

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXXXXX~~

543

199 0

DATE OF DECISION 30.1.1991

R. Mahesan & 4 others Applicant (s)

M/s MR Rajendran Nair & PV Asha Advocate for the Applicant (s)

Versus

UDI rep. by its Secy., M/o Respondent (s)
Comms., New Delhi & 2 others

Mr. AA Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. KRISHNAN - ADMINISTRATIVE MEMBER

AND

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? *N*
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

(Mr. A.V. Haridasan, Judicial Member)

The applicants who were working as Casual Labourers in the Telecom. Department have filed this application under Section 19 of the Administrative Tribunals Act, praying for setting aside the order of the Deputy General Manager, Telecom Quilon, at Annexure-VI dated 12.3.1990, turning down their representation for enrollment in the list of Casual Mazdoors for regularisation and also for a declaration that the denial of employment to them which amounted to retrenchment was null and void, and for the consequential reliefs including reengagement and disbursement of difference in wages.


...2/-

[Signature]

2. It is averred in the application that the first applicant was engaged as Casual Mazdoor from 2.8.82 till 27.5.86, the second applicant from 1.3.1983 to 10.5.87, the third applicant from 21.2.84 to 10.5.87, the 4th applicant from 20.12.84 to 23.5.87 and the 5th applicant from 5.12.83 to 10.5.87, and that they were denied work though several fresh casual labourers were engaged thereafter. Aggrieved by their non-reengagement and regularisation in service, they filed OA K-303/87 alongwith R.Nandanan, claiming reengagement and regularisation in the light of the ruling of the Supreme Court in Daily rated casual labourers, Posts and Telegraphs Department Vs. Union of India, reported in AIR 1987 Supreme Court-2342. This application was disposed of by the Madras Bench of the Central Administrative Tribunal with a direction to the respondents to give them the benefit of the scheme framed by the department, in pursuance of the direction of the Supreme Court in the decision reported in AIR 1987 SC 2342. After the disposal of the above application, the applicants submitted representations to the Telecom. District Manager, Quilon on 27.6.88, requesting that, they may be included in the list of approved casual mazdoors of Quilon Sub Division. Seeing that these representation did not evoke any response and that several persons who commenced service subsequent to them were regularised, the applicants filed a contempt petition No.20/88 in OA 303/87. This contempt

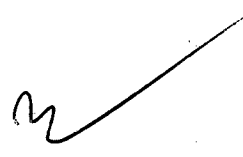
application was disposed of by order dated 7.12.89, observing that, if the applicants have longer period of service than those who have been regularised, the applicants should file representations with all supporting evidence to establish their claim regarding length of their service, and that they would be at liberty to approach the appropriate legal forum, if they felt aggrieved by the outcome of such representations. Thereafter the applicants submitted representations dated 15.12.1989 to the Telecom. District Engineer Quilon giving particulars of their services and requesting for regularisation. The Telecom District Engineer vide his Memo No.E.52/CM/Court Case/53 dated 7.2.1990 informed them that only casual labourers who had worked prior to 30.3.1985 could be absorbed, and that if they claimed to have been engaged prior to that date, they should produce certificates issued by Gazetted Officers of the Department to prove their claim. Enclosing the certificates issued by the Cable Splicers, who engaged the applicants which were attested by the Junior Engineers, at Annexure-I to Annexure-I(e) and stating that they could not get any certificate from Gazetted Officers, the applicants submitted further representations dated 15.3.1990 to the Telecom. District Engineer, Quilon. In response to these representations the Deputy ^{Manager} General Telecom. District, Quilon, issued the Annexure - VI order

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dated 12.3.1990 ~~order~~ stating that the scheme for conferring temporary status and regularisation applied only in the case of casual mazdoors enrolled before 30.3.1985, that the applicants who were not included in the select list of the SSA, as they were not approved casual mazdoors of the SSA, that there were no records available in the office to show ~~that~~ the engagement of the applicants prior to 30.3.1985, and that as the certificates produced by the applicants not being issued by the Gazetted Officers, were not sufficient to establish their claims, their request for reengagement could not acceded to. The applicants submitted further representations to the Telecom. District Engineer, Quilon ^{stating} on 15.3.1990, that as they could produce certificates only from the persons who engaged them and requesting for a reconsideration of the issue. By memo dated 12.3.1990, the Telecom. District Engineer informed the applicants that as their claim had already been rejected by Annexure-VI ~~memo~~, there was no question of a reconsideration of the issue. Thereafter, the applicants submitted representations to the second respondent, The Chief General Manager, Telecom. Kerala Circle, Trivandrum, requesting for their reengagement and regularisation on the basis of their casual engagement as evidenced by the certificates issued by the Cable Splicers who engaged them as they could not produce any better evidence. Annexure-VIII is a copy of the representation submitted by the first applicant. The second respondent forwarded the

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representations to the third respondent for taking a decision on the issue, By his letter dated 20.4.1990. But finding that they did not get any favourable reply, the applicants have filed this application. They have alleged that, by memo dated 26.3.1990, at Annexure-X, temporary status was conferred on 29 casual labourers among whom there were persons who were enrolled even in the year 1986 and 1987 and it has been contended that the non-consideration of the case of the applicants amounts to hostile discrimination. It has been further alleged that the denial of employment to the applicant being violative of the provisions contained in Chapter V.A of the I.D. Act, and that the stand of the respondents not to consider the case of the applicants for regularisation taking into account their past service rendered by them as evidenced by Annexure-I to I(e) series is unjustified and illegal. The applicants therefore pray that the directions as sought may be issued.

3. The respondents in their reply statement have contended that the applicants were not approved casual mazdoors, that they were engaged by Cable Splicers purely on temporary casual basis, that there was no evidence in the department showing their engagement prior to 30.3.1985, and that as the certificates issued by the Cable Splicers cannot be accepted in the light of the instructions, that the certificates of Gazetted Officers alone could be accepted, the applicants have not substantiated ^{their} ~~claim~~ of ~~xxx~~ casual

and therefore
employment prior to 30.3.1985, they do not have a legitimate grievance. It has been stated that in compliance to the direction contained in OA 303/87, ~~the~~ the difference in wages for the period they have worked have already been disbursed to the applicants.

4. The applicants have filed a rejoinder in which they have contended that the respondents have violated directions contained in OA 303/87, and that their action in not engaging applicants even inspite of the direction in the interim order to assign them work if ~~any~~ work is left to the approved casual labourers is absolutely unjustified.

5. We have gone through the pleadings and documents produced very carefully and have also considered the arguments raised at the bar by the counsel on either side.

6. In the order dated 27.1.1988 in OA 303/87 it was observed and directed as follows:

"The learned counsel for the applicants relies on the decision of the Supreme Court in AIR 1987 Supreme Court 2342-(The daily rate casual labourer Posts & Telegraphs Department Vs. Union of India) in support of his plea that the applicants are entitled to seek regularisation in view of their long and continuous employment as casual labourers by the P&T Department. We find that the said case before the Supreme Court also related to the casual labourers employed in the P&T Department. After dealing with the claims of persons like the applicants who were working as casual labourers in the P&T Department for more than one year and who sought regularisation

the Supre Court relying on the Directive Principles contained in Article 38(2) of the Constitution of India directed the Department to prepare to scheme on a rational basis for absorbing, as far as possible the casual labourers who have been continuously working for more than one year in the P&T Department. The applicants are also entitled to the same benefit which the casual labourers in that case got by approaching the Supreme Court. Following the said decision of the Supreme Court, we direct the respondents herein to give benefit of the scheme as and when framed by the Government in pursuance of the directions of the Supreme Court and to regularise these persons as per the terms of the said scheme, as the applicants claim that they are working in the P&T Department for more than one year."

7. The applicants therein were also given the opportunity to claim arrears of wages from the department if they were eligible and it was provided that, if their claim was refused they were at liberty to approach this Tribunal. Since the claim of the applicants ~~xxxxxxx~~ put forth in the representations pursuant to the above order was rejected, the applicants moved a contempt application in DA 303/87. As the claim ~~that~~ the applicants had been engaged prior to 30.3.1985 was disputed by the respondents in their statement filed in the contempt application, the contempt application was closed and the applicants were told that they could file representations claiming reengagement and regularisation producing documentary evidence in regard to their length of service, and that they were at liberty to approach ..

the appropriate forum, incase they felt aggrieved by the outcome of the representation. After the disposal of the contempt application, the applicants made representations enclosing the certificates, Annexure-I to I(e), issued by the Cable Splicers and attested by the Junior Engineers, Telephone Cables. The Annexure-I certificate dated 31.3.'85 issued by Cable Splicer, V.Sasi, attested by Junior Engineer, Telephone Cables issued to R.Mahesan, the first applicant reads as follows:


"Certified that Sri Mahesan, R, Kandathil Veedu, Kureepuzha, Kavanad P.O., Quilon Dt. is known to me and he has worked as a Mazdoor from 02.8.82 to 29.3.1985 at the rate of Rs.10.50 per day.

His conduct and character are good.

We relieved him from duty on his own request."

Similar certificates were issued to the other applicants containing the details of their engagement. Though the certificates were issued by Cable Splicers, they were attested by the Junior Engineer, Telecom Cables, Quilon. The respondents have refused to act upon these certificates on the ground that, these certificates were issued only by Cable Splicers who were not Gazetted Officers, and that certificates issued by Gazetted Officers alone would be accepted as proof of the engagements of the applicants. In Annexure-V memo dated 7.2.1990 issued by the Telecom. District Manager to the first applicant, he was directed to produce certificates issued by ~~xxx~~ Gazetted Officer of

the Department in proof of his engagement prior to 30.3.1985. Similar letters were issued to the other applicants also. When the applicants produced the certificates issued by the Cable Splicers, they were told by the Telecom. Deputy General Manager that their engagement in the Department by Cable Splicers can be considered as on casual basis for occasional work and that, since the certificates issued by Cable Splicers who were not authorised to issue certificates would not be accepted as proof of their engagement prior to 30.3.1985, their case for consideration for reengagement and regularisation in the department could not be considered. In Annexure-VI, it was made clear that the persons who had engaged the applicants were Cable Splicers. It is also admitted that Junior Engineers have attested the certificates issued by the Cable Splicers. The correctness of the statement made in the certificates issued by the Cable Splicers has not been denied or disputed in Annexure-VI. The certificates were not considered as sufficient proof of the claim put forth by the applicants on the ground that the persons who issued the certificates did not have the authority to do so. But the fact remains that the Cable Splicers and Junior Engineers who issued the certificates at Annexure-I to I(e) are officials serving the department, which is more the former had actually engaged the applicants were in the best position to certify so. The certificates show clearly the dates from which and upto which each of the applicants was engaged. In the reply statement, it is stated that no records relating to the engagement of the applicants prior to 30.3.1985 is available and therefore, ...10/-



the claim of the applicants that they were engaged prior to 30.3.1985 supported by the Annexure-I to I(e) certificates could not be accepted ^{want of} for sufficient proof. As the Annexure-I to I(e) certificates were issued by the persons who actually engaged the applicants as casual labourers and as they were attested by Junior Engineers who are responsible officers in the service of the Telecom. Department, the rejection of these certificates as worthless on the ground that they were issued by persons not authorised to issue certificates, and that the certificates issued by Gazetted Officer alone could be considered, to our mind appears to be absolutely unreasonable and unjust. If the Telecom Department has failed to keep the documents which would disclose the details of the engagements of the applicants, the applicants who are casual labourers at the mercy of the Department could not be faulted or put to hardship for that reason. While the Department claims that they do not have any records to verify whether the applicants had been engaged prior to 30.3.1985 or not the applicants have produced certificates issued by the officers of the Telecom Department showing details of their engagements and disengagements. Since the facts that these certificates were issued by the officers of the Telecom Department is not in dispute, we are of the view that the Department is bound to accept these certificates as correct. Therefore, the rejection of the claim of the applicants ^{reengagement and} for regularisation on the basis of their casual service is

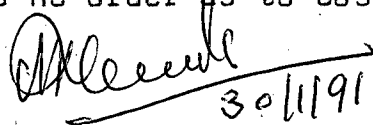
as evidenced by Annexure-I to I(e) is ⁱⁿ the most modest words unreasonable. The learned counsel for the respondents submitted that the engagements made by Cable Splicers of the applicants as casual labourers were not as approved casual labourers, but only as purely temporary casual labourers, and therefore cannot be considered on a par with approved casual labourers. Once it is either proved or admitted that the applicants had been serving as casual labourers for the department to distinguish those who were approved casual labourers and those who were not approved casual labourers does not appear to be reasonable because approval of casual labourers is a unilateral act on the part of the Department on which the applicants as casual labourers had no control. In State of UP and another Vs. Audh Narain Singh and another, AIR 1965 S.C.360, the Supreme Court has observed as follows:

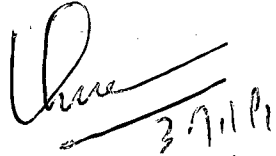
"Whether in a given case the relationship of master and servant exists is a question of fact, which must be determined on a consideration of all material and relevant circumstances having a bearing on that question. In general, selection by the employer, coupled with payment by him of remuneration or wages, the right to control the method of work, and a power to suspend or remove from employment are indicative of the relation of master and servant. But co-existence of all these indicia is not predicated in every case to make the relation one of master and servant. In special classes of employment a contract of service may be existed, even in the absence of one or more of these indicia. But ordinarily the right of an employer to control the method of doing the work, and the power of superintendence and control may be treated as strongly indicative

of the relation of master and servant, for that relation imports the power not only to direct the doing of some work but also the power to direct the manner in which the work is to be done. If the employer has the power, prima facie, the relation is that of master and servant."

In this case, since the Cable Splicers who issued the certificates, Annexure-I to I(e) have engaged the applicants as casual labourers, it is futile to contend that the applicants were not to be treated as casual labourers under the department because they were engaged by Departmental officials and their work was controlled by them and payment to them were also admittedly made out of Govt. funds. So to make a distinction between persons engaged by Cable Splicers to do casual work and those engaged as casual mazdoors by some other officials is not based on any intelligible differentia. Since the correctness of the statement made in Annexure-I to I(e) issued by Cable Splicers, Group 'C' officials of the Telecom Department and attested by Junior Engineers who are responsible officers though not Gazetted has not been disputed or denied, it is to be held that each of the applicants has worked as casual mazdoors for the period mentioned in the certificate relating to him and that the applicants are entitled to base their claim for reengagement and regularisation on the basis of the length of their actual service as evidenced by these certificates.

8. In the conspectus of facts and circumstances discussed above, we are of the view that the rejection of the request of the applicants for enrollment in the list of Casual Mazdoors and for consideration of their case for regularisation by the impugned letter, Annexure-VI is unjustified and therefore, we set aside the Annexure-VI order. Though the applicants have prayed that the termination of their service may be declared as illegal, and have prayed for consequential benefits, in the circumstances of the case, we are convinced that the interest of justice would be met if the respondents are directed to reengage the applicants forthwith as casual employees and to consider their case for regularisation in service in accordance with the scheme drafted by the Department pursuant to the decision of the Supreme Court in the case of daily rated casual labourers of P&T Department (AIR 1987 SC 2342) considering that they were engaged as casual labourers under the department for the period mentioned in Annexure-I to I(e) certificates issued by the Cable Splicers and attested by the Junior Engineers. Therefore, we dispose of the application with the above direction and ~~two~~ further direction that the reengagement of the applicants should be made without further delay and in any case within a ^{period of} ~~2~~ month~~s~~ from the date of communication of this order. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER

30.1.1991