absence of statutory rule, executive instruction can hold the field, as no executive instruction also appeared to have been issued by the Department of Personnel, every Department is following its own rules.

8 It is directed that respondents may take up this matter for clarification with the Department of Personnel who shall communicate a policy decision in this matter. Until such a clarification/decision is received, the applicant shall be continued in service. The impugned order Annexure A-7 is quashed. The application is allowed. No costs.

Dated 23rd August, 2006.

  
SATHI NAIR  
VICE CHAIRMAN

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