

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 562/90 188  
~~C.A. No.~~

DATE OF DECISION 27.3.91

M.A.Savithri Applicant (s)

M/s.T.A.Rajan, Alexander Joseph Advocate for the Applicant (s)

Versus

~~Union of India represented by its~~ Respondent (s)  
Secretary, Ministry of Communications, New Delhi and 3 others

Mr.T.P.M.Ibrahim Khan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. MUKERJI, VICE CHAIRMAN

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? *Yes*
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 S.P. Mukerji, Vice Chairman)

In this application dated 10.7.90 the applicant who has been working as a Sweeper on a casual basis in the office of the Sub Record Officer, Railway Mail Service, Alwaye has challenged the proposed termination of her services as illegal and has prayed that the respondents be directed to continue her in service so long as the vacancy exists and to regularise her services in accordance with the judgment of the Supreme Court in AIR 1987 SC 2342. The brief facts of the case are as follows.

2. According to the applicant she has been working as a Casual Labour (Sweeper) since 2.12.87 without any break. Being a 'workman' and the Department of Posts and Telegraphs being an 'industry' she is entitled to the protection of Chapter VA of the Industrial Disputes Act. She has referred to the aforesaid citation regarding the judgment of the Supreme Court in which the respondents were directed to prepare a rational scheme for regularising the services of casual workers who have put in more than

*Dr*

one year of service. Her apprehension is that her services might be terminated by <sup>the</sup> appointment of another casual worker while persons junior to her like Shri Vijayan are continuing in service. The 3rd respondent, i.e., the Senior Superintendent, Railway Mail Service, in the counter affidavit has stated that the post of Extra Departmental Sweeper in the Sub Record Office, Alwaye against which the applicant has been working was proposed to be abolished. The regular incumbent died on 27.7.88 while in service and when she was hospitalised the applicant who is her daughter was engaged by her as a substitute. Even after the death of the regular incumbent i.e., the mother of the applicant, the applicant continued as the 'substitute'. She had also applied for regular appointment "as a part of reliefs extended to the deceased employees under relaxation to normal recruitment rules". Her claim for such appointment was rejected because her father and brother are employed in the department as an Extra Departmental Mail Man and and regular Mailman respectively. She was informed accordingly on 11.8.89. The works attached to the abolished post are to be done by part-time/casual/contingent staff . The applicant was working as a substitute and was not a nominee of the Employment Exchange. A part-time Scavenger was selected through the Employment Exchange and was given the work of the applicant by clubbing the work of scavenging and sweeping. The applicant moved the Tribunal against the order dated 2.7.1990 assigning the work of the applicant to the selected casual employee. The respondents have argued that the verdict of the Supreme Court is applicable only to those Casual Mazdoors who are recruited through the Employment Exchange. Since the applicant was a substitute working in place of her mother, she is not entitled to the benefits contemplated by the Supreme Court. They have explained that the applicant who was continuing in the post of Extra Departmental Sweeper even after the death of her mother, the regular incumbent, pending consideration of her regular appointment on compassionate grounds. The post she was holding was to be abolished and the work has been clubbed to the work of another individual who is a casual employee recruited through the Employment Exchange. Shri Vijayan as a Casual Mazdoor has been recruited through the Employment Exchange whereas the applicant is not. As a substitute she has no right to the post of her mother. In the rejoinder the applicant has conceded that she

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was initially engaged in the leave vacancy of her mother but she has denied having been employed as a substitute. In the muster roll and the pay roll the applicant's name is being written independently and not as a substitute of her mother. Since her mother expired on 27.7.88 the applicant's services after that date cannot be considered as a substitute but as an approved E.D Agent/Casual Labourer. She has argued that denial of benefits on the ground that she was not sponsored by the Employment Exchange is illegal and violative of Articles 14 and 16 of the Constitution. She had also got her name registered with the Employment Exchange in 1984 and the person to whom her work is to be assigned is junior to her and thus her proposed termination will be against the provisions of the I.D.Act also.

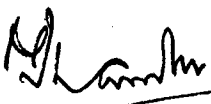
3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The question whether a casual employee who had been engaged for considerable period without being sponsored by the Employment Exchange can be given the benefit of the scheme of regularisation, was considered by this very Bench of the Tribunal in M.M.Unnikrishnan vs. Superintendent of Post Offices and others, (1990)13 ATC 250. Quoting liberally from the judgment of the Supreme Court in Daily Rated Casual Labour employed under P&T Deptt.v.Union of India, AIR 1987 SC 2342, relied upon by the applicant also before us, we observed as follows:-

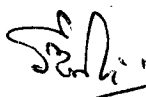
"From the above it is clear that what weighed with the Hon'ble Judges of the Supreme Court for regularisation of casual workers is the principle that for better management and better utilisation for human resources, the workers should be given security of work so that they contribute to maximising production. They felt that workers should not remain as casual labourer for an unreasonable long period of time and that it is possible for a big department like the Posts and Telegraphs Department to absorb the casual workers in the regular cadre for any of the several types of works which the department was undertaking on a large scale. The emphasised part of the extract from the judgment indicates that the scheme of absorption of casual labourers is not qualified by the terms "eligible casual labourers" much less only those casual labourers who are sponsored by the Employment Exchange. 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. The office memorandum issued by the respondents at Ext.R-1 on May 7, 1985 cannot constrain the directions of the Supreme Court, not only because the directions of the Supreme Court have the force of law but also because 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 May 7, 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 Union of

India v. N.Hargopal, (1987) 3 SCC 308, the Supreme Court held that under the Employment Exchanges (Compulsory Notification of Vacancies) Act, the vacancies need only to be notified compulsorily to the Employment Exchange but it was no compulsory to fill up the vacancies only through the candidates sponsored by the Employment Exchange. In R. Ashokan v. District Manager, Telephones, Trivandrum, (1989) 9 ATC 693, this Bench of the Tribunal to which one of us was a party held that drawing a line on March 20, 1979 for regularisation of casual workers recruited otherwise than through the Employment Exchange will be arbitrary. In the same manner drawing a line on May 7, 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." (emphasis added)

The applicant has been admittedly working as a Casual <sup>E.D. Part-time</sup> / Sweeper from 2.12.87 till 11.7.1990 when the Tribunal passed the interim order maintaining status quo so far as the applicant's continuance is concerned. Accordingly even as a part-time Sweeper she has put in more than 240 days of service or more than 480 days of <sup>part-time</sup> / casual work. The benefits of Chapter VA of the Industrial Disputes Act cannot be denied to her. In accordance with DG, P&T's letter No. 45/20/75-SPB-1 dated 20.10.84 the services rendered by part-time casual labour may be divided by two for comparison with the length of service of full-time casual labour. Since the applicant before us has put in more than 480 days of part-time service, her equivalent full-time service would easily be more than 240 days. In accordance with the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications casual labourers who have rendered a continuous service of at least one year out of which they must have been engaged for a period of 240 days, are entitled to temporary status until they are regularised in Group D cadres. On the analogy of that scheme also, the applicant would be entitled to the same security of service as is available to temporary Government servants. In accordance with the aforesaid scheme "despite the conferment of temporary status, the service of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act on the ground of non-availability of work".

4. We are not very much impressed by the argument of the respondents that as she was a substitute of her mother who was working as an Extra Departmental Sweeper, her case should be distinguished as that of a casual worker. There is very little to choose between a casual Extra Departmental Part-time Sweeper and a casual Sweeper, especially when, according to the respondents themselves, the work of the applicant was proposed to be given to a casual scavenger. In the conspectus of facts and circumstances we allow the application to the extent of directing that the applicant should be retained as a part-time Sweeper as before and should be considered for regularisation in accordance with the scheme of such regularisation so long as the <sup>relevant</sup> post exists. It goes without saying that in case it becomes necessary to terminate her services it should not be terminated except in accordance with law. There will be no order as to costs.

  
(N. Dharmadan)  
Judicial Member  
27.3.91

  
(S.P. Mukerji)  
Vice Chairman  
27.3.91