

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
T. A. No.

475/90

199

DATE OF DECISION 15.3.91

M.V.Poulose

Applicant (s)

M/s. K.P.Dandapani & K.Jaju Babu Advocate for the Applicant (s)

Versus

The Sub Divisional Officer, Respondent (s)
Telegraphs,

Perumbavoor and 2 others

Mr.N.N.Sugunapalan,SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? W
4. To be circulated to all Benches of the Tribunal? W

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

The applicant who had worked as a Casual Labourer under the Sub Divisional Officer, Telegraphs, Perumbavoor, has moved this application dated 4.6.90 praying that the respondents be directed to absorb him as Junior Mazdoor or regularise him in any of the Class IV posts in the Department and to dispose of his representation dated 23.12.1988 at Annexure V in which he had requested for issue of identity card and entry of his name in the seniority list, the representation dated 23.6.89 at Annexure VII seeking ^{at least} 6 part time job on the basis of his previous casual employment and the representation dated 19.1.90 at Annexure-IX repeating his request for the issue of mazdoor selection card and identity card and reengaging him. His further prayer is that the respondents be directed to issue identity card and service card as Junior Mazdoor in the Perambavoor Sub Division

where he had worked earlier. The brief facts of the case are as follows.

2. According to the applicant he has studied upto Xth Standard and was selected for employment as Casual Mazdoor vide the communication dated 26.7.1981 at Annexure-1. He worked as a Casual Mazdoor in the Perumbavoor Sub Division intermittently between 29.8.81 and 19.12.88. In support of this contention he has produced the Casual Mazdoor Certificate dated 12.12.1988 at Annexure-II issued by the Sub Divisional Officer, Telegraphs, Perumbavoor testifying to the applicant's casual employment for 352 days between 29.8.81 to 15.12.87, as also the photocopy of the muster roll at Annexure-III covering the period from 2.12.88 to 19.12.88 which has been scored off later for reasons not known to the applicant. He has referred to the judgment of the Supreme Court in AIR 1987 SC 2342 directing the P&T Department to pay to the casual workers wages equivalent to the minimum pay in the pay scale of the regularly employed workers and to prepare a scheme on a national basis for absorbing Casual Labourers who have been working for more than one year in the P&T Deptt. The DG,P&T vide the circular dated 19.2.1988 (Annexure-IV) directed the Heads of the various Offices to send proposal for absorption of Casual Labourers. The applicant submitted his representation for further employment and inclusion of his name in the seniority list of Casual Mazdoors on 23.10.88 at Annexure-V. His contention is that he could not take up the casual employment during ^{the period from} ~~1983 to 1988~~ on account of illness, in support of which he had sent a medical certificate as at Annexure-VI to respondent

2. However, he was never given casual employment. On his further representation dated 23.6.89 at Annexure-VII, he was directed(Annexure-VIII) to produce the original certificates and documents about his casual employment before the 2nd respondent.Even though he produced all the certificates and documents to prove his service from 29.8.81 to 19.12.88 he was given neither the identity card nor casual employment.His further representation dated 19.1.90 has evoked no response.His contention is that the respondents themselves had issued selection cards to about 100 Mazdoors and regularised them,even though some of them had joined subsequent

to the applicant in service and had lesser period of casual employment than the applicant in the same Division. He has in particular mentioned the case of Shri Satheesan who with only 171 days of service between 1982 and 1988 was issued identity card and regularised. The applicant also has mentioned the decision of this Tribunal in OAK 522/88 in which full time and part time Casual Labourers have been directed to the regularised.

3. The second respondent in the counter affidavit has conceded that the applicant on selection as a Mazdoor in 1981 worked for 352 days as a Casual Mazdoor till 15.12.87. According to them after that date the applicant did not report for duty. They have denied that Annexure-III are copies of muster rolls. They have also challenged the certificate at Annexure-III by stating that the certifying officer had no authority to issue the certificate. The first page of Annexure-III shows that the applicant had only worked upto 15.12.87. He cannot be given work under the existing rules after a break of one year. Since the certificate has to be given by a Group B officer the JTO's certificate at Annexure-III has no value. They have, however, conceded that the applicant was paid Rs.240/- for 8 days of work between 2.12.1988 and 19.12.88. They have also referred to the latest order of the Directorate General that those who had been on the rolls prior to 30.3.85 were to submit the application on or before 7.10.88 for consideration of their claims for regular employment. The applicant's representation dated 23.12.88 was time-barred and therefore he could not be employed on a casual basis. It has also been stated that since he was not in the approved list of Casual Mazdoors he was not given employment when he approached for work in December, 1988. They have conceded that another representation by the applicant dated 23.6.89 had been received but no action was taken. On another representation the applicant was asked to produce the original certificates before the DET, Ernakulam, but no intimation has been received from DET, EK about condonation of break in his service. They have also conceded that another representation dated

January 1990 from the applicant was received, but no action was taken. The respondents have conceded that as per the standing instructions Casual Mazdoors who were working on or prior to 30.3.85 had been issued enrolment cards and regularised. Shri Satheesan was given work on that basis as he was on muster rolls and was working at the time of issue of the identity cards. The applicant was not given any work as no order was received from DET,EK for condonation of break in his service. The applicant in the rejoinder has stated that by the respondents' own showing he was paid Rs.240/- for working in December 1988 and therefore, it is not correct that he never reported for duty upto 19.12.88. He has denied that the employment between 2.12.88 and 19.12.88 was on contract basis. Having been selected in 1981 and having worked for 246 days during 1981-83, the applicant cannot be denied of his right of being regularised or reemployed. He reiterated that Shri Satheesan who is junior to the applicant and had worked for 171 days between 1982 and 1988 was issued identity card and regularised.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have conceded that the applicant had been selected as Mazdoor in 1981. They have also accepted that he worked for 352 days as reflected in the certificate at Annexure-II. This certificate mentions that the applicant had been working for 246 days between August 1981 and April 1983, for 30 days between November-December 1985 and 76 days between September and December 1987. They have not denied that the averment made by the applicant that one Shri Satheesan who was employed as casual worker between 25.3.82 and 5.6.88 for 171 days was given identity card, regularisation and employment. From these facts it is crystal clear that the applicant has been discriminated against by denial of employment and regularisation. The respondents have tried to cover it up by a number of ^{unimpressive} reasons. For instance they have stated that he had been absent from work for more than six months after 15.12.87 and that constituted a break in service, for which the applicant had been asked to produce documents before the DET,Ernakulam from whom no intimation has been received. The reason that because

of break in service for more than six months he could not be given work is belied by the fact as given in Annexure-II certificate that the applicant was engaged on 7.11.85 after his last engagement on 24.4.83 and again on 8.9.87 after his last engagement on 7.12.85. This shows that he was being casual employment after a gap of more than one year in 1985 and again in 1987. The respondents themselves have conceded that he was paid Rs.240/- for 8 days of work between 2.12.88 and 19.12.88 when his last engagement was on 15.12.87. Thus there is no reason why the applicant cannot be given work on the basis of his previous employment and seniority. The applicant is having more number of days(352 days) of casual employment than Shri Satheesan's 171 days. While Shri Satheesan was engaged for the first time on 25.3.1982 the applicant was engaged for the first time on 29.8.81. Accordingly both on the basis of date of first engagement and length of casual service, the applicant has got better claim than ^{that of} Shri Satheesan. 6-

5. As regards denial of employment because of absence from duty it has been held by the Supreme Court in L.Robert D'Souza vs. Executive Engineer, Southern Railway, AIR 1982 SC 854, that termination without notice or enquiry due to absence without leave being against the principle of natural justice is void.

6. From the counter affidavit filed by the respondents it is evident that the applicant's representations were not properly dealt with. His first representation dated 23.12.88 at Annexure-V was forwarded to the Divisional Engineer on 13.1.89, but nobody knows what happened to that. His further representation dated 23.6.89 ^{praying} _{for} at least a part time job seems to have been rejected out of hand on the ground that the Sub Divisional Officer to whom it was addressed was not authorised to take part time officials. His further representation dated 13.8.89 for condonation of break in service did not bear fruit as the Divisional Engineer has not communicated his decision about condonation of break in his service. His further representation dated January 1990 at Annexure-IX asking for identity card and employment was consigned without any action as his case was pending with the DET.

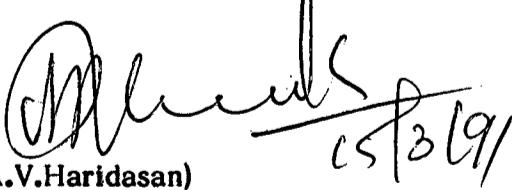
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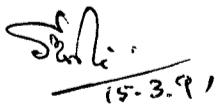
The applicant was denied any benefit under the scheme of regularisation and further employment for those Casual Mazdoors engaged prior to 30.3.85 on the ground that he had not applied prior to the deadline of 7.10.88 fixed for receipt of applications.

7. We are fully convinced that the applicant deserves better treatment than what has been meted out to him. The Supreme Court gave an unambiguous direction in the Daily rated Casual Labour employed under P&T Department v. Union of India,(1988)1 SCC 122, that a scheme of absorption of casual workers be launched by that Department. To deny the legitimate claim of the applicant by ignoring his repeated representations and on technical grounds of delay in representing for casual employment etc. and the alleged break in service, the condonation of which has been kept pending, will be going against the core and conscience of the Constitution as so clearly brought out by the Supreme Court in K.C.Rajeevan and 15 others v. State of Kerala and 2 others,(1991)1 SCC 31, in the following words:-

"Thus the Preamble promises socio-economic justice, the fundamental rights confer certain justiciable socio-economic rights and the Directive Principles fix the socio-economic goals which the State must strive to attain. These three together constitute the core and conscience of the Constitution".

8. In the facts and circumstances we allow the application to the extent of directing the respondents to grant to the applicant ^{at least} ~~the same~~ benefits as have been given to ^{his junior} Shri Satheesan in terms of employment, issue of identity card and regularisation as indicated in the counter affidavit dated 10th October,1990 by the 1st respondent on behalf of respondents 2 and 3. There will be no order as to costs.


(A.V.Haridasan)
Judicial Member


15.3.91
(S.P.Mukerji)
Vice Chairman