

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.. NO. 497/99

MONDAY, THIS THE 22nd DAY OF APRIL, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. Pithiyammel Jamaluddin
Mate, Water Supply Scheme
Panchayath Department
Kiltan Island
U.T. of Lakshadweep
2. Shaik Hussain
Mate, Water Supply Scheme
Panchayath Department
Kiltan Island
U.T. of Lakshadweep
3. Pokkayoda Ashraf, Casual Labourer
Water Supply Scheme
Panchayath Department
Kiltan Island
U.T. of Lakshadweep
4. Mohammed Saleel K., Casual Labourer,
Water Supply Scheme
Panchayath Department
Kiltan Island
U.T. of Lakshadweep
5. Puthiyapura Nazir, Casual Labourer
Water Supply Scheme
Panchayath Department
Kiltan Island
U.T. of Lakshadweep
6. Melapura Muhammed, Casual Labourer,
Water Supply Scheme
Panchayath Department
Kiltan Island
U.T. of Lakshadweep
7. Pokkayoda Sadiq Ali, Casual Labourer,
Water Supply Scheme
Panchayath Department
Kiltan Island
U.T. of Lakshadweep

Respondents

By Advocate Mr. Shafik M. A.

Vs

1. Union of India represented by
the Administrator
Union Territory of Lakshadwaep
Kavaratti.

2. The Director of Panchayat,
Union Territory of Lakshadweep
Kavaratti.
3. The Superintending Engineer
Lakshadweep Public Works Department
U.T. of Lakshadweep
Kavaratti.
4. Smt. B. Aminabi
Chairperson
Village Dweep Panchayat
U.T. of Lakshadweep
5. The Chairperson,
Village Dweep Panchayat, Kiltan Island

By Advocate Mr. P.R. Ramachandra Menon, for R 1-3
By Advocate Mr. Thampan Thomas for R 4 & 5

The Application having been heard on 7.3.2002 this Tribunal delivered the following on 22.4.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicants aggrieved by A1 notice dated 1.4.99 issued by the 4th respondent filed this Original Application. According to them A1 was in violation of the directions issued by this Tribunal in earlier two occasions. They sought the following reliefs through this O.A.:

(i) To call for the records relating to Annexure A1 to A-11 and to quash Annexure A1 being arbitrary, illegal and tainted with malafides.

(ii) To declare that the applicants are eligible and entitled to be granted Temporary status as per the OM No. 51016/2/90-Estt.(c) dated 10.9.93 of the Ministry of Personnel as has been granted to the other casual labourers working under the IIInd respondent.

(ii) A. To declare that the applicants are entitled to continue as Casual labourers and they are entitled for the benefits which may be granted by the Government of India as per Annexure A-4 order

(iii) To direct the respondents to continue the applicants as casual labourers until they are regularised or granted them temporary status.

(iv) To issue such other orders or direction which this Hon'ble Tribunal may deem fit, just and necessary in the facts and circumstances of the case and

(v) To award costs of this Original Application.



2. According to the averments in the O.A., the applicants are Casual Labourers attached to the Water Supply Scheme of the Kiltan Island having been initially recruited during the year 1994 by the Island Council which was maintaining the Water Supply Scheme at Kiltan Island. Thereafter the Scheme changed hands and they had worked under the Public Works Department, Special Officer Panchayat and ultimately now under the 4th respondent. Further it was submitted that the first applicant even though designated as Mate was actually working as Tiller Operator and was continuing as such till Annexure A1 order was issued. The entire Water Supply Scheme which was initially erected by the Lakshadweep Public Works Department (LPWD for short) and which was still being maintained by the LPWD indirectly changed the agency for maintainance a number of times. When the Island Council who engaged the applicants initially were disbanded during 1995 the respondents tried to terminate their services. The timely intervention of the then Collector Cum-Development-Commissioner who was aware of the need of the experienced hands had intervened and the proposal was cancelled. After the Island Council was disbanded the water Supply Scheme was maintained by the Panchayat Special Officer. Thereafter elections to the Village (Dweep) Panchayat were held and the scheme was entrusted with the Village (Dweep) Panchayat for running even though the entire funds required was still being met by the LPWD. While so since the respondents were not granting higher wages as that of the temporary status mazdoors of other departments and since they were not having any security of the job, they approached this Tribunal through O.A. No. 835/96 for a direction to the respondents to grant temporary status and

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regularisation on the basis of Govt. of India Ministry of Personnel Scheme dated 10.9.93. This Tribunal by A2 order dated 2.7.97 directed the respondents to examine the issues and formulate a scheme for granting temporary status/regularisation stating that the applicants could not be left high and dry. The representations which were submitted before the first respondent by the applicants were disposed of. Aggrieved by the order of disposal of the representations submitted by them the applicants again approached this Tribunal through O.A. No. 137/98. By A3 order dated 22.3.98 the OA was disposed off along with O.A. 9/98 and 839/98 with a direction to the applicants to submit a representation to the Ministry of Personnel, Govt. of India, New Delhi within three weeks and further directed the Ministry to consider and dispose off the same as expeditiously as possible after affording a reasonable opportunity to all the persons, organisations and institutions concerned. The applicants submitted A-4 representation dated 1.4.99 pursuant to A3 order. In the meanwhile a message from the Panchayat Office came to the worksite and intimated them that they were terminated. A1 was a notice which was said to have pasted on the notice board of the Panchayat office on 1.4.99 at 10 A.M. According to them, the notice was made with malafide intention only to dislodge them from even their precarious position. It was further alleged that while the earlier OA was pending and the 4th respondent was refusing to disburse the payment to them the 2nd respondent specifically informed that nine labourers who were working were the only approved mazdoors for the purpose of granting fresh water supply unit. Annexure A-5 dated 31.1.99 issued by the second respondent was produced in support. Immediately on their termination they intimated the

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said facts to the respondents 1 & 2 who were jointly liable as per A3 order about the illegality committed by the 4th respondent by A-6 fax message dated 17.4.99 sent to second and third respondents. Inspite of A-6 communication respondents 1 & 2 were not taking any action and the applicants remained terminated illegally and they were out of job. Since the scheme required at least nine labourers the 4th respondent had now intimated the 2nd respondent that there was dearth of employees under the Panchayat and requested to deploy the LPWD Casual Labourers. They alleged that the 4th respondent who belonged to a rival political fraction was trying to terminate the service of the applicants who belonged to rival party and to induct men of her ranks. According to them the action of the respondents in terminating the services was in violation of specific direction contained in Annexure A3 issued by this Tribunal as illegal, arbitrary and tainted with malafides. The applicants who had already submitted representation to the Ministry of Personnel, Govt. of India for preparing a scheme for their regularisation or atleast temporary status and who were continuing since 1994 without any break was entitled to continue until a decision on their representation was communicated to them. Having acquired a vested right to continue until they were regularised in the posts which they were holding prior to 1.4.99.. As per the Panchayat Regulations 1994 the 4th respondent was having no authority to terminate the services of those who had been employed under the regulations or erstwhile Island Council. The reasons stated in A1 notice of no funds was absolutely incorrect and was made with a specific intention to misguide and mislead this Tribunal. Right from 1994 onwards the LPWD was sanctioning the wages of the applicants. They were being



employed by the second respondent Department only since their wages were still being sanctioned by the 2nd respondent from the Consolidated Fund of the Govt. of India. Moreover, the 2nd respondent was also exercising the powers to control even the number of the required employees of the scheme as could be evidenced by A-8. The AWAM Society, the Island Council, the Panchayath Special Officer and the elected Panchayat were only agencies that were entrusted to supervise the functions of the scheme. In these circumstances the applicants could not be considered as employees of any other agency other than the Govt. of India and all the benefits of the Scheme granting temporary status and regularisation issued by the Ministry of Personnel as per OM dated 10.9.93. has to be extended to them as has been extended to all the other casual laborers employed by the second respondent.

3. The 4th respondent who had been impleaded by name filed reply statement. She had been impleaded by name. She had also been impleaded as 5th respondent in her official capacity. She submitted that even though she had been impleaded in her present capacity as 4th respondent there was no allegation of malafide against her and there was no specific mention of malafide. She had discharged the duties as a Chair Person without prejudice or bias to anybody. All her efforts were for the interest of the public and the interest of the Panchayat in particular. The vague allegations of political interest was without any foundation. The termination of the service of the applicants were made as there was no fund available to continue their services. Moreover, their services were not required for the Panchayat to carry on the water supply scheme. The scheme under which they were employed was scheme to help persons living below



poverty line. Under the scheme the job was to be given on rotation. Continued employment, permanency and higher wages were not envisaged in the scheme. It was run on fund allocated for such welfare activities by the Government to the Panchayat. The applicants were able to continue in their service on account of obtaining orders from this Tribunal to maintain status quo when any attempt was made to terminate them. The circulars which were produced in this behalf by the applicants were not applicable to the Panchayat. Even in some of the earlier cases the Panchayat was not made a proper party. The directions given by this Tribunal was only to dispose of the representation filed by the applicants either by the Administration or by Secretary to Govt. of India. Panchayat could not be penalised for their action or non-action. The vague allegation of malafide mentioned in the OA was not true.

4. Separate reply statement was filed by the 5th respondent denying all the allegations and resisting the claim of the applicants. It was submitted that the O.A. was not maintainable in law. The applicants were not employees eligible to approach this Tribunal as they were neither appointed by Government of India nor by anybody which would come under the jurisdiction of the Tribunal. The Panchayat Samithy was not amenable to the jurisdiction of the Tribunal and therefore the O.A. itself was liable to be dismissed on the grounds of lack of jurisdiction. In the earlier OA filed by these applicants this Tribunal had not given any relief against the Panchayat. As the applicants claimed the benefits of temporary status and subsequent regularisation they were directed to give representations to appropriate authorities. Earlier after hearing the entire matter this

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Tribunal had disposed of the OA with an observation that the applicants services could be terminated if it was so required. But now they had obtained interim order and on the strength of the interim order they continued in office. This had put the Panchayat in difficult situation. There is no allotted fund to pay the salary to the applicants. Their services were no more required for Panchayat as there was no work available. The various grants and money provided by the Govt. of India to the Panchayat was a programme of poverty alleviation. One of the criteria in such schemes were that more and more persons who live below poverty line to get an employment for a while and earn something for their livelihood. Under the said scheme the work could only be given on rotation basis. It is not a permanent work as that available in other departments. It is true that the applicants were attached to water supply scheme some time. They were able to manage continuity in service by filing OA or using the opportunity of formation of Village (Dweep) Panchayat. Their original appointment was made by Island Council which was abolished and in the place Special Officer was working before the election. Their wages were paid on the basis of fund available from the Govt. and persons could be appointed on casual basis to such posts and person so appointed could not have any claim for appointment in the regular vacancy violating the Recruitment Rules. The averment that the PWD was still maintaining the water supply scheme was not correct. The Administrator of Lakshadweep passed orders declaring that the applicants had no right to continue in service getting the benefits of temporary status. The applicants were not appointed prior to 10.9.93. They were given job under the IRDP scheme. No person employed under that scheme is entitled for the benefits of temporary



status and thereafter regularisation. Their services were terminated as fund sanctioned by the Government to the Panchayat was exhausted. Even now there was no money for the Panchayat to give the salary of the respondents. The Panchayat could not find resources to pay huge amounts to the applicants. Kiltan was a small Village Panchayat with no resources to generate fund for the Panchayat except the grants given by the Government. There were no factories or production or agricultural or any other sources to collect taxes or augment fund for the Panchayat. The Island Council was not having any power to appoint anybody permanently in the Panchayat.

5. Reply statement was filed on behalf of respondents 1 to 3. It was submitted that as A1 order was mainly challenged on the ground that the same was issued without notice and without affording an opportunity of being heard as directed by this Tribunal in A3 judgment. The 5th respondent had informed that the applicants were allowed to continue under the water supply scheme of the Kiltan Panchayat on the basis of the interim order passed by this Tribunal on 28.4.99. The first respondent had examined all the facts and circumstances in detail and was of the opinion that the 5th respondent had issued A1 order terminating the service of the applicants with effect from 2.4.99 without giving an opportunity of being heard as directed by this Tribunal in A3 order was an inadvertent mistake. It was submitted that the first respondent was willing to review A1 order in accordance with the direction contained in A3 order. A1 order was issued without the knowledge and consent of the first

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respondent. It was submitted that the Tribunal may direct the first respondent to review A1 order and issue a fresh order as stipulated in A3 order.

6. Applicants filed rejoinder reiterating therein that the scheme was actually brought into existence by the LPWD and one of the applicants had been issued with a promise letter by the Junior Engineer and Asst. Engineer of LPWD in support of which they produced A7. Relying on A-8 of 14.7.2000 it was submitted that the third respondent was controlling the entire operation and it was only the agency which was entrusted with the day to day operation which had been changing. They claimed that they should be considered as Casual Labourers of LPWD only since in some of the islands the temporary status attained mazdoors of the LPWD was working side by side with the casual labourers like the applicants. It was only in Kiltan island where the entire operation was being managed by the applicants who was doing the duties of the departmental plumber, pump operator, tiller driver etc. right from the beginning. The day to day operation had now changed different hands like the AWAM Society, Island Council, The Panchayat Special Officer and now the elected Panchayat. It was also pertinent here to note that the 4th respondent had also filed a reply statement specifically pointing out that the scheme under the Panchayat was only for the persons below the poverty line and the applicants were not the Panchayat's casual labourers. It was also submitted that A-9 letter dated 21.7.99 issued by the Ministry of Personnel had intimated the first respondent to formulate their own scheme or to adopt the scheme. But the first respondent had not taken any action on the same nor had passed any order regularising the engagement of the

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applicants whereas the third respondent had now issued A-8 order reducing the number of casual labourers. The applicants who were doing exactly the same nature of duties of the Departmental Plumber, Pump Operator and the Tiller driver was being paid at the rate of Rs. 50/- and Rs. 45/- per day whereas the Casual Labourers of the Department was being paid at the rate of 1/30th of the regular pay scale of the Group-D employee. Even the other Panchayat employees were being paid at the rate of RS. 55/-. The applicants were being ignored like anything and was being left to rot by the department of the same administration without even a paid weekly off.

7. Applicants further filed M.A. No. 19/2000 enclosing therewith A-10 communicating the order of the Govt. of India Ministry of Personnel in response to their representation made pursuant to the direction of this Tribunal in O.A. 137/98, 9/98 and 839/1998. By another M.A. No. 655/2001 the applicants produced A-11 order of the Lakshadweep Administration dated 9.4.2001 to show that the scheme of water supply was being made by the PWD only and the power was exercised by the second respondent. It was submitted that the stand of the 5th respondent that they were not employees of the Panchayat was incorrect in the light of the said order.

8. Respondents filed additional reply statement wherein it was submitted that the applicants were temporarily engaged by Island Council, Kiltan on various dates ranging from 1.1.95 to 1.7.95 except P. Sadik ali who was engaged on 4.5.98. It was submitted that none of the applicant was in the roll of the Island Council or under any other

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organisations of the Govt./U.T. Administration as on 10.9.93, the date of notification of Temporary Status Scheme of Govt. of India. Therefore, they were not eligible for consideration under the scheme. The facility under the scheme was available to those who were working under State/U.Ts. The Ministry by R1 letter directed the 1st respondent to consider the contents of the representation of the applicants to take up the matter with the Village (Dweep) Panchayat as they were free to adopt the scheme of the Government of India in the matter of grant of temporary status to its employees. As per the Govt. of India Allocation of Business Rules, 1961 the Department of Personnel & Training was empowered to formulate policy regarding service conditions of employees working under Central Govt. and that the Department was not empowered to lay down the service conditions of the employees working in the autonomous organisations. The Ministry in their letter had further indicated that as per Section 37(4) of Lakshadweep Panchayats Regulation 1994 the 1st respondent was competent to regulate the service conditions of the persons appointed to the Panchayats. The above provision applied in the case of fresh recruitment to the Panchayat. The case of the applicants was entirely different from what had been considered by the Ministry in its order dated 10.11.2000 as they were engaged as temporary casual labourers not against any regular or existing posts by the Island Council and presently under the Dweep Panchayat. Since the Dweep Panchayat was a body corporate having perpetual succession and a common seal and regulated by the provisions of the Lakshadweep Panchayat Regulations 1994, and the rules made thereunder the Administrator, U.T. of Lakshadweep did not have any direct control over the employees/casual labourers

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of the Panchayat and also could not alter/modify or formulate fresh proposal independently on behalf of the Panchayat and its employees/workers/temporary casual labourers. Therefore the contention of the applicants that they must be given the temporary status could not be accepted as the scheme did not apply to them. Moreover, they were not under the roll of the Govt. Institution/Public Works Department and they were not even in the roll of the Island Council or the Dweep Panchayat as on the date of issue of Temporary Status Scheme 1993 of the Govt. of India. Relying on the order of this Tribunal in O.A. 137/95, 9/98 and 839/98 dated 22.3.99 it was submitted that this Tribunal had accepted the submission that the Administrator could not formulate a scheme similar to the Temporary Status Scheme 1993 of Government of India for the benefit of the applicants as they were not on the roll of the Island Council. On the date of the order of this Tribunal in O.A. 836/96 the applicants were only maintained as temporary casual labourers under the Village Panchayats in accordance with the provisions of the Lakshadweep Panchayat Regulations 1994 and the rules made thereunder and the Administrator had no direct role or control over the functions of the Village Panchayats. The cause of action arose on the issuance of A1 order. Now that the applicants had been re-engaged on the basis of the interim order, the applicants did not have any subsisting cause of action, the O.A. was liable to be dismissed on this score alone. The applicants were working under the Panchayat which was run by the elected body and therefore the Tribunal did not have any jurisdiction to decide the issue involved. The applicant did not have any legally enforceable cause of action. The O.A. was devoid of any merit and was liable to be dismissed.

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9. Further rejoinder and additional reply statement by the applicants and respondents 1 to 3 respectively were filed.

10. Heard learned counsel for the parties. Learned counsel for the applicants argued the matter at length and submitted that the applicants were claiming the benefits of the scheme dated 10.9.93 of the Govt. of India, Ministry of Personnel or a similar scheme to be made as per the directions issued by this Tribunal in the earlier O.A. He submitted that the applicants were initially engaged by the LPWD itself and the fresh water supply scheme to which they were recruited was of a perennial nature. He submitted that one of the applicants had been issued with a promise letter by the Junior Engineer and the Asst. Engineer of the LPWD. The LPWD is controlling the entire fresh water supply scheme. He submitted that the benefits granted to the departmental casual labourer was being denied to the applicants. When the Island Council was disbanded, all the assets and liabilities along with the schemes were handed over to the Special Officer and from A-12 it could be seen that the Water Supply Scheme and the labourers were counted as Assets of the Island Council. Regarding the plea that the applicants were not on roll on 10.9.93, the date of issue of the OM of the Scheme of Temporary Status- it was submitted that as per the decision of this Tribunal in a number of OAs, the scheme could not be limited to those who were on roll on 10.9.93 only. The Superintending Engineer had issued instructions restricting the number of labourers to be engaged for the water supply scheme and was releasing the funds for the wages of the applicants. Section 37(4) of the Panchayat Regulations empowers the Administrator to formulate the service condition



of the Panchayat employees. The Panchayat could be construed as one of the arm or the department of the administration. Learned counsel submitted that this Tribunal may direct the respondents to either grant temporary status to the applicants or to formulate similar scheme to grant temporary status and regularisation to the applicants considering their engagement since 19945. He cited the order of this Tribunal in O.A. No. 835/96 and judgment of the Hon'ble Supreme Court in Secretary, Haryana State Electricity Board Vs. Suresh and Others (AIR 1999 SC 1168) in support of his submission.

11. The learned counsel for the respondents 1 to 3 submitted that no cause of action subsisted for continuing the OA and by virtue of the interim order of this Tribunal the applicants were continued in service. It was further submitted that none of the applicants were under the roll of the Island Council/U.T. Administration as on 10.9.93 the date of notification of the Temporary Status Scheme of the Government of India, they would not be eligible for consideration under the above scheme. even otherwise the said facility under the scheme was available to only those working in the Central Government Establishments. The Administrator was not competent to frame any scheme for the Casual Labourers working under the Panchayat. Further as no regular posts were created by Govt. of India/UT of Lakshadweep Administration their regularisation could also not be done. Relying on the orders of this Tribunal in O.A. 557/98 and O.A. No.218/99 and 1297/98 the learned counsel for the respondents submitted that the applicants were not entitled for any of the reliefs sought for.

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12. The learned counsel for the 5th respondent submitted that there was no justification for continuing the applicants in service under the Panchayat since the Panchayat did not have any funds of their own. The applicants were not entitled for grant of temporary status, etc. as the Scheme does not cover Panchayat employees. It was also submitted by him that the OA was not maintainable as the applicants are not employees eligible to approach this Tribunal as they were not appointed by the Govt. of India to come under the jurisdiction of this Tribunal. In the earlier O.A. filed by the applicants this Tribunal had not given any order against the Panchayat. The applicants have been continuing on the basis of the interim order which has put the Panchayat in difficulty without any funds to pay the salary of the applicants. The original appointment of the applicants was under the scheme which was an IRDP scheme. The various grants and money provided by Government of India to the Panchayat was a programme of poverty alleviation and one of the criteria in such schemes was that more and more persons who live below poverty line to get an employment for a while and earn something for their livelihood and under the said scheme the work could be given only on rotation basis. The applicants were attached to water supply scheme for some time. They were able to continue in service by filing Original Applications. If the applicants were working under the PWD as claimed by them then they should have made their claim to that Department. It was incorrect to say that the PWD is continuing the water supply scheme. As the applicants were not covered under the Temporary Status Scheme they were not entitled for temporary status and thereafter for regularisation.

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13. We have given careful consideration to the submissions made by the learned counsel for the parties and their pleadings and have perused the documents brought on record.

14. After giving careful consideration to the pleadings in detail and the submissions of the learned counsel for the parties and perusing the documents brought on record we are of the view that the following issues are to be decided by this Tribunal for the adjudicating on the reliefs sought for by the applicants in this O.A:

(i) Are the applicants employed by the Lakshadweep PWD and hence by the Lakshadweep Administration.

(ii) If the answer to (i) above is in the affirmative, are the applicants covered by the Temporary Status Scheme introduced by the Govt. of India by their OM dated 10.9.93.

(iii) If the answer to (i) is in the negative, are the applicants entitled for a direction to the Central Government / Administrator, UT of Lakshadweep for framing a scheme similar to the one dated 10.9.93.

15. These applicants approached this Tribunal for the first time through O.A. No. 835/96. A2 order passed by this Tribunal on 2.7.97 in that OA reads as under:

Applicants are originally recruited by the Island Council Kiltan on daily wages. Thereafter, the Island Council ceased to exist after the promulgation of enforcement of the Lakshadweep Panchayat Regulation, 1994 and all the assets and liabilities of the Island Council were entrusted to the Dweep Panchayat. The grievance of the applicants is that they have not been granted temporary status and regularisation in the light of A-2 scheme. They have also prayed that their services should not be terminated till they are regularised.

2. Respondents submitted the A2 scheme for grant of temporary status and regularisation does not apply to a local self organisation like the Dweep Panchayat, since it is not department or office of the Lakshadweep Administration or office of the Government of India.



3. Even though the scheme A-2 may not technically apply to the applicants, the respondents have a duty to formulate a scheme for the grant of temporary status/regularisation of casual labourers since a policy decision has been taken by the Government of India in this behalf as seen from A-2, in pursuance of the directions of the Apex Court. the applicants cannot be left high and dry on the plea that they are being employed by an autonomous body which has been set up by the Government of India. From the pleadings before us it is not clear under what terms and conditions the employees of the Island Council have been recruited and later transferred to the Dweep Panchayat. The terms and conditions of the employees of the Dweep Panchayat are also not placed before us.

4. Under these circumstances, we permit the applicants to submit a representation in this regard to the 1st respondent within two months and if such a representation is received by the 1st respondent he shall consider it and pass appropriate orders within three months of its receipt.

5. Application is disposed of accordingly. No costs."

16. On a careful consideration of the above order we find that A2 scheme referred to in the above order is the Department of Personnel & Training Casual Labourers (Grant of Temporary Status and Regularisation) Scheme dated 10.9.93 and further held that the said scheme would not apply to the applicants. This in our view would mean that this Tribunal had accepted that the applicants having been engaged initially by the Island Council and later on by the Dweep Panchayat at the time of approaching this Tribunal through the above OA were not employees of the Central Government or the UT of Lakshadweep. What this Tribunal had ordered in that OA was only permitting the applicants to submit a representation to the first respondent Administrator and directing the said respondent to consider the same and pass appropriate orders. Though O.A. No.137/98 the applicants again approached this Tribunal seeking to quash the order dated 10.11.97 passed by the first respondent Administrator

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pursuant to the order of this Tribunal in O.A. No. 835/96.

The specific reliefs sought for by the applicants were as following:

(i) To call for the records relating to annexure A-1 and to quash the same.

(ii) To declare that the applicants are entitled to be conferred with temporary status as per Annexure A-3 Scheme with effect from the date on which they completed 240 days of service and to direct the respondents to confer such temporary status to the applicants with all consequential benefits or in the alternative to formulate a Scheme in tune with A-3 scheme and to grant the applicants temporary status and regularisation.

(iii) To direct the respondents to pay the arrears of

This Tribunal held as follows in para 7, 8 & 9 of A-3 order dated 22.3.99 passed in the above O.A:

"7. Applicants are permitted to submit through proper channel representations to the supplemental respondent brought in the party array today, i.e. Union of India represented by the Ministry of Personnel, Public Grievances & Pensions, within three weeks from today. If such representations are received, the supplemental respondent, i.e. the Union of India represented by Ministry of Personnel, Public Grievances & Pensions shall consider those representations in the light of the order in OA 835/96 and pass appropriate orders as expeditiously as possible after affording a reasonable opportunity to all persons, organisations and institutions concerned in the matter.

8. Fifth respondent in OA 137/98 has raised a contention as to the maintainability of this OA against fifth respondent before this Tribunal. That question is left open since no relief is granted against the fifth respondent in OA 137/98.

9. Applicants in OA 137/98 were continuing under the respondents on the strength of the interim order of this Tribunal. That interim order was vacated as per order dated 11.3.99. It is submitted by both sides that the applicants are still engaged and their services are not terminated. If the respondents do not find any reasonable justification for their continuance their services shall not be terminated without giving an opportunity of being heard.



It is evident from a reading of A2 and A3 orders above that this Tribunal has never held that the applicants are employees of the Lakshadweep Administration or the Central Government. It has in para 3 of A2 order held that the respondents on the ground that the Island Council/Dweep Panchayat are autonomous body set up by the Government of India and the applicants were being employed by this autonomous body could not be left high and dry, and hence permitted the applicants to file a representation to the Administrator, 1st respondent herein. In A-3 order applicants were permitted to make a representation to Union of India, Ministry of Personnel, Public Grievances and Pension, New Delhi and the latter was directed to consider the representation in the light of A-2 order in OA 835/96 and pass appropriate orders.

17. By the applicants' own admission they were initially recruited by the Island Council. According to the respondents 1 to 3 the applicants were engaged in 1995 except 7th applicant who was engaged in 1998. Applicants have admitted the same except in the case of 1st and 7th applicants who according to them were working from 1.4.94 and 1.4.95 respectively. As regards applicants statement that they were to be treated as having been engaged by the Lakshadweep PWD and hence by the Lakshadweep Administration because the water supply scheme of Kiltan island was under PWD till it was handed over by order of Administrator on 9.4.2001 (A-11), we find from R-4 dated 7.7.94 that the water Supply Scheme of Kiltan Island came under Island Council by that letter. We also find from R-4 that A-7 dated 4.3.90 relied on by the applicants had been referred to in the same

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for engagement of Shri K.Mullakoya. From A-7 we find that the assurance of job made therein was only under AWAM Society and not under LPWD.

18. From the above position in our view what emerges is that the Water Supply system after construction and commissioning, for maintenance and running were handed over to AWAM Societies followed by Island Council followed by ~~xxxxx~~ Panchayats and till Panchayats were formed, by the Block Development Officer who according to the applicants was the Panchayat Special Officer.

19. From the 4th and 5th respondents' averments in their respective reply statements we find that the applicants' original appointments were under an IRDP scheme. The grants and money provided by the Govt. of India to the Panchayat was for programme of poverty alleviation. Thus, we find that the applicants' averments that they were engaged by PWD Lakshadweep itself is found to be not based on facts. Further atleast six of the applicants were engaged after the maintenance and running of the water supply scheme in Kiltan Island were taken over by the Island Council. In any case the applicants have not specifically denied that they were engaged under the scheme of IRDP.

20. The next question that comes up is whether the employees of the Island council could be treated as employees under the Lakshadweep Administration. The Lakshadweep Island Councils Regulations 1988 Rule 27, 30 and 60(2)(g) read as under:

27. The Island council may appoint such officers and employees and in such number as may from time to time be considered necessary.

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Provided that it shall not create any post not already provided for in the budget except with the previous approval of the Administrator.

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30. The Administrator may entrust to the Island Council, the execution, maintenance or repair of any work or the management of any institution on behalf of the Government:

Provided that the funds necessary for the execution, maintenance or repair of the work or the management of the institution shall be placed at the disposal of the Island Council by the Government.

X X X X X X X

60(2)(g) appointment, powers, duties and conditions of service of the officers and employees of an Island Council.

From Regulation 30 above we find that the Administrator can handover any work to the Island Council. Similarly Regulation 46 of the Lakshadweep (Panchayat) Regulation 1994, provides that for the management of the work under their control, the Panjayat could engage employees and as per Regulation 37 of the Lakshadweep Panchayat Regulations, 1994 such employees would be distinctly different from those employees employed in connection with the affairs of the Administration. Thus, the applicants who were initially engaged by the Island Council and later on by the Panjayat cannot be considered as being employed by the Lakshadweep PWD or the Lakshadweep Administration. Accordingly, the issue No. (i) framed by us is answered in the negative.

21. As the issue No. (i) is answered in the negative, we need not consider the issue No.(ii). Next we have to consider the issue No.(iii) i.e. Whether the applicants are entitled for a direction to the Central Govt./Administrator of U.T. of Lakshadweep for framing a scheme similar to the one dated 10.9.93. A similar request was made by the applicants in their representation to the Ministry of



Personnel, Public Grievances and Pension who had replied the same by under A-10 letter dated 10.7.2000. But before we consider this question, as we have come to the conclusion that the applicants are not employees of the Lakshadweep Administration and they are also not employees of the Central Govt. they are necessarily the employees of the Island Council initially and at present are under the Panchayats set up pursuant to the Lakshadweep Panchayats Regulations, 1994. As a matter of fact all the applicants except the first applicant having been appointed in 1995 should be deemed to be the employees of the Panchayat right from their date of engagement. Once it is seen that they were recruited by the Panchayat/^{and} they were continuing in the Panchayats they cannot approach this Tribunal for any relief against the 4th and 5th respondents. It is for the concerned Panchayats to lay down the conditions applicable to the service of their employees depending on the ways and means position. We also find support for our above view in the order of the division Bench of this Tribunal in OA No. 1297/98 dated 14.8.2001 where the five water supply mazdoors of Androth Island had approached this Tribunal for regularisation of their service under the Union of India represented by the Secretary, Ministry of Home Affairs and Administrator UT of Lakshadweep. It was held by this Tribunal in that OA as follows:

"12. We have carefully perused the pleadings and other material on record. We have also given our anxious consideration to the rival submissions. We find that in both these OAs under consideration, the applicants were originally engaged by the Island Council of Androth/Minicoy. They might have continued to be engaged subsequently by the succeeding local self Government body, namely, the Village (Dweep) Panchayat of Androth/Minicoy. The Chairpersons of the respective Island Council might have with or without proper authority from the Councils issued what are purported to be appointment orders and the subsequent service certificates. We have good reason to reject the same as those do not reveal the applicants' nexus with the Administration

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of U.T. of Lakshadweep in order that they might have a cause of action before us. The applicants have not adduced any evidence to show that they were appointed against any posts sanctioned or approved by the Lakshadweep Administration in the light of the provisions in the regulations briefly surveyed above. The case law cited by the applicants' counsel viz. Arun Kumar Rout & Others Vs. State of Bihar & Others AIR 1998 SC 1477, turns on facts which are clearly distinguishable. Apart from having long service and the requisite qualification, the persons in the cited case were appointed against sanctioned posts. In the case on hand, the applicants were not employed against any posts sanctioned by the administration and that would make all the difference. The Island Council or the Chairpersons, as the case may be for reasons best known to them, seem to have accommodated these people. They might rightly come under the wage employment programme as a poverty alleviation measure under the DRDA or they might have been employed since the village (Dweep) Panchayat authorities considered it expedient to give employment to them. It probably might have offered some succor by way of daily rated wages to the unemployed local persons. It might have and we hazard a guess that it has happened in this case that the local self governing bodies with local socio-political affiliations and compulsions have allowed these wage-earners to work under them for a considerably long period without any legal or administrative backing. A perusal of the Island Council Regulation 1988 and the subsequent Village (Dweep) Panchayat Regulations, 1994 and the rules framed thereunder, as discussed earlier in this order would make it clear that the Administration held itself responsible for specified number and categories of employees only. If a local self Government body employed any person or persons otherwise and allowed them to stay, it should be at their risk and cost and not at the expense of the Administration of the U.T. of Lakshadweep. Such employment/engagement would not ipsofacto confer any constitutional right on the concerned persons as Government employees inspite of the designations they were accorded by the local self government bodies. It is significant to note that the so called appointment orders contain no information with regard to any sanction or approval of the Lakshadweep administration regarding such appointments. There is nothing to show that such posts are provided for in the budget. The case of the applicant in OA 218/99 is more curious in as much as A-2, which is purported to be a true copy of the resolution of the Island council contains no details as to the members present or their signature, resolution No. etc. There is no formal appointment order at all. The service certificate issued by the Chairperson of the Village (Dweep) Panchayat of Minicoy does not also state whether the employee concerned continued in the service of the Panchayat under any authority. The applicants cannot seek any protection under Regulation 88 of the Lakshadweep Panchayats Regulation either since their initial engagement, if at all under the Island Councils was not authorised or approved by the Administration. The provisions of



the Industrial Disputes Act also would not come to the rescue of the applicants and in any case, we see no reason to address ourselves to that issue since, according to us, the applicants have failed to show that they are employees of the Administration of the U.T. of Lakshadweep. We find no scope to look into their alleged grievance as their employment/engagement does not have any proximate connection with the Lakshadweep Administration. Neither the Panchayat authorities (respondents 4 and 5) nor the applicants have shown how the posts created/retained in addition to those sanctioned by the Administration could be considered regular. As matters stand, the Administration of U.T. of Lakshadweep has no accountability as far as the matter of regularisation of the applicants are concerned. The anxiety of the U.T. Administration to prevent misapplication of funds granted to the Village/District Panchayat for developmental purposes towards expenditure on account of wanton appointments of staff against posts neither created nor sanctioned nor approved is legitimate. A-12 circular referred to in OA 1297/98 and A-1 referred to in OA 218/99 seeking to put an end to such unauthorised expenditure of central funds warrants no interference. It is, however, for the Administration and the relevant concerned (Dweep) Panchayat authorities to decide on the regularisation of the expenditure incurred so far in whatever manner deemed just and fair.

13. For the reasons stated above, the interim orders in these cases are vacated and the applications are held to be not maintainable in law and are accordingly dismissed. We find it proper not to order any costs in these cases".

In the present OA the Panchayats had terminated the services of the applicants and that was the cause of action for the applicants to approach this Tribunal and the reliefs sought for by them was against the Panchayat Chairperson. By interim order this Tribunal ordered maintenance of status quo as on 30.3.99. As now we find the Union of India had replied their representation and we have come to the conclusion that they are Panchayat employees, this OA is not maintainable. Therefore, we hold that the third issue framed by us should be adjudicated by the appropriate forum.

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22. In the light of the above this OA is only to be dismissed and we do so accordingly. In the circumstances we leave the parties be bear their respective costs.

Dated the 22nd April, 2002.


K. V. SACHIDANANDAN
JUDICIAL MEMBER


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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APPENDIX

Applicant's Annexures:

Annexure A-1 : True copy of the Notice No.Nil dated 1.4.99 issued by the 4th respondent to the applicants.

Annexure A-1(b): English translation of Annexure A1.

Annexure A-2 : True copy of the order dated 2.7.97 of this Hon'ble Tribunal in OA 835/96.

Annexure A-3: True copy of the order dated 22.3.99 of this Hon'ble Tribunal in OA 137 and 839 of 1998.

Annexure A-4: True copy of the representation no.nil dated 2.4.99 submitted by the applicants before the Secretary to Government Ministry of Personnel, Public Grievances & Pension, New Delhi.

Annexure A-5: True copy of the letter F.No13/4/98-DOP dated 31.1.99 sent by the 2nd respondent to the 4th respondent.

Annexure A-6: True copy of the letter no.nil dated 17.4.99 sent by the 1st applicant to the respondents 1 and 2, dated this the 27th day of April'99.

Annexure A-7: True copy of the letter F.No.WB/JEKN/472/89-90 dated 04.3.90 issued by the Office of the Junior Engineer, PWD, Kiltan.

Annexure A-8: True copy of the Office Order F.No.71/2/2000-AB 2/876 dated 14.7.2000 issued by the IIIrd respondent.

Annexure A-9: True copy of the Letter No. 40011/4/99.Estt.(C) dated 21.7.99 issued by the Government of India, M/o Personnel Public Grievances and Pensions.

Annexure A-10: True copy of the OM F.No 13/2/98-DOP dated 18.12.2000 issued by the IIIrd respondent.

Annexure A-11: True copy of the F.No.7/4/2000/ DOP&RD(1) dated 9.4.2001 issued by the 1st respondent.

Annexure A-12: True copy of the Handing over and taking over charge of Island Council by the Panchayath Special Officer.

Annexure A-13: True copy of the letter F.No.13/2/98-DOP dated 28.8.2000 addressed to the IIIrd respondent.

Respondent's Annexures:

Annexure R-1: True copy of the letter no.40011/4/99-Estt(C) dated 21.7.99 issued by the Government of India, M/o Personnel, Public Grievances & Pension.

Annexure R-2: True copy of the letter F.No.13/2/98-DOP dated 2.2.00 sent by the Administrator, U.T of Lakshadweep to the Govt. of India, M/o Personnel, Public Grievances and Pension.

Annexure R-3: True copy of the letter No.W(XII)/SE/88/1008 dated 28.6.90 sent by the Superintending Engineer.

Annexure R-4: True copy of the letter F.No.P2/JEKN/47/94-95 dated 7.7.94 sent from the Office of the Asstt. Engineer, LPWD.

Annexure R-5: True copy of the Message F.No.1/1/98-VDP(K1t)/335 dated 29.9.99 sent by the Chairperson Village Dweep Panchayat, Kiltan.

Annexure R-6(a): True copy of the Order F.No. 73/2/97-AB2/870 dated 14.7.98 issued by the Administrator.

Annexure R-6(b): True copy of the Order F.No.73/2/97-AB2/1676 dated 16.11.98 issued by the Administrator.

Annexure R-6(c): True copy of the order F.No.71/1/99-AB2 dated 3.6.99 issued by the Administrator.

Annexure R-6(d): True copy of the order F.No.71/1/538/2000-AB-2(5) dated 7.5.2000 issued by the Superintending Engineer.

Annexure R-7: True copy of the order F.No.71/2/2000-AB 2/876 dated 14.7.2000 issued by the Superintending Engineer.
