

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 30.3.90

P R E S E N T

HON'BLE SHRI N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.514/1989

1.P.Govindankutty

2.M.Basheer

.. Applicants

v.

1. Chief Postmaster General,
Kerala Circle, Trivandrum.

2. Superintendent of RMS, 'CT' Division,
Calicut-2.

3. Sub Record Officer,
RMS 'CT' Division, Palghat.

4. Union of India, represented by its Secretary,
Ministry of Communications, New Delhi. .. Respondents

M/s.O V Radhakrishnan &
K.Radhamani Amma

.. Counsel for the
applicants

Mr TPM Ibrahim Khan, ACGSC

.. Counsel for the
respondents

JUDGMENT

Hon'ble Shri N.Dharmadan, Judicial Member

The short point that arises for consideration in this application filed under Section 19 of the Administrative Tribunals Act is as to whether the termination of the service of the two casual workers without any order presumably in terms of Annexure R2(A) circular letter issued on behalf of the PMG, Kerala is valid or not?

2. The applicants were engaged by the third respondent as casual mazdoors in 1986. Admittedly they have put in more than 240 days. The wages paid to them during their employment were stated to be very low and far less than the salary and allowance paid to the regular employees in the P&T Department. The services of the first applicant was terminated on 31.10.1987 and he filed

Annexure A-1 representation requesting for reinstatement in service. Similarly when the services of the second applicant was terminated on 31.10.1987 he also filed a representation claiming reinstatement.

3. The applicants submitted that Ext A-2 circular was issued by the Postal Department after the decision of the Supreme Court in AIR 1987 SC 2342 framing a scheme for absorption of casual labourers who had been continuously working for more than one year in the department. According to the applicants since they have satisfied the conditions contained in Ext.A2 as on 31.12.87 they are entitled to be absorbed in the department. Annexures 4 and 5 are the requests for absorption in the light of the Supreme Court judgment and Annexure A-6 is the reply given to the second applicant by the Superintendent, RMS Calicut stating that his name cannot be included in the panel of mazdoors because his engagement was after the crucial date of 7.5.85 and that his name was not sponsored by the employment exchange while engaging him as casual mazdoor. The applicants filed this application for a declaration that the termination of their services is illegal and violative of Section 25F of the Industrial Disputes Act, 1947.

4. The respondents are relying on para 2.7 of Annexure R-2(A) letter of P.M.G, Kerala No.ST/307/88 Rigs dated 5th September, 1988 for opposing the claim of the applicants. It reads as follows:-

"Casual mazdoor, full-time or part-time, engaged as a regular measure or only occasionally, should be a nominee of the Employment Exchange, unless the person was in casual employment in the unit before 7 May 1985 on a regular basis. The unit should keep a record of its mazdoors in the following manner".

5. In the case of the applicants admittedly the conditions for regularisation namely (1) casual employment

in the Unit before 7th May, 1985 and (2) nomination by the Employment Exchange for appointment, are not satisfied. Hence the respondents submitted that their names could not be included in the panel of mazdoors of Sub-Record Office, Palghat. But at the time of hearing it was agreed at the bar that similar question had already been decided by this Tribunal.

6. The respondents admitted in the counter affidavit respondent in that the applicants were engaged as mazdoor under the 3rd L Sub-Record Office, Palghat with effect from 21.6.86 to 31.10.87 and 10.5.86 to 31.10.87 respectively. But they have taken up the stand that no termination order has been issued to the applicant because they had been engaged on temporary arrangement till a regular recruitment was made. Hence the provisions of the Industrial Disputes Act would not apply. We are not prepared to accept this argument. This is contrary to the view of the Supreme Court in various decisions. In Krishan Kumar Dubey v. U.P State Food & Essential Commodities Corporation and another, Judgments Today 1988(4) S.C 774 considering the termination of the temporary employees who have put in 240 days, the Supreme Court held as follows:-

" The petitioner had been working under the respondent Corporation as a temporary employee for over three years. It is the case of the appellant that from time to time his services were discontinued for a day or two with a view to breaking the continuity of his service. It, however, appears that he has continuously worked for more than 240 days. It is not disputed that the respondents have terminated his services without complying with the provision of section 25F of the Industrial Disputes Act, 1947. The High Court took the view that the appellant had an efficacious alternative remedy before the Industrial Tribunal and, accordingly, dismissed the Writ Petition. It is not necessary for us to consider whether the High Court was justified in dismissing the Writ Petition on that ground or not, but the fact remains that the appellant had worked continuously for more than 240 days and so, his services could not be terminated without complying with the provision of section 25 of the Industrial Disputes Act".

7. We have also considered the issues raised in this case in O.A 465/86 and held that such termination of casual employment would be violative of Chapter VA of the Industrial Disputes Act. We have observed as follows:-

"A number of similar cases have been considered by this Tribunal and the Tribunal is consistently taking the view following the Supreme Court decisions, that the services of the casual labourers employed in the Railway like the petitioner can only be terminated following the procedure prescribed in the Manual or satisfying the requirement of the Industrial Disputes Act for the retrenchment of an employee. A notable case is Jai Shanker Vs. State of Rajasthan, AIR 1966 SC 492".

8. The casual employees who have been employed under the Government service and Public Undertakings are entitled to parity in pay and allowance with regular employees. The Supreme Court very recently in Judgment Today, 1990(1) SC 343 exhaustively dealt with the issue and made certain salient observations.

The Supreme Court observed as follows:-

"We have referred to several precedents - all rendered within the current decade - to emphasise upon the feature that equal pay for equal work and providing security for service by regularising casual employment within a reasonable period have been unanimously accepted by this Court as a constitutional goal to our socialistic policy. Article 141 of the Constitution provides how the decisions of this Court are to be treated and we do not think there is any need to remind the instrumentalities of the State - be it of the Centre or the State, or the public sector - that the Constitution-makers wanted them to be bound by what this Court said by way of interpreting the law".

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"They should be eligible for an annual increment at the rate of Rs.10/- till their services are regularised. On regularisation they shall be adjusted at the basic pay-scale applicable to the lowest Group D cadre but would be entitled to all other benefits available to regular employees of their class".

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"2. From amongst the casual and daily rated employees who have completed ten years of

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service by 31.12.1989, 18,600 shall immediately be regularised with effect from 1.1.1990 on the basis of seniority-cum-suitability".

9. A similar case came up for consideration before this Bench in O.A 40/89. We have (one of us, Hon'ble Shri N.Dharmadan, Judicial Member was a party) decided the very same issues in favour of the applicant in the light of the principles laid down by the Supreme Court in Daily Rated Casual Labour employed under P&T Department v. Union of India and others (AIR 1987 SC 2342).

The relevant portions reads as follows:-

" The directions issued by the Director General, Postal Department or the Department of Personnel also nowhere indicated that the casual workers who have not been sponsored by the Employment Exchange should be kept out of the scheme of regularisation."

" Further the O.M itself indicates that the requirement of being sponsored by the Employment Exchange has been relaxed by the respondents themselves in respect of the casual workers who were engaged before 7th May, 1985. This shows that the requirement of being sponsored by the Employment Exchange has not been recognised by the respondents themselves as inviolable and binding".

* In the same manner drawing a line on the 7th May 1985 for regularisation cannot otherwise be sustained. In K. Murugesan v. Secretary, Ministry of Communication (Postal Department), (1989) 9 ATC 357 it was held that termination of the services of an employee who was appointed otherwise than through Employment Exchange and retained in service for a considerable period, without giving him an opportunity, on the ground that his appointment contravened administrative instructions, was illegal".

10. On the facts and circumstances of the case, we allow the application and declare that the termination of the service of the applicants is illegal and they are entitled to be included in the panel of regular employees kept in the office of the third respondent.

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11. In the light of our above conclusion it goes without saying that the applicants are also entitled to all consequential benefits under the Industrial Disputes Act, 1947 as if the applicants are ~~deemed to be~~ in service from the dates on which their services were terminated. Accordingly the application is allowed. There will be no order as to costs.

N.Dharmadan
(N.DHARMADAN)

30.3.96

JUDICIAL MEMBER

N.V.Krishnan
(N.V KRISHNAN)

30.3.96

ADMINISTRATIVE MEMBER

n.j.j

① CEP 1579, w OA 516/89.

1/2/81

(5)

AVK to AVH

Mr OV Radhakrishna for the petitioner
or TDM Ibrahim Khan for the respondent

The learned counsel for the respondent
wishes to file a statement. Granted.

Re
12pm

Call on 1572/81

11/2/81

AVK to AD

1572/81

(13)

Mr OV Radhakrishna for the petitioner by Proxy.
or TDM Ibrahim Khan for the respondent by Proxy.

The learned counsel for the respondent
wants to make submissions regarding
implemenation of the order.

Re
12pm

Call on 11/3/81

11/2/81

1572/81

11-3-91

SPM & ND

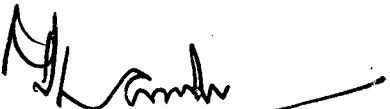
(24)

Mr OV Radhakrishnan for petitioner
Mr Aboobacker represents Mr TPM Ibrahimkhan
for respondents

ORDER

The learned counsel for the respondents stated that the judgement of this Tribunal in OA-514/89 has been implemented. The learned counsel for the petitioner does not wish to press the CCP any more.

Hence the CCP is dismissed as not pressed and the notice discharged.


(N DHARMADAN) 11.3.91

JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

*See issued
One*

*m/m
m/m
12/3*

11-3-1991