

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 58 of 2010

Thursday, this the ^{24th} day of March, 2011

CORAM:

Hon'ble Ms.K.Noorjehan, Administrative Member

1. S.P Harris, C/O Koyakunhi, aged 45
Sailanivapura, Kiltan, Lakshadweep
2. K Azhar, S/o Sayed Buhari, aged 49 years,
Kuriyathivodu, Kiltan
3. A.P Ahamed, S/o Kunhikoya, aged 43 years
Alimapura, Kiltan

Applicants

(By Advocate – Mr. M.R Hariraj)

V e r s u s

1. Administrator
Union Territory of Lakshadweep
2. Director of Panchayaths
Union Territory of Lakshadweep
3. Sub-Divisional Officer,
Kiltan Island
Union Territory of Lakshadweep
4. Hamsakoya
Assistant Engineer
LPWD, Kiltan Island
Union Territory of Lakshadweep

Respondents

**(By Advocate – Mr.S Radhakrishnan for (R1-3)
Mr.B Amanulla and Mr.T.M Abdul Azeez for R4)**

ORDER

By Hon'ble Ms. K.Noorjehan, Administrative Member -

1. The applicants who are casual labourers are aggrieved by the termination

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of their services and engagement of freshers in their places by the respondents.

2. The first, second and third applicants were engaged under the third respondent as daily waged casual labourers from 31.05.1985, 1983 and 2003 respectively. While so, the third respondent proceeded on leave and the fourth respondent who was given current charge, terminated the services of the applicants. The applicants have alleged that such action arose out of differing political loyalties. The applicants submitted their representation against such an illegal retrenchment, as a result of which an enquiry was ordered by the second respondent. The enquiry report is produced at Annexure A-1. As the third respondent recommended re-instatement of the applicants they have been re-engaged in Jul 2009. Again, when the third respondent availed leave in October 2009, the fourth respondent retrenched the applicants. A detailed representation submitted by the applicants to the first respondent, has not elicited any response so far. Aggrieved, the applicants have filed this Original Application praying for their continued engagement as casual labourers in preference to freshers or persons with lesser casual service.

3. The respondents refuted the claim of the applicants for continuous engagement as casual labourers. They have submitted in their reply statement that to consider and give equal opportunities to all the registered labourers in their engagement by the Village Dweep Panchayath in the implementation of developmental schemes, the Department of Panchayath has issued the order instructing the Panchayath to prepare and maintain ward wise registers and to engage casual labourers from that register strictly according to the seniority for a period not exceeding 89 days. They emphasised that this process was conducted to ensure that every unemployed person gets equal opportunity to work. The Village Panchayaths were empowered to send labourer to various departments and offices under the Administration as per their order

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F.No.5/26/2003-DOPT & RD/403 dated 04.11.2008. In accordance with this order, the departmental heads/heads of offices are to approach the Panchayath to obtain casual labourers as per their requirement and distribute the labourers who have completed 89 days of work without a break or those who worked with a break. Hence the respondents maintained that there was no malafide intention in the retrenchment of these labourers and action on the part of the fourth respondent was in obedience of the orders issued by the Administration.

4. Heard the learned counsel for the parties and perused the documents. The undisputed fact is that the applicants were working for the past 3-2 decades and have been deprived of the assured daily wages all of on a sudden from December 2009 onwards. When they were initially retrenched by the fourth respondent in June 2009 an enquiry was ordered. The enquiry report shows very clearly that the applicants have been engaged in the Survey Section and entrusted with various items of indoor/outdoor work connected with the Survey section. They were paid from non-plan funds allocated for Land Revenue, Survey and Settlement Operations and District Administration and District Establishment. The minimum prescribed wage of Rs.115+variable Dearness Allowance was being paid. While concluding the report the third respondent has suggested that changing the casual labourer in every 89 days is causing lot of operational problems and hence standing order of the Administrator to engage casual labourers through Village Panchayath may be modified.

5. Reply statement clearly shows that the engagement of labourer through Village Panchayath is for the implementation of the Mahatma Gandhi National Rural Employment Guarantee Scheme (in short MGNREGS). This scheme was introduced to generate employment in villages and to entrust the work connected with all developmental schemes of the villages to those labourers who are registered with the Panchayaths. The Village Panchayath was

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instructed to issue job cards to all willing people above the age of 18 years and to provide an opportunity for employment for a minimum of 100 days in a year under MGNREGS. The Government of India has allocated funds under the plan head specifically for this purpose. This scheme never contemplated engagement of casual labourers for items of work in administrative and operatives office through the aegis of the Village Panchayaths. The objective of MGNREGS was to ensure that infrastructural development work in the village like laying roads, provision for drinking water, rural electrification etc is got done through the unemployed villagers. The payment to the labourers engaged under the MGNREGS was to be effected through Banks or Post Offices ie; an agency which is other than the one which got the work executed

6. In this particular case the applicants have been engaged in various years ie; from 1989 to 2003 while the MGNREGS was launched in the year 2005 and allocation of funds was done under the plan head. Here the village panchayath is instructed to send labourers registered with them to various offices, to grant equal opportunity in employment to all the registered labourers. In the Annexure A-2 enquiry report it is shown clearly that the payment for the casual labourer engaged in offices is being effected from non-plan funds. Therefore, it leaves room for doubt about the proper implementation of the MGNREGS if labourers are engaged to execute items of work other than developmental schemes. The manner of accounting of funds under plan and non-plan heads also raises a moot question.

7. DOPT has issued very strict instructions not to engage full time casual labourers right from 1986 onwards. However, it has permitted engagement of part time casual labourers whenever there is an imperative need. It is a fact that back door entry of countless number of casual labourers will pose a huge problem for the administration to meet their demand for regularisation on a later

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date and will also result in various types of malpractices. However, it is seen that respondents in order to tide over administrative contingencies, often resort to engaging casual labourers, giving them a break after 89 days. In this case first applicant has averred that he was engaged after a regular selection and is working right from 31.05.1985 onwards. So are the other two applicants who are working from 1985 and 2003. It is not correct to put them on par with those labourers who are supposed to be registered with the Dweep Panchayath, to exclusively carry out the work relating to execution of schemes under MGNREGS. The second applicant was attending to typing work and computer operations. They cannot be deprived of their livelihood, after their services were utilised for so long by the respondents. The respondents have not elucidated about the need, which necessitated, their engagement for so many years. Were they utilised against vacant posts or in excess of the sanctioned strength or as and when need arose for assistance in survey operations? This point is not answered by the respondents who filed a brief reply. The labourers registered with the Village Panchayath are to be rightly deployed, for execution of developmental schemes, in villages.

8. In view of the above, this O.A is disposed of with a direction to the respondents to consider the Annexure A-5 representation of the applicants to examine the issue, of their re-engagement as full time/part time casual labourer as per the administrative requirement, in the light of the observations supra and pass a speaking order within a timeline of two months.

(Dated this the 24th day of March..... 2011)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER