

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 493/90

~~J. A. No.~~

~~199~~

DATE OF DECISION 27.3.91

G.Sundaran Applicant (s)

M/s.M.R Rajendran Nair &P.V.Asha Advocate for the Applicant (s)

Versus

The Chief General Manager, Respondent (s)
Telecommunications,
Trivandrum and 2 others

Mr. Ajith Narayanan, ACGSC 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? M
4. To be circulated to all Benches of the Tribunal? M

JUDGEMENT

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

In this application dated 18.6.90 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as a Casual Mazdoor under the Sub Divisional Officer, Telegraphs, Alleppey, has prayed that he should be declared to be entitled to be continued in casual employment and that the respondents be directed to reengage him as Casual Mazdoor and regularise him in accordance with law. According to the applicant he was initially engaged as a Casual Mazdoor on 19.7.82 without being sponsored by the Employment Exchange. He was working on muster roll on daily rate basis and later, on bills. He was working in that capacity till the end of 1987 with intermittent cessation of work beyond the control of the applicant. His grievance is that other Casual Mazdoors who were engaged without being sponsored by the Employment Exchange have been approved as Casual Mazdoors and given mazdoor cards, but

in spite of several requests to the SDO(T) he was not given similar treatment. His argument is that his service had never been terminated as he was never removed from the muster rolls. Therefore, he is entitled to be re-engaged because his juniors have been given casual employment. His representation dated 5.2.1990(Annexure-I) addressed to the Chief General Manager mentioned cases of a number of casual workers who having commenced service along with him have been given approval cards in 1983 and others who worked even on bills have been given work with seniority from the date of initial engagement. His representation has not yet been disposed of. The applicant also has given the details of his previous engagements under various mustering officials with order number and the dates of engagement. He does not however have any documentary evidence. He has also claimed the protection under Chapter VA of the Industrial Disputes Act.

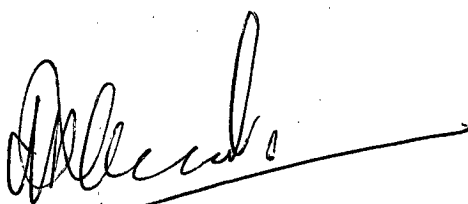
2. In the counter affidavit the respondents have stated that the applicant's name does not appear in the list of approved casual mazdoors of the department. The applicant also has not produced any such cards to substantiate his claim. These muster rolls are weeded out after a period of 5 years. However, on the basis of the available records, they have indicated that the applicant was engaged intermittently for 127 days between 26.3.1983 and 30.9.1984. No record regarding his bill work is available with the respondents. The respondents have firmly stated that no Casual Mazdoor has been approved after 1.6.83 and since the applicant was not an approved Casual Mazdoor he was not engaged for any regular work. The instances of Casual Mazdoors who are in employment have been explained by the respondents by stating that they were approved Casual Mazdoors. No approval of Casual Mazdoors was given after 1.6.83. Therefore his representation cannot be disposed of. Engaging a Casual Mazdoor on muster roll for a casual work cannot entitle the Casual Mazdoor to future employment. Casual Mazdoors are not being engaged from outside the list of Casual Mazdoors. In the rejoinder the applicant has stated that in accordance with the respondents themselves the applicant had worked from 26.3.83 to 30.3.1984 on muster rolls. Interruption in employment was due

to cessation of work and therefore his work is to be taken as continuous under Section 25 B of the I.D. Act. The applicant has referred to the decision of this Tribunal in O.A. 21/90 in which it was held that a fixation of minimum 400 days service for reengagement was not proper. He has mentioned a number of other cases of Casual Mazdoors reengaged after interruption. Finally he has prayed that the respondents be directed to engage him for casual work by including his name in the list with at least bottom seniority.

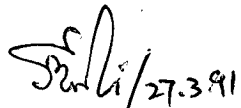
3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Unfortunately the respondents were not able to verify the casual employment of the applicant between 19.7.82 to 26.3.1983 because of weeding out of the records and non-availability of the records regarding the applicant's engagement under bill work. However the respondents have conceded that the applicant was engaged intermittently for 127 days between 26.3.1983 and 30.9.1984. They have, however, justified his non-engagement after that date on the ground that he was not an 'approved' Casual Mazdoor and on that ground also they have not disposed of his representation dated 5.2.1990 at Annexure-1. The learned counsel for the respondents could not explain the difference between 'approved' Casual Mazdoor and an 'ordinary' Casual Mazdoor. It was stated by him that 'approved' Casual Mazdoor might be those who are engaged through the Employment Exchange. In this case the applicant has not averred that he was originally engaged through the Employment Exchange. Since the applicant was admittedly being engaged for 127 days between 26.3.83 and 30.9.84 and since by the Department of Personnel & Training's O.M. No.49014/18/84-Estt(C) dated 7th May, 1985 it was decided that casual "workers recruited before the issue of these instructions may be considered for regular appointment to Group 'D' posts, in terms of the general instructions, even if they were recruited otherwise than through the employment exchange, provided they are eligible for regular appointment in all other respects", ^{fact of the} ² the applicant not being recruited through the Employment Exchange on or before 26.3.1983 should not be held out against him. In the

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judgment of this Tribunal dated 27.11.1990 in O.A 21/90 the applicant therein who had worked as an 'approved' Casual Mazdoor under the Assistant Engineer, Telephones between 1.10.83 and 31.12.83 intermittently for a total period of 84 days was allowed to get his name included in the list of Casual Mazdoors with bottom seniority and given work "whenever work is available according to his turn". Still in another case in O.A. 202/89 one Shri K.M.Joseph who had worked like the applicant before us under the Sub Divisional Officer, Telegraphs, Alleppey as a Casual Mazdoor between 10.6.75 and 30.9.80 and was denied employment by the respondents after 30.9.1980 on the ground that he had abandoned the work, this Tribunal by its order dated 15.2.90 on MP No.3/90 in that case directed the respondents therein "to include the name of the applicant as the last casual labourer in that list so as to enable him to get casual employment whenever work is available, in accordance with his seniority in that list". In the light of the aforesaid discussion and the reliefs given in similar cases we allow this application to the extent of directing the respondents to include the name of the applicant as the last casual worker in the list of approved casual labourers and to give him casual employment whenever work is available, in accordance with his seniority in that list. The applicant should also be considered for grant of temporary status and regularisation in Group 'D' cadre in his turn in accordance with the scheme, if any, which the respondents ^{may} have promulgated in implementation of the judgment of the Supreme Court in Daily Rated Casual Labour employed in P&T Deptt. vs. Union of India, AIR 1987 SC 2342. There will be no order as to costs.



(A.V. Haridasan)
Judicial Member



(S.P. Mukerji)
Vice Chairman