

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 519 1989
T. A. No.

DATE OF DECISION 16.10.90

A. K. Somasundharan & others Applicant (s)

Mr. O V Radhakrishnan Advocate for the Applicant (s)

Versus

Sub Record Officer, RMS CT Div, Respondent (s)
Palghat and others

Mr. TPM Ibrahim Khan for Advocate for the Respondent (s)
R 1-6

Mr. M R Rajendran Nair for R 7-11

CORAM:

The Hon'ble Mr. N. V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicants, who were engaged as full time Mazdoors by the first respondent for different periods from 1981 to 1985 filed this application, after the judgment of the Supreme Court in Daily Rated Casual Labour, P & T Department Vs. Union of India, reported in AIR 1987 SC 2342, with the main prayer that respondents 1 to 6 may be directed to regularise them since they are entitled to be empanelled for regular appointment and absorption in the department as per the scheme envisaged by the Supreme Court in the judgment.

2. The case of the applicants is that they have been engaged by the first respondent as full time Mazdoors for different periods as shown below:

	<u>Date of engagement</u>	<u>Date of discharge</u>
i) 1st applicant	19.5.81	28.11.82
ii) 2nd applicant	6.8.82	31.10.85
iii) 3rd applicant	29.12.82	30.5.85
iv) 4th applicant	7.10.82	28.8.83
v) 5th applicant	1.4.84	17.8.84
vi) 6th applicant	1.4.84	15.9.84

The applicants contended that after the engagement they continued in service and completed the statutory period of 240 days in service in twelve calendar months and they are, therefore, entitled to be absorbed in service. But somehow they were not allowed to work continuously under the first respondent.

3. Persons similarly situated approached the Supreme Court since the first respondent refused regularisation to them. After considering the contentions the Supreme Court passed the judgment on 27.10.1987 in which the Court observed that a scheme is to be prepared for empanelling the casual mazdoors who have put 240 days service and the service of these casual mazdoors should be regularised in accordance with their seniority if any, or with reference to the date of engagement.

4. According to the applicants, consequent on the direction contained in the judgment of the Supreme Court, the Postal Department issued Annexure A-13 dated 16.6.88. The relevant portions in Annexure A-13 reads as follows:

"Keeping the above in view, a suggestion has been put forth that casual labourers both full and part-time should be given preference for recruitment as Extra Departmental Agents in case they be willing with a view to afford the casual labourers a chance for ultimate absorption as Group 'D'.

4. The suggestion has been examined in details and it has been decided that casual labourers whether full time or part time, who be willing to be appointed to ED vacancies may be given preference with matter of recruitment to ED posts provided they fulfil all the conditions and have put in a minimum service of 1 year. For this purpose a service of 240 days in a year may be reckoned as one year's service. It should be enlarged that nomination are called for from employment exchange to fill up the vacancies of casual labourers to that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange.

5. These instructions take effect from the date of their issue."

5. The applicants also relied on Annexure A-14 letter dated 19.2.87 issued by the Supdt. in which it has been stated that having regard to the fact that the termination of service of some of the casual employees, who were not recruited through Employment Exchange, caused injustice and undue hardship and it had been decided to draw a panel of Mazdoors recruited before 7.5.1985 and allow them to continue in service. The applicants submitted that their case would come squarely within the provisions of Annexure A-13 and A-14. They had completed the statutory period of 240 days service before 7.4.1985 as indicated in Annexure A-14.

6. The applicants further submitted that they submitted Annexure A-6, A-7, A-8, A-9, A-10 and A-11 representations raising their claim for regularisation under the first respondent. But the respondents 1 to 6 had not considered the same and granted relief to them.

7. In this connection the applicants brought to our notice Annexure A-16 by which the following persons were regularised by the second respondent:

1. S/Shri Premadas
2. Shri B. Udayakumar
3. Shri K. K. Ravi
4. Shri C. Sukumaran and
5. Shri M. Kuttan.

According to the applicants these five persons are their juniors in service and the applicants are entitled to be empanelled and regularised in service even before the regularisation of the persons shown in Annexure A-16. Hence the action of the second respondent is discriminatory and violative of the provisions of Articles 14 and 16 of the Constitution of India. Thus after the Supreme Court judgment taking into consideration the provisions in Annexures A-13 and A-14, the applicants are also entitled to the same treatment and regularisation in service.

8. The five persons mentioned in Annexure A-16 were impleaded as additional respondents 7 to 11. But they did not appear before us nor did they file any reply statements in this case. The respondents 1 to 6 have filed counter affidavit in which they have denied the claim of of the applicants for regularisation and contended that they are not entitled to the benefits envisaged by the judgment of the Supreme Court referred to above. They have taken the stand that only such of the Mazdoors who were working continuously for a year as on 5.2.1986 alone are entitled to absorption under the scheme envisaged by the Supreme Court judgment. According to them the applicants were not in service on the crucial date.

9. The applicants have filed rejoinder producing Annexures A-18 to A-21. In the rejoinder it was stated that applicants 4, 5 and six were also engaged by the first respondent and subsequently they were retrenched and hence they are also eligible to be empanelled for absorption and non inclusion of the applicants in the panel is against Annexures 19, 20 and 21.

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10. After hearing the matter we sought some clarification from the counsel appearing on behalf of the respondents 1 to 6^{and 4} to ascertain what is the significance and importance of the crucial date namely 5.2.1986 mentioned in the reply. But no satisfactory explanation has been given by the learned counsel today when the case was ^{again 4} taken up for hearing. He has produced a letter instructing the counsel. It does not contain any explanation worth adverting to in this connection.

11. We have heard the arguments of the counsel appearing on both sides and we have also perused the records. We are satisfied from Annexure A-16 that the department had empanelled respondents 7 to 11 giving benefits of the scheme envisaged in the judgment of the Supreme Court referred to above. They were regularised in service. The benefits which were given to the respondents 7 to 11 are equally available to the applicants also. They are entitled to the same because admittedly the applicants are similarly situated persons. It is an admitted fact that the applicants were engaged by the first respondent as full time Mazdoors for different period from 1981 ⁶⁵ and 1985. It is also further admitted that they had put in 240 days of service under the first respondent. In the light of these admitted facts there is no legal justification for denying the benefits of regular employment as claimed by the applicant in the application in the light of the scheme contemplated by the Supreme Court in its judgment referred to above read with the statements in Annexure A-13 and A-14. Considering the facts and circumstances of this case we hold that there is discriminatory treatment as alleged by the applicants and hence they are entitled to be empanelled for absorption

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as regular employees ^{in this case of 2} as respondents 7 to 11 under the first respondent.

12. Accordingly we direct the respondents 1 to 5 to empanel the applicants also as casual mazdoors for being regularised in service as group 'D' employees. They are to be absorbed as regular employees in accordance with their seniority or rank in the list of casual full time mazdoors. This shall be done by the respondents within a period of three months from the date of receipt of a copy of the judgment.

13. The application is allowed to the extent indicated above. There will be no order as to costs.



(N. Dharmadan)
Judicial Member

16.4.90



(N. V. Krishnan)
Administrative Member

16/4/90

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