

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 551 OF 2011

Wednesday, this the 13th day of June 2012

CORAM:

**HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. K Mustafa, S/o the late Kasim Sahib
aged 53 years, Working as Part-time
Casual Labourer (Mazdoor)
Sub Record Office, RMS 'CT' Division,
Palakkad, residing at Thazhemurali House
P.O Palakkad Industrial Estate
Pin – 678 731
 2. C.Sukumaran-I, S/o the late R.Chamy
aged 53 years, Working as Part-time
Casual Labourer (Mazdoor)
Sub Record Office, RMS 'CT' Division, Palakkad
Residing at 25/105, Elanthiancode
Palakkad – 678 013
 3. N.C Kumaran, S/o the late Chathan
aged 46 years, Working as Part-time
Casual Labourer (Mazdoor)
Sub Record Office, RMS 'CT' Division, Shornur-679 121
Residing at Nayadikkunnath House,
Manjakkad, Shornur-1
- Applicants

(By Advocate Mr.O.V Radhakrishnan, Sr. with Mr.K Ramachandran)

Versus

1. Superintendent
RMS 'CT' Division
Calicut – 673 032
2. Postmaster General
Northern Region, Kochi
3. Chief Postmaster General
Kerala Circle, Thiruvananthapuram

4. Director General of Posts
Dak Bhavan, New Delhi
 5. Union of India
represented by its Secretary, Ministry of Communications
New Delhi
 6. K Kannammal
Multi Tasking Staff, Sub Record Office
Palakkad
 7. V.K Vinodini
Multi Tasking Staff, Sub Record Office
Shornur
- Respondents

(By Advocate S.Jamal, ACGSC for R 1-5 & Mr.C.S.G Nair for R7)

The application having been heard on 08.06.2012, the Tribunal on 13.06.2012 delivered the following:

ORDER

HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER

1. The case of the applicants in this case is that when they were eligible for appointment under the 25% quota meant for casual labourers and others as per 2002 Recruitment Rules for Group D posts specified therein and when the vacancies did exist during the currency of the said 2002 Recruitment Rules, respondents have denied the applicant the said appointment on the basis of the fact that the 2002 Recruitment Rules had been superseded by the 2010 Recruitment Rules. Again, the rejection of the applicant's case by the respondents is on the contention that the applicant being a Casual Mazdoor, he cannot fill the bill of casual labourer.

2. **Brief facts:** The applicants, three in number have all been working in the RMS 'CT' Division, Calicut as Part Time Casual Mazdoors, all having been sponsored

by the Employment Exchange. As per the provisions of the Department of Posts (Group 'D' Posts) Recruitment Rules, 2002, a number of Group D posts are to be filled up inter alia as under:-


"25% of the vacancies remaining unfilled after recruitment of employees from among Chowkidar, Watchman etc., (as in serial No. 2 of the Schedule to the Rules Rules) shall be filled by selection-cum-seniority in the following order:-

- (a) By casual labourers with temporary status of the recruitment division or unit, failing which
- (b) By full-time casual labourers of the recruiting division or unit failing which
- (c) By full time casual labourers of the neighboring division or unit failing which
- (d) By part time casual labourers of the recruiting division or unit; failing which by direct recruitment.

Qualification for such posts is Middle School Standard Pass.

The applicants fall within the last category, they having been functioning as Part Time Casual Mazdoors.

3. In 2010, the Respondents have amended the Recruitment Rules, whereby the posts of Group D have been classified as Multi-Tasking Staff and promulgated the Rules called "Department of Posts Multi Tasking Staff Recruitment Rules, 2010" and as per the provisions thereof, the said Rules would come in to force on the date of their publication in the official Gazette. (The Gazette Notification was published on 12-12-2010). Qualifications for the above posts have been reflected as Matriculation or Equivalent or ITI from recognized Boards. In case a Casual labourer to be appointed as Multi Tasking Staff is not Matriculate he shall be given training



before he is appointed. As regards allocation of posts to be filled up by casual labourers, the same is spelt out in the Recruitment Rules as hereunder:-

" (iii)(a) 25% by appointment of Casual Labourers conferred with temporary status on the basis of selection-cum-seniority failing which by;

(b) appointment of Casual Labourers engaged on or before 01.09.1993, working for eight full hours in a day, on the basis of selection-cum-seniority failing which by;

(c) appointment of Casual Labourers conferred with temporary status in the neighboring Division or Unit on the basis of selection-cum-seniority failing which by;

(d) Appointment of Casual Labourers engaged on or before 01.09.1993, working for eight full hours in a day of the neighboring Division or Unit; on the basis of Selection-cum-seniority failing which by;

(e) Appointment of part time Casual Labourers engaged on or before 01.09.1993, of the recruiting Division or Unit on the basis of selection-cum-seniority failing which by;

(f) by direct recruitment from amongst Gramin Dak Sevaks of the basis of their seniority in the Division or Unit.

Failing (i),(ii) and (iii) above by direct recruitment from open market. "

4. Totally, there were 17 vacancies for the year 2010 out of which 9 were given to the Gramin Dak Sevaks and 4 vacancies to casual labourers. Respondents have considered the case of only those casual labourers who were paid in the rolls through Drawing and Disbursing Office of RMS Division and as only two candidates were available under the above category, respondents had thrown open the remaining two vacancies to be filled up by the other mode from among GDS.

5. Vide Annexure A-9, the Sub Record Officer RMS 'CT' Division Shornur published the details of Part time Contingent employees under the said unit in which the 3rd applicant is shown in the second position, while the private respondent No. 6 had been shown at serial seven. The first in the list having crossed sixty, there is no

scope of her being considered for the post in question. The first applicant moved a representation as early as on 24-09-2010 that he be considered for GDS post. This did not evince any response.

6. Under the above circumstances, the first respondent had issued Annexure A-11 Order dated 25-03-2011 stating that pursuant to certain orders (dated 16-03-2011) certain Gramin Dak Sevaks/Casual Labourers were allotted to the units noted against each for appointment as MTS in the vacancies of the year 2010 and the Head Record Officer/Sub Record Officer concerned would appoint them in their respective units after completing the requisite pre-appointment formalities and by giving appropriate training as per the directions contained in yet another officer order dated 22-04-2009. In the said order at Annexure A-11, the names of sixth and seventh respondent figure in respectively at serial No. 10 and 11. It is the case of the applicants that the sixth respondent has been moved from yet another division to Palakkad Division, while the seventh respondent cannot be appointed as MTS against the vacancies of Group D remaining unfilled prior to the coming into force of the new Recruitment Rules. Further, it is the case of the applicants that the applicants are entitled to be considered for the erstwhile Group D posts as per the provisions of the earlier Recruitment Rules and hence, they have made the following prayer:-

"i) to call for the records leading to Annexure A-11 Memo No.B-11/Rectt/MM/2011 dated 25.03.2011 and appointments if any, made pursuant to Annexure A-11 to the extent of filling up the vacancies falling under 25% quota earmarked for Casual labourers under Annexure A-3 Department of Posts Group D Recruitment Rules, 2002 and to set aside the same;

ii) to issue appropriate direction or order directing the respondents 1 to 4 to fill up the vacancies of Group D posts against 25% quota set apart for Casual Labourers remaining unfilled immediately before the date of coming into force of Annexure A-8 Recruitment Rules, 2010 in accordance with Annexure A-3 Department of Posts Group D Recruitment Rules, 2002 and to direct the 1st respondent to appoint the applicants 1 to 3 against those


vacancies from the respective dates of their entitlement with all consequential benefits forthwith and at any rate, within a time-frame that may be fixed by this Hon'ble Tribunal "

7. Notice to the respondents, including the private respondents was issued and served. While the official respondents had responded to the application, there has been no representation from the private respondents and hence they are to be set ex parte.

8. Respondents No.1 to 5 had in their reply admitted the vacancy position, the existence of the 2002 Rules, and their substitution by 2010 Rules. Their case is that the applicants 1 to 3 are working as 'Casual Mazdoors' since 1987 and not as Part time 'Casual Labourers' and their wages are not drawn on rolls of the DDO of RMS 'CT' Division. Their contention is that the impugned order at Annexure A-11 had been issued after completion of all the procedures for filling the vacancies for the year 2010 and as per the new Recruitment Rules. The available Casual Labourers had been given appointment as MTS. It has further been contended by the respondents that both respondents No. 6 and 7 had been drawing their salary through the DDO.

9. The applicants have filed their rejoinder, inviting a reference to Annexure A-12 clarification by the DG Posts, whereby Casual Mazdoors are treated as Casual Labourers only. That the applicants are casual labourers even as per the respondents has been reiterated by the applicants by inviting reference to the Annexure A9, which clearly reflects the name of one of the applicants.

10. In their additional reply, the respondents have contended that casual labourers form a different category distinct from Casual Mazdoors. The latter are arranged only on demand, while the casual labourers are included in the establishment of the units/Divisions.



11. The above contention had been rebutted by the applicants in their additional rejoinder.

12. In their second additional reply, respondents have brought in one more point that no sanction memo was issued by Superintendent, RMS 'CT' Division posting the applicant No. 3 as Part time Casual Labourer. Applicants 1 to 3 had not been treated as Casual Labourers by the respondents.

13. In their second additional rejoinder, the applicants have annexed, vide Annexure A-13, a copy of consolidated orders relating to casual labourers, and yet another order at Annexure A-14, in which the following two aspects have also been referred to:-

(i) As to whether the casual Mazdoors are to be treated as Casual Labourers;

(ii) As to whether there could be distinction in the status of the casual labourers on the strength of the head of the account under which payment is made to them.

14. Counsel for the applicant succinctly brought out the facts of the case and argued as under:-

(i) That the respondents are not right in contending that Casual Mazdoors are different from casual labourers. In this regard he had invited the attention of the Tribunal to Annexure A-12. This is a part of Annexure A-13 order. This clarifies that all daily wagers working in Post Offices or in R.M.S. Offices or in Administrative Offices or P.S.Ds/M.M.S. under different designations (Mazdoor, Casual Labourers, Contingent Paid Staff, Daily Wager, Daily Rated Mazdoor, Outsider) are to be treated as Casual Labourers. These Casual Labourers who are engaged for a period of 8 hours a day should be described as Full Time Casual Labourers. Those

Casual Labourers who are engaged for a period of less than 8 hours a day should be described as Part-time Casual Labourers. All other designations should be discontinued.

(ii) As regards the Head of Payment, the counsel has invited the attention of the Tribunal to two clarifications as contained in Annexure A-14. These relate to the question whether the wages of daily rated workers covered under Temporary Status are to be prepared on Hand Receipt and the clarification was that the existing procedure may be followed and that even after conferment of temporary status, these workers continue to be casual workers. This has been reiterated in yet another clarification to whether the wages of casual employees would be debited to salaries sub head of the establishment or to the contingent sub head and the clarification has been that since the casual employees on grant of temporary status would be entitled for wages on actual basis, their wages will have to be debited to the sub head wages.

(iii) As regards filling up of the vacancies that existed prior the coming into force of the 2010 Recruitment Rules, the counsel invited the attention of the Tribunal to the following decisions:

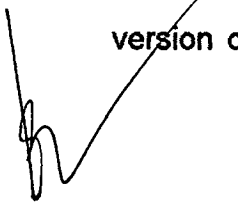
(ii) AIR 1983 SC 851

(iii) 2006(3) KLT 64

15. Counsel for the respondents reiterated the contentions contained in the Reply. The fact that the vacancies occurred were prior to the coming into force of the Revised Recruitment Rules 2010 has not been disputed by the counsel.

16. Arguments were heard and documents perused.

17. First as to the appellation 'Casual Mazdoor' The term 'Mazdoor' is the Hindi version of 'Labourer' and it is commonly used in the Hindi Belt of our country in the



place of Labourer. In any event, by Annexure A-12, the D.G. Posts have clearly held that all casual workers by whatever name they be called would be casual labourers. This letter is of 1989 and it has been clearly mentioned therein that 'All other designations should be discontinued.' Thus it is not known as to how the respondents continue to retain the term 'casual Mazdoors' when the same should have been discontinued. Thus, the status of the applicants is no less than that of other casual labourers.

18. Next is the question relating to the sub head against which the payments to the casual labourers are made. Clarification at Annexure A-14 provides the answer for the same. Even after temporary status, the casual labourer remains casual labourer. The head of account is the same. If for any reason the head of account has been varied by the respondents in respect of the wages paid to the applicants, the same cannot change the status of the applicants as casual labourers.

19. As regards the rules that are to be applied in filling up the vacancies of 2010, law on the subject is clear and this legal issue is no longer res-integra. The vacancies pertain to 2010 and the revised Recruitment Rules came in to force on 12-12-2010. It is not the case of the respondents that all the 17 vacancies out of which 4 were to go for Casual Labourers arose only after the coming into force of the Revised Recruitment Rules. Nor is it the case of the respondents that in view of the proposal to revise the recruitment rules, a conscious decision has been taken to keep all the vacancies unfilled till new recruitment rules came into force. Vide para 3 of the reply, Annexure A-11 was issued by the respondent on 25-03-2011 which is posterior to the publication of the Revised Recruitment Rules which were published in the official gazette on 20-12-2010 and hence the revised recruitment rules have been followed.

20. Law on the subject is settled in the case of *Y.V. Rangaiah v. J.*

Sreenivasa Rao, (1983) 3 SCC 284: wherein the Apex Court has held as under:-

"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules."

21. In **P. Ganeshwar Rao & Ors. vs. State of Andhra Pradesh & Ors.**, AIR 1988 SC 2068, it was stated that the vacancies that occurred prior to the amendment of the Rules will have to be governed by the old Rules and not by the amended Rules.

22. In **Arjun Singh Rathore v. B.N. Chaturvedi**, (2007) 11 SCC 605, the Apex Court has held as under:-

"5. Mr Calla, the learned Senior Counsel for the appellants has argued that the matter was fully covered by the judgment of this Court in *State of Rajasthan v. R. Dayal* wherein it had been held that the vacancies to be filled by promotion were to be filled under the rules which were in operation on the date when the vacancies had occurred. Relying on and referring to an earlier judgment in *Y.V. Rangaiah v. J. Sreenivasa Rao* it was opined as under:

"8. ... This Court has specifically laid (*sic*) that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose."

6. The above legal position has not been seriously disputed by the learned counsel for Respondents 6 and 7. We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly."

23. In **State of Punjab v. Arun Kumar Aggarwal**, (2007) 10 SCC 402, referring to a few judgments, including *Y.V. Rangaiah (supra)*, the Apex Court has held as under:-



"32. He has also referred to *B.L. Gupta v. MCD (1998) 9 SCC 223*,

"9. When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr Mehta to a decision of this Court in *N.T. Devin Katti v. Karnataka Public Service Commission*. In that case after referring to the earlier decisions in *Y.V. Rangaiah v. J. Sreenivasa Rao*, *P. Ganeshwar Rao v. State of A.P.* and *A.A. Calton v. Director of Education* it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only restricted to 79 and not 171 vacancies, which admittedly existed."

24. While, the above is the legal position, one exception had been carved out in the case of *K. Ramulu (Dr) v. S. Suryaprakash Rao (Dr), (1997) 3 SCC 59*. In that case the apex court has held as under:-

"When the vacancies were not being filled up in accordance with the existing Rules, this Court had pointed out that prior to the amendment of the Rules, the vacancies were existing and that the eligible candidates were required to be considered in accordance with the prevailing Rules. Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As a proposition of law, there is no dispute and cannot be disputed. But the question is whether the ratio in *Rangaiah case* would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force. It is true, as contended by Mr H.S. Gururaja Rao, that this Court has followed the ratio therein in many a decision and those cited by him are *P. Ganeshwar Rao v. State of A.P.*, *P. Mahendran v. State of Karnataka*, *A.A. Calton v. Director of Education*, *N.T. Devin Katti v. Karnataka Public Service Commission*, *Ramesh Kumar Choudha v. State of M.P.* In none of these decisions, a situation which has arisen in the present case had come up for consideration. Even Rule 3 of the General Rules is not of any help to the respondent for the reason

that Rule 3 contemplates making of an appointment in accordance with the existing Rules.

13. It is seen that since the Government have taken a conscious decision not to make any appointment till the amendment of the Rules, Rule 3 of the General Rules is not of any help to the respondent. "

25. In the instant case, there is no such averment that a conscious decision not to make any appointment till the amendment of the Rules has taken place. At least nothing has been brought to our knowledge. It is also not the case of the respondents that the applicants did not fulfill the qualifications as per the 2002 rules.

26. In view of the above, the applicants have made out a cast iron case in their favour. Their contention that the posts of Group D should be filled up as per the 2002 recruitment Rules in which case, they would be covered cannot be brushed aside. The contention of the respondents that the applicants are not casual labourer, they being casual Mazdoors is rejected in view of D.G's clarification at Annexure A-9/A-13. So is their case that they have not been on the regular pay roll, which should also be rejected in view of the clarifications as contained in Annexure A-14. And since, 'Raingiah' has clearly held that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules, and since the case of the applicants do not fall under the excepted category as contained in the case of Dr. Ramulu (supra), it is declared that the applicants are entitled to be considered for the post of Group D in accordance with the provisions of Recruitment Rules, 2002. The OA is thus allowed. Since the two vacancies against which the applicants were entitled to be considered have been consumed by posting Respondents No. 6 and 7 as contained in serial No. 10 and 11 of Annexure A-11, the impugned annexure A-11 order is set aside, in so far the same related to Respondents No. 6 and 7. The applicants shall be considered for the post of Group D against the two vacancies as per the 2002 Recruitment Rules. Respondents are

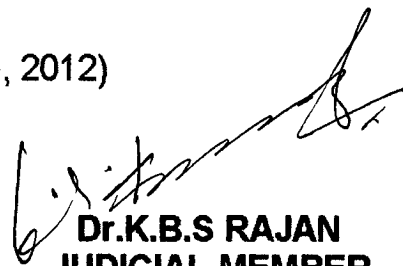
directed to hold necessary DPC for this purpose and consider the case of the applicants against the two posts which occurred prior to 12-12-2010. On their appointment as Group D, they could be given necessary training to uplift their status as MTS. Their seniority would be in the same way as the other two casual labourers who have been appointed against two of the four vacancies earmarked for casual labourers. This order shall be complied with, within a period of six months from the date of communication of this order. If similarly situated casual Mazdoors who are senior to the applicants are serving as such, respondents may consider their cases also, as the same would avoid litigation by such individuals.

27. The private respondents have not made appearance despite service of notice to them. In their case, it is for the respondents to revert them or to adjust them against future vacancies or against any supernumerary posts. The seniority of the applicants as Group D posts, in case of their selection, cannot be upset.

28. Under the circumstances, there shall be no orders as to costs.

(Dated, this the 13th day of June, 2012)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S RAJAN
JUDICIAL MEMBER