

O.A. NO. 491 OF 2009

CORAM:

1. K.P.Joy
Kannamopuzha House
Narackkal P.O
Ernakulam - 682 505

2. Bharathan K.S.
Karingathu Parambil
St.Antony's Road
Near Govt. Hospital
Narakkal P.O. - 682 505

3. M.N.Lalan
Marotian House
Near Panchayat Office
Narakkal - 682 505

4. K.N.Sasi
Kochery House
Nmarakkal P.O
Cochin - 682 505

(By Advocate Mr. B.K.Gopalakrishnan)

1. Union of India represented by its Secretary
Ministry of Defence
New Delhi

2. The Flag Officer Commanding-in-Chief
Southern Naval Command
Naval Base P.O. Kochi - 4

3. The Chief Staff Officer (Personnel & Administration)
Southern Naval Command
Naval Base P.O. Kochi - 4

4. The Administrative Officer Grade II
Staff Officer (Civilian Personnel)
Staff Naval Command
Naval Base P.O. Kochi - 4 ...

Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 19.11.2009, the Tribunal on ...2.3.11... delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Crystallization of vested right and infringement upon such vested rights alone qualify a person to seek judicial remedy for restoration of such vested rights. *No vested right is created in temporary employment. (State of H.P. v. Nodha Ram, 1998 SCC (L&S) 478)* For a casual labourer, there is no vested right for regularization *Hindustan Aeronautics Ltd. v. Dan Bahadur Singh, (2007) 6 SCC 207*. Challenge after lapse of time results in losing the remedy and the right as well *Karan Singh v. Haryana State Marketing Board, (2007) 14 SCC 291*, Challenge could be made only when any junior has been retained and senior ignored. Here again, the so called senior should have made enough efforts to seek engagement and any lapse on his part in taking such efforts within a reasonable time would tilt the balance in favour of the junior casual labourers.

2. When the above is the settled position of law, in the instant case what is to be seen is whether the applicants have crystallized any of their vested rights for engagement as casual labourers and whether such a vested right has at all been infringed by the respondents on account of their action/omission to act.

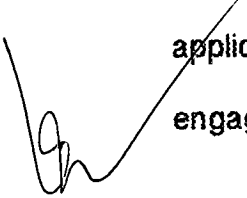
3. Way back in 1993, in its order in OA No. 488/92, the Tribunal directed the respondents to prepare a gradation list of casual labourers for the purpose of engaging from the gradation list casual labourers as and when the exigencies warranted. In its order in OA No. 622/2001, the Tribunal directed the respondents to revise the gradation list and the



same was followed, after publication in the news media. Names of those who did not respond to the media notification were necessarily to be deleted to trim the list. Thus, from a stupendous 584 the list thinned itself to 101. While two of the applicants did not figure in the first list itself, the other two could not figure in the second list as they had not responded to the media notification. It is thereafter, from the above list that engagement of casual labourers took place and on completion of 206 days of casual labour service, as many as 56 could get regularization in the wake of an order of this Tribunal in OA No. 34/2007 and such regularization took place in respect of those who were regular in their engagement for 20-25 years. As at present, the requirement of casual labourers has been reduced to just six as exigencies justified outsourcing in respect of certain specific work such as cleaning, removal of garbages etc., which has been going on for quite some time now.

4. The applicants who had been engaged earlier far back as some 20-25 years ago, have now risen from the slumber to stake their claim for engagement in preference to freshers, and such a claim at this stage, according to the respondents, must have been due to the fact that some regularization took place in September 2008.

5. Counsel for the applicants argued that the applicants could not even seek entry inside the office, being a secured area and as such, there was no possibility of the applicants to have an access to the office to make enquiries and the like. According to the counsel, all that the applicants seek is that they should be preferred to the freshers or those who had been engaged posterior to the date of engagement of the applicants. According to the counsel, a number of individuals are being engaged at present.



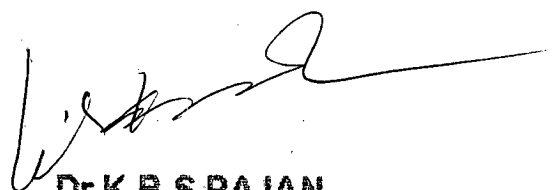
6. Counsel for the respondents submitted that there is no question of the applicants being engaged now, after a lapse of a score of years of their previous engagement.

7. Arguments were heard and documents perused. The OA is blissfully silent about the earlier date of engagement, presumably as a reflection of the same would logically create a doubt about the rights of the applicants to seek re-engagement and thus, expose the extent of weakness in the case. Of the four applicants, one is 50 years of age, another 47 years, the third 43 and the fourth 38 years. These individuals were not in the scene for the past two decades. Their total period of engagement is also not reflected in the O.A. The applicants seem to have only made an attempt seek re-entry, fully knowing the 'strength' of their case.

8. From the facts and circumstances of the case, it is clear that the applicants have not made out any case. No rights have accrued to them on the basis of their past engagement some twenty years ago and even if there were any, the same had been obliterated due to their not availing of the offer made to them in 2002. The OA is totally misconceived and is therefore, rejected.

9. No cost.

Dated, the ..23rd..... November, 2009.


Dr.K.B.S.RAJAN
JUDICIAL MEMBER