

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 526/2000

WEDNESDAY THIS THE 17th DAY OF JULY 2002

C O R A M

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

1. SHARAFUKDHEEN.B, S/o MIGDATH,
BIRIYOMMADA, KADAMATH,
LAKSHADWEEP
2. MOHAMMADALI, S/O ABDULLA HAJI,
PALLIYACHETTA, KADAMATH,
LAKSHADWEEP
3. THAJUDHEEN, S/O POOKUNHI, AMINAPURA, KADAMATH,
LAKSHADWEEP
4. ATTAKOYA, S/O LATE BANKIL, KADAMATH, LAKSHADWEP
5. ADIMA, S/O LATE MOHAMED, KADIYAMMADA, KADMATH
LAKSHADWEEP
6. ABDUL SALAM, S/O LATE ANHANI, KALLIVAMMAKAEDA,
KADAMATH LAKSHADWEEP
7. CHERIYAKOYA, S/O YOSEF, PUTHIYARECHETTA, KADAMATH
LAKSHADWEP
8. SAJEED, SURAMBL, KADAMATH, LAKAHSDWEEP
9. ABDUL SALAM, THIRUVATHAPURA, KADAMATH LAKSHADWEEP
10. MUTHUKOYA, PURATHUPURA, KADAMATH LAKSHADWEEP
11. ALISAHEER, MUKRIYAMMAKKADA, KADAMATH LAKSHADWEEP
12. AMAMULLA, AVVAMMADA, KADAMATH LAKSHADWEEP
13. IBRAHIM, KUNNIPANDAL, KADAMATH, LAKSHADWEEP
14. MOHAMMEDKOYA, UKKAYECHETTA, KADAMATH, LAKSHADWEP
15. POOKUNHIKOYA, PURATHUPURA, KADAMATH LAKSHADWEEP
16. ABDULLAKOYA, PATHADA, KADAMATH LAKSHADWEEP
17. ABDUL JABBAR, MELACHETTA, KADAMATH LAKSHADWEP
18. HAMEED, PALLIYACHETTA, KADAMATH, LAKSHADWEP
19. POOKUNHI, VADAKILAPURA, KADAMATH LAKSHADWEEP
20. ADBUL KHADER, THITHOTTAM KADAMATH LAKSHADWEEP
21. ABDUL RAZAK, SULFAKUDI, KADAMATH LAKSHADWEEP
22. SEETHIKOYA, THOTTATHAKARA, KADAMATH LAKSHADWEEP
23. HAMZATH, KUNHINAMET, KADAMATH LAKSHADWEP

24. NAZER, PATHUMMAPURA, KADAMATH LAKSHADWEEP
25. AHAMED, PUTHIYAPURA, KADAMATH, LAKSHADWEEP
26. KASMI, THIRUVATHAPURA, KADAMATH LAKSHADWEEP
27. MUKTHUKOYA, KEEJAILLAM, LAKSHADWEEP
28. MUJEEB RAHIMAN, SURAMBIYAKKAL KADAMATH LAKSHADWEEP
29. MOHAMMEDALI, KANDADIYAKKAL, KADAMATH LAKSHADWEEP
30. KADERKOYA THEKILAKEELAILLAM KADAMATH LAKSHADWEEP
31. BASHEER, KUNNAMPALLI, KADAMATH LAKSHADWEEP
32. BASHEER, PARUTHIKUNNEL, KADAMATH LAKSHADWEEP
33. SAMEEMUDAR, PATHADAR, KADAMATH LAKSHADWEEP
34. ABDUL SAMAD, MULLECHETTA, KADAMATH LAKSHADWEEP
35. MUTHOKOYA, T.K. MALLKAKAL, KADAMATH LAKSHADWEEP
36. BAHDAR.P.K. PUTHIYA KADIYAMMADA KADAMATH, LAKSHADWEEP
37. SHAFFI.V.P., KADAMATH, LAKSHADWEEP
38. KHALID.P.P., PURATHUPURA, KADAMATH LAKSHADWEEP

...APPLICANTS

BY ADVOCATE MR. K.P. DANDAPANI

Vs

1. UOI R/B SECRETARY, LABOUR DEPARTMENT SHARMASAKTHI BHAVAN, NEW DELHI
2. SECRETARY, DEPARTMENT OF PERSONNEL AND TRAINING, NEW DELHI
3. ADMINISTRATOR, UT OF LAKSHADSWEP KAVARATHI
4. DIRECTOR OF INDUSTRIES UT OF LAKSHADSWEEP, KAVARATHI
5. SUPERVISOR, FIBRE FACTORY, KADAMATH LAKSHADWEEP

..RESPONDENTS

BY ADVOCATE MR. P.R. RAMACHANDRA MENON

The Application having been heard on 19.6.2002 the Tribunal delivered the following on 17.7.2002.

ORDER

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicants in this Original Application are working in the Fibre Factory in Kadamath/Amini Islands under the respondents 3 and 4. According to them the entire factory is an industrial concern under the 3rd respondent and



that the appointments in the Fibre factory are effected on the basis of the instructions issued by respondents 1 & 2. The applicants were all selected for carrying out the work in the factory of perennial nature. They were all given training in the process of manufacturing fibre from coconut husk. Their selections were initially made through the Employment Exchange after interview. The first applicant was directed by A1 memorandum issued by the 4th respondent to report with all testimonials and originals on 5.1.1997 for interview on 6.1.97 in the Fibre factory for recruitment as temporary casual labourer for Fibre factory at Kadamath. He was selected as per A2 order dated 31.7.97 and was directed to report before the 5th respondent. It was submitted that though it was stated in A2 that the applicant's service would be terminated after 89 days he was permitted to work subsequently also. He was paid consolidated salary of Rs. 1445/- as per A3 memorandum dated 25.6.98. The applicants claimed that all of them were issued with attendance card and ID Cards from 1997 upto the date of filing of the O.A. They understood that they were going to be terminated by the end of May, 2000 without permitting them to continue in the present job. They submitted that they were entitled to continue and absorption as they were employed in works of a perennial nature. Hence they filed this OA seeking the following reliefs:

(i) To declare that the applicants are entitled for absorption as regular employees in Fibre factory under respondents 3 to 5 as they are doing work in perennial nature.

(ii) To direct respondents 3 to 5 to pay the applicants wages of Group-D employees from the date of their employment.

(iii) To direct that the applicants' service should not be terminated as long as the vacancies are available and also not to appoint any other workers in their place.

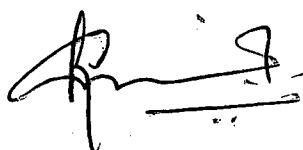
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(iv) To direct the respondents to give all benefits of the circulars issued by the Government of India in the matter of regularising casual workers on attaining temporary status.

(v) To declare that the conversion of the employees as contract employees is illegal and against the provisions contained in the Contract Abolition Act as well as decision of the Hon'ble Supreme Court as Fibre factory is an industrial establishment.

(vi) To issue such other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and to award exemplary cost of this proceedings to the applicants.

2. Respondents 1 to 5 filed reply statement resisting the claim of the applicants. It was submitted by them that work was being awarded on contract basis on a consolidated monthly remuneration on executing an agreement with the Department. They were not entitled to any other benefits than what was specifically mentioned in the agreement. Annexure A3 was the service conditions, benefits and remuneration applicable to the first applicant. Similar agreements had been signed by the remaining applicants also. It was submitted that the Fibre Factory was a demonstration-cum-experimental production centre run by the Administration. The workers were selected through Employment Exchange just to safe guard the interest of the local candidates whose names were in the Live Register of the Employment Exchange and also to avoid unwanted complaints in selection of candidates. The workers were engaged for work like transportation of husks and piths, filling up the soaking tank with husks and bundling the finished products like Fibre and Curled rope. The applicants were initially engaged on daily wage basis for 89 days. They were re-engaged after break according to the availability of works in the factory run on experimental basis to assess the profit and loss of the establishment for the year. After studying the functioning of the establishment, expenditure on wage to



the workers, production cost for one year, it was found that there was heavy loss in maintenance of the Fibre factory which was started with the good intention to provide employment to the local S.T. people of the backward area. The administration took keen interest to continue the experimental fibre factory for another year with workers on purely contract basis on a fixed remuneration basis. Their claim for engagement as regular classs-IV employee could not be considered now as the present functioning of the factory was on expeirmental basis only. It was submitted that there was no recruitment rule for recruitment of temporary casual workers as there was no sanctioned posts. There was no permanent nature of work in the fibre factory. The applicants did not have any legally enforceable cause of action. The O.A. was devoid of merits and liable to be dismissed.

3. The applicants filed rejoinder.

4. Heard learned counsel for the parties. The learned counsel for the applicant after taking us through the factual aspects contained in the Original Application submitted that the very fact that the applicants were being continued would indicate that the work was available. She also drew our attention to A-4 as well as A-6 and submitted that the respondents' contention that there was no work was not borne out by these documents. She submitted that in the light of the recent judgment of the Hon'ble Supreme Court in Union of India and another Vs. Mohan Pal & Others (2002 (4) SCC 573) as the applicants were not on the roll of the respondents on 1.9.93 the applicants would be satisfied if a direction is given to the respondents to continue them as long as work was available as Casual Labourers instead of as contract workers

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after declaring that their continuation as contract employees was illegal and against the 'The Contract Labour (Regulation and Abolition) Act, 1970. She relied on the following judgments of the Hon'ble Supreme Court in the case of Secretary, Haryana State Electricity Board V.Suresh and Others etc. etc. (AIR 1999 SC 1160)

5. The learned counsel for the respondents took us through the reply statement and submitted that the applicants were not entitled for any of the reliefs sought for. He referred to the order of this Tribunal in O.A. 557/98 and submitted that similarly placed Casual Labourers of Kavarathi approached this Tribunal and on the same was dismissed and hence this O.A. was also liable to be dismissed. He also relied on the judgment of the Hon'ble Supreme Court in Union of India and Another Vs. Mohan Pal and Others (2002 (4) SCC 523).

6. We have given carefull consideration to the submissions made by the learend counsel for the parties and the rival pleadings and have also perused the documents brought on record.

7. On a careful consideration of the submissions made by the learend counsel for the parties and on perusal of the materials placed before us we are of the considered view that the applicants in this OA are not entitled for the reliefs sought for. The applicants are basing their claim for temporary status and regularisation on the basis of the Government of India's scheme for grant of Temporary Status to Casual Labourers. This scheme is produced by the respondents as Annexure R-1. the respondents resisted the claim of the

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applicants on the ground that the applicants did not fulfill the conditions laid down in R-1 OM dated 10.9.93. Para 1,2 and 3 of the R-1 OM reads as under:

1. This Scheme shall be called Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993.
2. This scheme will come into force w.e.f. 1.9.93.
3. This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes..."

Admittedly the applicants were not on roll on 10.9.93 under the respondents. We find substance in the respondents' plea that the applicants are not entitled for the benefits of the scheme introduced by the Govt. of India by their letter dated 10.9.93. In any case learned counsel for the applicant fairly conceded that in the light of the recent judgment of the Hon'ble Supreme Court in Union of India and Another VS. Mohan Pal (2002(4) SC 573, that the applicants' claim for temporary status and consequent regularisation would not legally stand in the light of the dictum laid down by the Hon'ble Supreme Court in the above mentioned case wherein the Hon'ble Suprme Court held referring to para 4 of the scheme as follows:

"6. Clause 4 of the Scheme is very clear that the conferment of "temporary" status is to be given to the casual labourers who were in the employment as on the date of commencement of the Scheme. Some of the Central Administrative Tribunals took the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get "temporary" status. We do not think that clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire "temporary" status, the casual labourer should have been in employment as on the date of commencement of the



Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving "temporary" status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group 'D' posts.

The applicants have approached this Tribunal apprehending that their services are going to be terminated. It is again on the basis of the Grant of Temporary Status under the Scheme dated 10.9.93 that the applicants are claiming that they could not be terminated. As we have already held that the applicants are not entitled for the temporary status no right accrues to them by virtue of the scheme. Even otherwise we find that as per para 7 of the scheme, despite conferment of temporary status services of a casual labourer could be dispensed with by giving a notice of one month in writing. Similarly a casual labourer with temporary status could quit service by giving one month's notice in writing. The wages for the notice period would be payable only for the days on which such casual worker was engaged on work. This would indicate that service of temporary status attained casual labourer could be terminated.

8. In para 7 of the judgment in Mohan Pal's case referred to above, Hon'ble Supreme Court held:

"7. The second question that arises for consideration is whether the casual labourers who have been given "temporary" status can be removed from service by giving notice as per clause 7 of the Scheme. It is true that by conferment of "temporary" status, the casual labourers acquire certain certain rights. Their daily rates of wages will be on the pro rata basis of salary and allowances payable to the employees working under the Group 'D' posts. They are also eligible for casual and other kinds of leave. On completion of 3 years' continuous service after conferment of "temporary" status, they would be



admitted to the general provident fund. They are entitled to get festival advanced and flood advance and other welfare measures applicable to the Group-D employees. clause 7 of the scheme makes it clear that despite the conferment of "temporary" status, the services of a casual labourer may be dispensed with by giving one month notice in writing. This clause would certainly give the employer the right to terminate the services of casual labourers who have been given "temporary" status.

8. The learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court to submit that conversion of the applicants as contract employees was illegal and against the provisions of The Contract Labour (Regulation and Abolition) Act, 1970. We do not find any substance in the submission. We are of the considered view that in this case provisions of "The Contract Labour (Regulation and Abolition) Act, 1970" would not be attracted at all. The applicants had been directly engaged by the respondents. There is no intermediary of a Contractor. Therefore, we are of the view that the Contract Labour (Regulation and Abolition) Act has no applicability in this case. Respondents submitted that the applicants are being paid consolidated wages per month on the basis of the agreement executed by the applicants with the respondents. They justified their action on the basis of financial consideration. They submitted that the Fibre Factory was an experimental one and when it was decided by them to start second shift they engaged initially casual labourers and when they found that such engagement of casual labourers was resulting in loss to the Fibre Factory they decided to continue a year more running the Fibre Factory with labourers like the applicants being engaged on monthly consolidated wages. The respondents' case is that they wanted to close down the second shift but the same had to be continued because of the interim orders of this Tribunal. Further O.A. NO. 557/98 filed by the workers of Fibre Factory, Kavaratti



was dismissed by the Tribunal. Applicants rely on A-4 Annual Plan 2000-2001 and A-5 letter dated 8.2.2000 to substantiate that there is work and they are eligible to be continued. On the basis of the materials placed before us we find substance in the respondents' plea. On the basis of the materials produced by the applicants before us we cannot hold that there is work of a continuous nature and further the applicants have not produced any material to establish that they have a legal right for further engagement on contract basis.

9. Of course if there is work available and if the applicants are prepared to work in accordance with the terms and conditions stipulated by the respondents, they are free to apply in response to notifications/ notices and the respondents shall consider their cases also in accordance with law along with others.

10. In the result this Original Application fails and accordingly we dismiss this OA with no order as to costs.

Dated the 17th July, 2002.



K. V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

KMN

APPENDIX

Applicants' Annexures

- A1 True copy of the OM No. 11/21/92-Ind (Vol.II dt. 4.1.97 issued by the 4th respondent to the 1st applicant.
- A2 True copy of the order dated 31.7.97 issued by the 4th respondent to the 1st applicant.
- A3 True copy of Memo No. 11/21/92-Ind (Vol. .II dated 25.6.98
- A4 True copy of the relevant pages of annual plan 2000-2001 of U.T
- A5 A true copy of the sanctioning order issued by the Administrator dated ..-8-2000.
- A6 True copy of order NO. 15/1/2000-Ind dated 22.6.2001 issued by the respondents.

Respondents' Annexures

- R1 True copy of OM No. 51016/2/90-Estt.(C) dated 10.9.93 issued by the Ministry of Personnel, P.G. & Pension, New Delhi.