

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.563/1999

Wednesday this the 3rd day of January, 2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

1. M.J.Mary,
Ayah, Telephone Exchange,
Ernakulam, residing at Pallathusserry,
Ochanthuruth,
Cochin-1.
- 2 Mini A.R.,
Ayah, Telephone Exchange,
Ernakulam, residing at
Anjuthykkal House,
Thevara, Kochi-13. ..Applicants

(By Advocate Mr. M.R.Rajendran Nair)

vs.

1. Union of India, represented by its Secretary,
Ministry of Communications, New Delhi.
2. The Chief General Manager, Telecom,
Kerala Circle, Trivandrum.
3. The General Manager, Telecom District,
Ernakulam. .. Respondents

(By Advocate Sri Govindh K.Bharathan, SCGSC)

The Application having been heard on 3.11.2000, the
Tribunal on 3.1.2001 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN;

This is the third round of litigation between the applicants who are working as Ayahs in the Creches attached to the office of the third respondent and the respondents in regard to the applicants claim for regularisation of their services as Government servants. The applicants 1 and 2 claim that they have been serving as casual labour Ayahs under the third respondent since 1983 and 1988. The applicants jointly filed O.A.1587 of 1992 for a direction to the respondents to regularise their services as casual

labourers. The Tribunal made certain observations in the order in that case that the applicants could not be treated differently from Ayahs functioning in the department but directed that the applicants representation should not be considered differently. In obedience to the order of the Tribunal, the third respondent considered the representation and rejected the claim by order dated 10.2.1995 (Annexure A2). The applicants challenged Annexure A2 order in O.A.163/96 with a direction to take a decision on the representation of the applicant within three months. The third respondent by A3 order again rejected the claim of the applicants. The applicants made again a representation on 18.10.97. Finding no reply and alleging that the applicants are entitled to be regularised in terms of notification dated 17.8.95, the applicants have filed this application for the following reliefs:-

(i) To declare that the applicants are entitled to be considered for regularisation as Government employees and to direct the respondents to consider the applicants for regularisation as Government employees.

(ii) Alternatively direct the 1st respondent to consider and pass orders on Annexures-A4 and A5 representations within a reasonable time.

(iii) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and,

(iv) Grant the costs of this Original Application.

2. The respondents contend that as the applicants are engaged as Ayahs in Creches run by a Welfare Committee which is a voluntary organisation and were not paid out of Government funds, they cannot be treated as casual labourers

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of the department and therefore they are not entitled to the reliefs claimed in the O.A.

3. I have heard the learned counsel on either side and have also gone through the pleadings and materials on record.

4. If the payments to the applicants are being made not out of Government funds but from the funds of the voluntary organisation as contended by the respondents, the applicants could not be entitled to be granted temporary status and regularisation under the Scheme which applies only to casual labourers employed by the Government. When the O.A. was filed applicants had not produced any documents to show that their wages were paid out of Government funds. However the applicants have produced Annexures A7 to A9 alongwith M.A. 653 of 1999. Learned counsel of the applicants argues that Annexures A7 and A8 copies of ACG 17 receipts issued by the applicants 1 and 2 to the Assistant Engineer (Trunks), Ernakulam for the period between March 1993 and April 1994, and February 1993 to July 1994 would establish that the payments were made out of Government funds. He further argued that Annexure A9 copy of the muster for the month of June 1991 would establish that the applicants have been working under muster roll along with other workers under the respondents. The counsel argues that these documents are sufficient to show that the contention raised by the respondents are false. The respondents have not been able to explain how the applicants came to issue ACG 17

receipts and how their names were included in the muster roll along with other workers. In fact this calls for an explanation from the respondents. It is evident that Annexures A7 to A9 were not produced before the second respondent when the Annexure A3 order was issued. Since a decision in this matter calls for a fact adjudication regarding the source of payment to the applicant, I feel that the matter has again to be remitted to the second respondent to take a decision considering the Annexures A7 to A9 and similar receipts or muster for the earlier and later periods, if any. The applicants also have prayed for an alternate relief of direction to consider and dispose of A4 and A5 representations.

5. In the conspectus of facts and circumstances, the application is disposed of with a direction to the second respondent to reconsider the claim of the applicants for regularisation as Government employees considering Annexures A7 to A9 and also similar ACG 17 receipts or muster rolls, if any, for the previous and succeeding periods^{and} to give the applicants a speaking order within four months from the date of receipt of a copy of this order. No costs.


(A.V. HARIDASAN)
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1. Annexure A2 True copy of the letter No. Admn-7/04 dated 10.2.95 issued by the 3rd respondent.
2. Annexure A3 True copy of the letter No.ST/II/28-151/92/16 dated 25.5.96 issued by the 2nd respondent.
3. Annexure A4 True copy of the representation dated 18.10.97 submitted by the 1st applicant to the 1st respondent.
4. Annexure A5 True copy of the representation dt. 18.10.97 submitted by 2nd applicant to the 1st respondent.
5. Annexure A7 True copy of the ACG 17 receipt issued by the 1st applicant to the Assistant Engineer(Trunks),Ernakulam for the period March 1993 to April 1994.
6. Annexure A8 True copy of the ACG 17 receipt issued by the 2nd applicant to the Assistant Engineer(Trunks),Ernakulam for the period February 1993 to July 1994.
7. Annexure A9 True copy of the Muster Roll for the month of June 1991.