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Central Administrative Tribunal
Ernakulam Bench

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Date of Decision ... 28.6.90

PRESENT

Hon'ble Shri S.P.Mukerji, Vice Chairman
And

Hon'ble Shri A.V.Haridasan, Judicial Member

ORIGINAL APPLICATIONS NO. 566/89, 600/89 & 671/89

I. OA 566/89

P.Hamza Koya Applicant

Vs.

The Administrator, Union
Territory of Lakshadweep &
2 others. ... Respondents

Shri M.K.Damodaran ... Counsel for the applicant
Shri P.V.M.Nambiar ... Counsel for the respondents.

II. OA. 600/89

K.C.Muthukoya
Kolikkat Thangakoya
K.C.Hamza Koya Applicants

Vs.

The Administrator, Union
Territory of Lakshadweep
& 2 others. ... Respondents

Shri M.K.Damodaran ... Counsel for the applicant
Shri P.V.M.Nambiar ... Counsel for the respondents

III. OA 671/89

1. B. Pookunhi
2. Mathil Jaleel
3. Karachetta Cheriya Koya
4. Kolikatt Iyammada Sayed Mohammed
5. Biluthatha Yacoob
6. Pappada Kunhiseethi Koya
7. P.Cheriya Koya
8. Chachanal Mohammed
9. Moosampathada Pookunhikoya
10. Kadiyammada Mullakoya Applicants

Vs.

The Administrator, Union
Territory of Lakshadweep &
2 others Respondents

Shri M.K.Damodaran ... Counsel for the applicants.
Shri P.V.M.Nambiar ... Counsel for the respondents.

O R D E R

(Shri S.P.Mukerji, Vice Chairman)

Since common questions of facts, law
and reliefs are involved in the three cases listed above,
they were heard together and are being disposed of by
a common order as follows:

2. The applicants ~~the~~ in the aforesaid three
applications were engaged as casual labourers under the
Agricultural Officer of Andrott Island of the Union
Territory of Lakshadweep Administration, from various
dates in 1977, 1978, 1979 and 1981. In these applications
they have prayed that the eligibility criteria fixed by
the respondents for the post of Spraying and Dusting
Operators (SDOs) be considered to be unconstitutional
and the selections made for the posts be set aside
and that the respondents be directed to consider the
applicants for regular appointment to the post of SDOs
and to absorb them in the Directorate of Agriculture
as regular employees on the basis of their seniority.
As casual labourers, according to them, they have been
looking after the vegetable and fruit crops, loading and
unloading of goods of the Agricultural Departments
and doing spraying and dusting operations also. They were
engaged on a daily rate basis. When the Department
published their proposal of filling up the posts of
SDOs and interview was fixed on 10.8.89, they were not
called for the interview, as they were not educationally
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qualified. They represented and the interview was postponed. It appeared that on the basis of the Recruitment Rules prescribed for the post of SDOs a minimum educational qualification of 8th standard had been fixed. Since none of the applicants fulfilled that educational qualification, they were not called for interview. On their representations the respondents relaxed the provisions of educational qualifications in respect of labourers working in the Department for many years and made those with 4th standard pass and with 5 years experience as eligible. Unfortunately for the applicants, they did not qualify even by the relaxed standard as they were not even 4th class pass. Aggrieved by this decision, they moved this Tribunal for setting aside the selections made. The applicant in OA 566/89 was allowed to be interviewed provisionally in other cases by the interim order of this Tribunal. It was directed that the appointments will be subject to the outcome of the applications.

3. The main contention of the applicants is that having put in more than a decade of service as casual labourers they have a prior right to be absorbed in the regular cadre of Class IV staff of the Agricultural Department and the newly created posts of SDOs should have been filled up by regularising them against those posts. They have argued that as casual labourers they have been doing spraying and dusting operations and the

respondents have arbitrarily fixed a minimum educational standard of 4th class pass for no reason, as such an educational qualification has nothing to do with the work of spraying and dusting which they have been carrying on in the past. They have referred to the ruling of the Hon'ble Supreme Court in Daily rated Casual Labourer Vs. Union of India, 1988(1) SCC 122, wherein the P&T Department was directed "to prepare a 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...." They have also referred to some cases in other Departments where casual workers were regularised without insisting upon the educational qualification. They have stated that they have been doing the work of Malies and Spraying and Dusting Operators and when some vacancies arose in the past of Malies they were filled up by regular appointments of casual labourers and the same policy should have been adopted for Spraying and Dusting Operators. They have also stated that their long experience should be taken into account ignoring the lack of educational qualification.

4. The respondents have clarified that the posts of Spraying and Dusting Operators were created in March 1989 and the Recruitment Rules framed in May 1989 provided for a minimum educational qualification of 8th standard, which was subsequently relaxed to 4th standard to accommodate casual labourer.

The posts are to be filled up by direct recruitment through Employment Exchange. The applicants' names were not sponsored by the Employment Exchange as they even relaxed did not have the minimum qualification of 4th standard pass for these posts. They have specified the following items of work for the Spraying and Dusting Operators:

- i) Surveillance work on pests and diseases of crops and Spraying Dusting operation to control pests and diseases on coconut, fruit plants, vegetables, ornamental plants and social forestry plantation in the islands.
- ii) Preparation of pesticide/fungicide formulation for plant protection operation.
- iii) Day to day maintenance of plant protection equipment and their repair.
- iv) Spraying & Dusting in breeding places of rhinoceros beetle like compost pits decaying materials etc.
- v) Preparation of Rodacakes/Bromodialone cakes and their supply to the needy farmers to control rats.
- vi) Motivation and providing necessary assistance to the farmers for undertaking plant protection measures wherever rat attack on a coconut and pest and disease problem noticed to the crops.
- vii) Biological control pests like mealy bugs, scale insects, rhinoceros beetle etc. in the crop fields and release of parasites and predators at the time of infestation of such pests.
- viii) Attend other duties of importance assigned to them by his superiors on public interest.

According to them, the discharge of the various duties call for the minimum educational qualification of at least 4th standard. The Operators are expected to mix of prepare poisonous pesticides and fungicides for plant protection operation for which educational qualification cannot be dispensed with. They have

categorically and repeatedly stated that the applicants, as casual labourers, have never engaged for spraying and dusting operations. They were doing unskilled manual work in the Agricultural and horticultural farms like preparation of field, digging, weeding, watering of plants. They have indicated that 30 of the casual workers who were educationally qualified have since been selected for the post of S.D.Os and a proposal to regularise 50 senior labourers of the Department as regular mazdoors in Group D posts is under consideration.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is an admitted fact that for Malies (gardeners) who are doing far less technical work than that of Spraying and Dusting Operators, a minimum educational qualification of 4th standard had been prescribed since 1979. Even this educational qualification is being upgraded. Accordingly, the applicants cannot claim relaxation of even 4th class educational qualification in their favour for the more sophisticated posts of S.D.O.

6. It is a recognized fact that spraying and dusting entail handling of toxic chemicals. Unless the Operators are able to read and understand the various instructions for handling these chemicals formulations and mix of both for preparing the pesticides as also for handling the equipments and methods of spray, they will be

risking not only their lives but also of others.

The respondents have already relaxed the minimum statutory educational qualification of 8th standard to 4th standard in order to accommodate the casual workers and they have already absorbed 30 of such workers who fulfilled the relaxed standards. It is not for this Tribunal to intercede on their behalf for further relaxation of the educational qualification against the technical and administrative wisdom of the respondents.

We are not impressed by the arguments of the learned counsel for the applicants that such a relaxation is justified because of relaxation given to casual workers working in the Coir Department. Apart from the fact that the Coir Department may not be handling as poisonous chemicals as Spraying and Dusting Operators, in the Agricultural Department, the fact remains that in the Coir Department the Class IV posts of Helpers were specifically created for regular absorption of casual workers (Annexure-4 of OA 671/89). Such a situation is not obtaining in the Agricultural Department.

7. Nothing has been shown to us to indicate that absorption of casual labourer has taken precedence over the public interest of having suitable candidate in accordance with the statutory Recruitment Rules. The direction of the Supreme Court in the P&T Department as has been quoted above required the department to prepare a scheme on a rational basis for absorbing as far as possible casual labourers. It does not give any

indication that all casual labourers must be automatically absorbed in regular cadres irrespective of satisfying the minimum qualification prescribed for the post.

8. The Supreme Court in State of Andhra Pradesh Vs. Sadanandam (1989) 11 ATC 391 has observed that the mode and source of recruitment is exclusively in the domain of the Executive and judicial bodies should not intervene in the policy of recruitment. Courts have also been cautioned against considering and assessing the merits of prescribed qualifications for posts (AIR 1990 SC 535). Courts are not to consider or assess relevancy and suitability of qualification prescribed for recruitment (J. Rangaswamy Vs. Government of Andhra Pradesh, 1990 Lab. I.C. SC 296). Thus we refrain from giving any direction about further relaxation of the educational qualification in respect of the applicants. However, as casual workers of long standing the applicants deserve to be regularised in areas and posts for which they are found to be eligible and suitable without compromising public interest, efficiency and safety.

9. In the conspectus of facts and circumstances we find that the applicants are not entitled to the relief claimed. But, we dispose of the application with the direction to the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual workers who have been continuously working for more than one year in the Agricultural Department which has a sizable number of such workers. Such a

scheme should be prepared within a period of eight months from today. A copy of this order may be placed on the three case files.

Alivel
28/6/90

(A.V.Haridasan)
Judicial Member

S.P.M.
28.6.90

(S.P.Mukerji)
Vice Chairman