

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.1008/97 and O.A.571/98

Friday, this the 19th day of October, 2001.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

O.A.1008/97

K.Nafeesathbi,
Clerical Assistant,
(ousted from service),
Village(Dweep) Panchayath,
Kiltan Island,
Union Territory of Lakshadweep.

- Applicant

By Advocate Mr Shafik.M.A.

Vs

1. Union of India represented by the
Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. Director of Panchayats,
Union Territory of Lakshadweep,
Kavaratti.
3. T.P.Cheriyakoya,
Block Development Officer,
Ex-Officio Special Officer,
Village(Dweep) Panchayat,
Kiltan Island,
Union Territory of Lakshadweep. - Respondents

By Advocate Mr S Radhakrishnan(for R.1&2)

O.A.571/98

M.Mohamed Koya,
L.D.Clerk(Daily Wages),
Village(Dweep) Panchayat,
Chetlat Island,
(Residing at Maidan House,
Chetlat Island,
Union Territory of lakshadweep.

- Applicant

By Advocate Mr Shafik.M.A.

Vs

1. Union of India represented by the Administrator, Union Territory of Lakshadweep, Kavaratti.
2. The Collector-cum-Development Commissioner, Union Territory of Lakshadweep, Kavaratti.
3. The Chairperson, Village(Dweep) Panchayat, Chetlat Island, Union Territory of Lakshadweep. - Respondents

By Advocate Mr S Radhakrishnan

The application having been heard on 22.8.2001, the Tribunal on 19.10.2001 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

These two O.A.s filed by the applicants who have been working as Casual Labourers allegedly carrying out clerical functions under the Village(Dweep) Panchayats of Kiltan and Chetlat islands turn on fairly similar facts and circumstances and accordingly, it is deemed convenient to dispose of the two applications by a common order.

2. The facts though similar, have some differences in details and accordingly it is considered necessary to have a brief survey of facts arising in either case separately.

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3. The applicant, Ms K Nafeesathbi, a Matriculate claims to have been initially engaged as "Mate" as per the Districtwise Rural Development Agency (DRDA for short),

scheme under the Kiltan Island Council in the U.T. of Lakshadweep. Her service admittedly was punctuated by periodic termination on account of absence of adequate work. According to her, she was later engaged as Clerical Assistant and continued to be so under the Kiltan Village(Dweep) Panchayat which succeeded the Island Council. Her grievance is that on account of what she refers to as the third respondent's oral direction to her not to come to office. Perceiving this to be a verbal termination of her service, the applicant seeks the following reliefs:

- i) To call for the records of the case and to declare that the termination of the applicant's services as Clerical Assistant, Village (Dweep) Panchayat, Kiltan is illegal and arbitrary;
- ii) To direct the respondents to permit the applicant to continue as Clerical Assistant, Village (Dweep) Panchayat, Kiltan and to regularise her services as such with effect from the date of engagement.

O.A.571/98

4. The applicant, Shri M Mohamed Koya, claims to have been initially appointed as daily wager Clerk by the Chairman of the Island Council, Chetlat, by order dated 31.12.93(A-2) and continued in the same job even after the Island Council was statutorily replaced by Village (Dweep) Panchayat. A-3 certificate issued by the Special Officer, Village (Dweep)

Panchayat, Chetlat Island would, according to the applicant, support the claim of such service. He is now aggrieved by A-1 order dated 5.12.97 whereby the Special Officer, Village(Dweep) Panchayat, Chetlat Island has terminated his services from the afternoon of 5.12.97 under orders of the Administrator, U.T. of Lakshadweep. It is stated that even before the formal termination order was issued, the applicant had by A-4 representation, requested the second respondent, viz, the Collector-cum-Development Commissioner, U.T. of Lakshadweep, Kavaratti to regularise his services. The applicant alleges that his ouster from service, as has been the case of a Clerical Assistant in Kiltan Dweep Panchayat office who is the applicant before this Tribunal in O.A.1008/97 (the application filed by Ms K Nafeesathbi, now considered along with this case sic), was a politically motivated act of vengeance. The applicant would submit that he has made A-5 representation to the first respondent challenging the A-1 termination order pointing out the legal infirmities therein. However, since there has been no response to the said representation, the applicant has filed this O.A. before this Tribunal seeking inter-alia the following reliefs:

i) To call for the records relating to Annexure-A1 and to quash the same.

ii) To declare that the applicant is entitled to continue as Lower Division Clerk at least on casual basis till the post is filled up regularly in accordance with the rules.

iii) To declare that the period which he has been kept out of service shall be treated as duty for all purposes and direct the respondents to reengage the applicant immediately with all consequential benefits including salary.

5. Shri Shafik M.A., counsel for the applicants in the above two cases, has taken us through the pleadings in the respective O.A.s and made further submissions.

6. With regard to O.A.1008/97, it is submitted that the applicant has been dusted from the service of the Kiltan Village(Dweep) Panchayat under which she had been engaged as a Clerical Assistant since 17.7.95. Counsel points out that in the absence of elected body for local self Government, the affairs of the Panchayat were managed by the Block Development Officer appointed as Special Officer by the Administrator of the U.T. of Lakshadweep and that the charge handing over report of the Chairman, Island Council, Kiltan to the Block Development Officer, Kiltan, Ex-Officio Special Officer and the A-2 certificate dated 20.3.97 issued by the Special Officer, Village(Dweep) Panchayat, Kiltan, would bear out the applicants' claim that she has been working as Clerical Assistant under the Kiltan Panchayat since 17.7.95 on daily wages. Counsel invites our attention to A-3 and A-4 representations made by the applicant requesting the Administrator to consider her for a regular post in view of her continuous experience and the fact that she was nearing the upper age limit for purposes of Government employment.

Counsel would explain that consequent to the O.A. filed by certain Casual Labourers working under the Water Supply Scheme within the U.T., i.e., O.A.835/96, this Tribunal by A-5 order had directed the respondents to take a decision with regard to their regularisation under the Panchayat on the basis of a detailed representation to be made by them in that regard and that a decision was pending in that matter. According to him, the verbal instruction directing her not to come to office and asking her to do the work of Sweeper of the street under the DRDA project was calculated to deny her the benefit that might arise out of a favourable decision that might be in pursuance of this Tribunal's order in O.A.835/96. Counsel would also invite our attention to the Regulation 88 of the Village (Dweep) Panchayat and Regulation 1994 which legitimises the due acts and decisions of the Island Council and allows continuity thereto under the Village(Dweep) Panchayat. In other words, counsel would stress the point that the employees who were appointed under the Island Council and who enjoy continuity under the Village (Dweep) Panchayat after its advent would continue as employees under the U.T. Administration eligible for all the consequential benefits.

7. The main contentions with regard to O.A.571/98 are also substantially the same as narrated above. Learned counsel would maintain that the termination order A-1 is arbitrary and hence is tantamount to denial of natural justice. Since this Tribunal directed the respondents to examine the question of regularisation of the casual employees working in the U.T. of Lakshadweep vide O.A.835/96 and a

decision in this regard is still pending, the applicant ought not have been served with termination notice. Such an action was calculated only to deny the benefit of any favourable decision that might arise out of action taken in pursuance of the Tribunal's directions.

8. Basing his arguments on the reply statements and the affidavits filed by the second and third respondents, Shri S Radhakrishnan, learned counsel for the respondents would submit that the applicant in O.A.1008/97 having been initially employed by the erstwhile Island Council under the DRDA scheme and paid from the fund provided by the DRDA was never appointed by the Island Administration against any sanctioned post. Apart from an Executive Officer and a Peon, there was no sanctioned post of a Clerical Assistant under the Island Council or under the Village (Dweep) Panchayat, Kiltan. Being a worker under the Wage Employment Programme of the DRDA carried out by the Island Council and later by the Village (Dweep) Panchayat, the applicant could not claim any regular post under the Administration, except in accordance with the norms and procedure laid down in that regard. Learned counsel would plead that after the dissolution of the Island Council by the Administrator, the ex-Chairman of the disbanded Island Council who had been asked to look after the Panchayat's routine affairs till alternative arrangements were made appeared to have changed the original designation of the applicant from "Mate" to "Clerical Assistant" and made entries in the records and muster rolls. The certificate of employment was accordingly issued by the Chairman, who held

the charges as Special Officer as an interim measure. The Administration had neither approved any such appointment nor was it even aware of it, urges the counsel. The applicant was, accordingly, a wage earner under the DRDA and that being so, she could not be compared to the labourers of the Water Supply scheme engaged by the agency for water management. The DRDA scheme did not visualise any permanent employment as the intention was to provide employment for a period of 100 days in a year to the persons who are registered for that purpose. Although there were periodical breaks, reengagement was possible, because of the availability of work and absence of adequate number of persons registered for the purpose particularly at the initial stage. Drawing our attention to the R1(1) letter dated 11.3.97, counsel would contend that it would be clear from that letter that the granting of temporary status to the applicants in the O.A. referred to therein, i.e. O.A.917/97 who were similarly placed like the applicant, could not be considered since they were engaged after the cut off date of 10.9.93. According to counsel, the increase from daily wage of Rs.48.46 to Rs.51.46 was incorrectly done although the same was being continued as per the directions of this Tribunal. The increase from daily wage of Rs.48.46 to Rs.51.46 was due to an incorrect understanding on the part of the Special Officer with regard to the instructions issued by the Director of Panchayats and, accordingly, the increase which was intended for casual employees of the Water Supply scheme was indiscriminately extended to all employees including the daily wage earners under the DRDA working in the respective Panchayats. Thus, the applicant also started

receiving the enhanced wage of Rs.51.46 although she was not entitled to it. With regard to the apprehended termination, counsel has emphatically stated that there was no order of termination written or verbal. Carrying out functions of Sweeper, was a necessary incident of work provided under Wage Employment Programme and the applicant being a worker under that scheme, had to attend to it. Counsel would, therefore, sum up his argument by stating that the applicant was never employed under any authority or approval of the Lakshadweep Administration and as such, she could not be considered for regularisation and that such regularisation, if ordered, would bring about manifold problems to the Administration.

9. The contentions advanced by the learned counsel for respondents in respect of O.A.571/98 are substantially similar to those in O.A.1008/97. Here also the important submission that the counsel would like to make is that the applicant being a daily rated worker, employed under the Wage Employment scheme of DRDA under the Island Council of Chetlat to start with and later the Village (Dweep) Panchayat, his wages were paid out of the funds provided for the purpose by the DRDA. The gist of the contention is that the applicant was an employee of the Island Council/Village (Dweep) Panchayat and not of the Administration. It is emphasised that the recruitment to various posts under the Administration is made in accordance with the rules and regulations and norms prescribed by the authority working under the DRDA and casual employment under Administration of U.T. of Lakshadweep are different. Thus the applicant being a worker under the Wage

Employment scheme, not recruited through the administration's established procedure, cannot be regularised and an act to the contrary would be in violation of the specific provisions of the Village (Dweep) Panchayat Regulation 1994, the counsel would urge. In this connection, however, it is maintained by the learned counsel that the termination notice was rightly issued to the applicant, since continued engagement of the applicant without proper sanction or approval of the Administration would bring about improper application of the administration's resources. However, the local self Government bodies had every freedom and right to employ workers as found necessary, provided the expenditure in relation to such engagement was not borne on the funds released by the Administration/Central Government. In other words, the Village (Dweep) Panchayat might engages its own labour force for specific items of work and meet the expenditure from its own internally generated resources.

10. We have examined the pleadings and other material on record. We have carefully considered the arguments put forward by Shri Shafik, learned counsel for the applicants and Shri S Radhakrishnan, learned counsel representing the respondents. The crucial issue to be resolved in this case is, whether the two applicants are in fact and in law, employed by the Administration of the U.T. of Lakshadweep in order that they might claim continued engagement and regularisation with all the consequential benefits.

11. Having regard to the facts and contentions, we are of the view that there is no evidence even to suggest that the

applicant in O.A.1008/97, Ms K Nafeesathbi, was appointed against any sanctioned post or engaged under any approval from the Administration of Lakshadweep. The applicant, no doubt, has been a daily wager and still continues to be so. There is no record of any regular appointment. By the applicants' own admission, she was engaged as "Mate" under the DRDA's wage employment scheme. We are not convinced as to how and under what authority did the applicant get the alleged appointment as Clerical Assistant. The mere fact that she had been carrying out clerical functions would not make her an employee approved by the Administration. There is no case that the Chairman, Island Council, Kiltan appointed her under the norms approved or against vacancy sanctioned by the Administration. But records produced do not support such an inference. The respondents have strongly denied the allegation that the applicant is an employee of the Administration her appointment has been duly approved or authorised by the Administration. The fact remains that she had been engaged in a job under the Wage Employment Scheme as part of poverty alleviation programme implemented by the DRDA. That would not confer on her the status of a casual labourer entitled to the benefit of regularisation, as provided under the relevant scheme in that regard. In our opinion, the material on record would indicate that she was only a worker engaged by the Kiltan Island Council and was continued to be so engaged by the Kiltan Village (Dweep) Panchayat thereafter. The certificate of service issued by the Chairman, Island Council who was the the ad-interim Special Officer would not, as rightly pointed out by the respondents, make her an employee of the Administration. There is no proximate connection between her

engagement as "Mate" - subsequently redesignated as Clerical Assistant - and the Administration or any other agency authorised by the Administration in that behalf. As such, she cannot ask for any relief from this Tribunal since the Administration or any of the respondents cannot be held accountable for her engagement.

12. The facts and circumstances of the case pertaining to the applicant in O.A.571/98 also point to a similar position. It is evident from A-2 that the applicant in this case was engaged by the Chairman, Island Council, Chetlat as daily waged office Clerk in the office of the Island Council, Chetlat with effect from 1.1.94 under the DRDA scheme. There is no sanctioned post against which he was appointed. He was thus only a contingent labour doing clerical functions even after the Island Council was taken over by the Village (Dweep) Panchayat. There is no material in this case also to substantiate the contention that the applicant was in fact and in law, the employee of the Administration of U.T. of Lakshadweep. A person engaged under the DRDA scheme can have no right to be regularised unless the Government has a scheme. The scheme for regularisation referred to by the applicant does not pertain to persons coming under the DRDA programme, initially engaged for a short while, though under fortuitous circumstances they were allowed to work for a longer period. The Village(Dweep) Panchayat should be accountable for them and not the Administration.

13. In this connection, we find that we had occasion to address ourselves to substantially similar issues in another

said of cases viz, O.A.1297/98 and O.A.218/99. There also the question involved was regularisation of persons engaged by the Island Council and continued to be engaged by the Village (Dweep) Panchayat on the ground that they were in fact employees of the U.T. of Lakshadweep Administration. In our considered view, the difference in facts between the cases considered by the Tribunal in the above O.A.s and those obtaining in the case on hand are not materially so different as to warrant a different conclusion. After going through the Island Council Regulation 1988 and the Village (Dweep) Panchayat Regulation 1994 and after analysing the relevant facts in those cases, this Tribunal by order dated 14.8.2001 rejected the applicants' claim. The relevant findings are extracted hereunder:

"We find that in both these O.A.s under consideration, the applicants were originally engaged by the Island Council of Androth/Minicoy. They might have continued to be engaged subsequently by the succeeding local self Government body, namely, the Village (Dweep) Panchayat of Androth/Minicoy. The Chairpersons of the respective Island Council might have, with or without proper authority from the Councils, issued what are purported to be appointment orders and the subsequent service certificates. We have good reason to reject the same as those do not reveal the applicants' nexus with the Administration of U.T. of Lakshadweep in order that they might have a cause of action before us. The applicants have not adduced any evidence to

show that they were appointed against any posts sanctioned or approved by the Lakshadweep Administration: in the light of the provisions in the regulations briefly surveyed above. The case law cited by the applicants' counsel viz Arun Kumar Rout & others Vs State of Bihar & others, AIR 1998 SC, 1477, turns on facts which are clearly distinguishable. Apart from having long service and the requisite qualification, the persons in the cited case were appointed against sanctioned posts. In the case on hand, the applicants were not employed against any posts sanctioned by the administration and that would make all the difference. The Island Council or the Chairpersons, as the case may be, for reasons best known to them, seem to have accommodated these people. They might rightly come under the wage employment programme as a poverty alleviation measure under the DRDA or they might have been employed since the Village (Dweep) Panchayat authorities considered it expedient to give employment to them. It probably might have offered some succour by way of daily rated wages to the unemployed local persons.....

A perusal of the Island Council Regulation 1988 and the subsequent Village (Dweep) Panchayat Regulations, 1994 and the rules framed thereunder, as discussed earlier in this order, would make it clear that the Administration held itself responsible for specified number and categories of employees only. If a local self Government body employed any person or persons otherwise and allowed them to stay, it should be at

their risk and cost and not at the expense of the Administration of the U.T. of Lakshadweep. Such employment/engagement would not, ipsofacto, confer any constitutional right on the concerned persons as Government employees inspite of the designations they were accorded by the local self government bodies.....

.....We find no scope to look into their alleged grievance as their employment/engagement does not have any proximate connection with the Lakshadweep Administration. Neither the Panchayat authorities (respondents 4 and 5) nor the applicants have shown how the posts created/retained in addition to those sanctioned by the Administration could be considered regular. As matters stand, the Administration of U.T. of Lakshadweep has no accountability as far as the matter of regularisation of the applicants are concerned. The anxiety of the U.T. Administration to prevent misapplication of funds granted to the Village/District Panchayat for developmental purposes towards expenditure on account of wanton appointments of staff against posts neither created nor sanctioned nor approved is legitimate."

The above findings have considerable relevance as far as the cases on hand are concerned.

14. On the facts and in the circumstances of the case and for reasons discussed above, we find that in the case of the applicant in O.A.1008/97, there is nothing on record to show that any termination order has been passed or is imminent.

This Tribunal does not propose to issue any direction in regard to the apprehension entertained by the applicant since there is no evidence to support an inference that the applicant was at any stage appointed by the Lakshadweep Administration or any appointing authority duly authorised by it in that regard to any sanctioned post. This Tribunal therefore, finds no way to exercise its jurisdiction to issue a direction to the respondents to permit the applicant to continue as Clerical Assistant under the Village (Dweep) Panchayat, Kiltan and to regularise her services as such with effect from the date of engagement. The application is to be dismissed.

15. For the same reasons, with regard to O.A.571/98 we do not propose to interfere with the impugned A-1 order. We decline to make any declaration as prayed for. The application is liable to be dismissed.

16. Before we part with the matter, we may, however, observe that having regard to the pecuniary circumstances of the applicants, it is for the Administration and the concerned Village (Dweep) Panchayat to decide on the regularisation of the expenditure incurred in pursuance of the interim order or orders passed by this Tribunal pending disposal of these O.A.s. A decision in this regard may be taken in whatever manner which the authorities deem just and fair.

17. In the result, the interim orders in these cases are

ANNEXURES

O.A.1008/97

1. A-1: True copy of the Handing Over Charge List of Shri B Mohammedkoya Haji, Chairman, Island Council to Shri T.P.Sayed Koya, BDO, Kiltan.
2. A-2: True copy of the certificate dated 20.3.97 issued by the 3rd respondent to the applicant.
3. A-3: True copy of the representation dated 8.4.97 submitted by the applicant before the 1st respondent.
4. A-4: True copy of the representation dated 6.7.97 submitted by the applicant before the 1st respondent.
5. A-5: True copy of the order dated 2.7.97 passed by this Tribunal in O.A.835/96 filed by Pithiyamel Jamaluddin & others.
6. A-6: True copy of F.No.1/38/96-DOP dated 23.10.97 issued by the Director, Panchayat.
7. R-1: True copy of the letter No.40011/3/97-Estt(C) dated 11.3.97 issued by the Director, DOPT, New Delhi.

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8. A-1: True copy of the order F.No.5/4/90-ICC dated 5.12.97 issued by the Special Officer, Village(Dweep) Panchayat, Chetlat Island.
9. A-2: True copy of the order F.No.5/4/90-ICC dt.31.12.93 of the Chairman, Island Council, Chetlat Island.
10. A-3: True copy of the Certificate F.No.1/2/97-DPC dt.27.6.97 issued by the Special Officer, Village (Dweep) Panchayat, Chetlat Island.
11. A-4: True copy of the representation dt.2.10.97 submitted by the applicant before the 2nd respondent.
12. A-5: True copy of the representation dt.6.12.97 before the 1st respondent.
13. A-6: True copy of the interim order dated 12.8.97 passed by this Tribunal in O.A.1008/97 filed by K Nafeesathbi.