

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 572/89
T.A. No.
XXXXXX

109

DATE OF DECISION 18.1.1991

Smt.M.Leela Chellappan Applicant (s)

Shri M.Rajagopalan Advocate for the Applicant (s)

Versus

Port Health Officer, Respondent (s)
Port Health Organisation,
Willington Island, Cochin-682 009 and 3 others

Mr.A.A.Abul Hassan Advocate for the Respondent (s)

CORAM: Mr.V.Radhakrishna Menon(R-4)

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

&

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? M
4. To be circulated to all Benches of the Tribunal? M

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

The applicant who has been working as Lower Division Clerk(L.D.C) in the Port Health Organisation at Cochin under the Ministry of Health has in this application dated 25.9.89 filed under Section 19 of the Administrative Tribunals Act prayed that the impugned order dated 25.8.89 at Annexure-A12 transferring her to the post of L.D.C in Port Health Organisation, Bombay or face termination of her services should be set aside and the respondents directed to regularise her appointment to the post of L.D.C with effect from 1.11.76 and keep her posted at Cochin in preference to respondent No.4. The brief facts of the case is as follows.

2. The applicant is a member of the Scheduled Caste and was appointed as an L.D.C in the Port Health Organisation on 1.11.76 through the Employment Exchange for a period of two months vide Annexure A1. The

post had fallen vacant following the suspension of the regular incumbent Shri Joseph and was to be filled up by a Scheduled Caste candidate. The applicant's name was sponsored by the Employment Exchange and interview was conducted and the applicant was appointed with effect from 1.11.76 for a temporary period of two months. The respondents have also admitted that since 1.11.76 the applicant had been continuing without interruption as an L.D.C. It is also admitted that she was enrolled in the General Provident Fund Scheme and was granted maternity leave on two occasions. At the time of her appointment there were two posts of L.D.C and one post of U.D.C in the Port Health Organisation. The applicant was appointed to one of the two posts of L.D.C and one Sri.T.P.Antony who was holding the other post of L.D.C was promoted as U.D.C on adhoc basis with effect from 31.5.1980 when Sri Kuttappan who was the U.D.C retired. On 10.12.1982 Sri Joseph the permanent incumbent of the post of L.D.C to which the applicant had been temporarily appointed was dismissed from service. Thus one regular vacancy of L.D.C fell vacant. At that time both the applicant as well as respondent No.4 Miss.P.V.Rani were each holding the post of L.D.C on adhoc basis. The applicant has been representing even from 1981 for regularisation and had got reply dated 21.10.81 as at Annexure A5 that her case will be considered sympathetically and favourably when opportunity comes. She is aggrieved by the fact that when the opportunity came on 10.12.1982 on the dismissal of Sri Joseph, respondent No.4 Miss.Rani who had been appointed on compassionate grounds as an L.D.C on adhoc basis only on 24.8.1982 against the temporary vacancy caused by the promotion of Sri Antony was regularly appointed as an L.D.C with effect from 10.12.82 by an order passed on 23.1.1989. The applicant's grievance is that in spite of her being a member of the Scheduled Caste, in spite of her husband working in the same station, i.e, Cochin and in spite of the fact that she had been working continuously as L.D.C since 1976, she was not regularised against the vacancy of L.D.C but respondent No.4 who had joined as an L.D.C six years later on 24.8.82 was regularised. Even though she was entitled to be regularised without passing any further test, the applicant appeared and passed the Special Qualifying Examination

did not even appear. The held in 1987 conducted for regularisation of adhoc L.D.Cs while the R4 L applicant's further representation dated 2.2.89 did not bear any fruit while on the other hand respondent No.4 was regularised with effect from 10.12.82 vide the order dated 23.1.1989. Her further representation dated 17.4.89 (Annexure -A11) only resulted in the impugned order dated 25.8.89(Annexure-A12) in which she was informed that because of non-availability of vacancy in the cadre of L.D.Cs at P.H.O.,Cochin the applicant has either to go as an L.D.C. to Bombay or face termination of her services. The applicant has challenged the impugned order by claiming that as a member of the Scheduled Caste, being/fully qualified and selected through the Employment Exchange and having passed the Special Qualifying Examination in which respondent No.4 did not even appear and the post being held by her being reserved for Scheduled Caste she has superior claim to be regularised over respondent No.4 who joined as L.D.C. six years after her.

3. According to the respondents 1 to 3 on the sudden death of the father of respondent No.4 she had to be given compassionate appointment and since the policy is to give compassionate appointment on a regular basis respondent No.4 had to be accommodated to a regular post as soon as the same was available. The applicant cannot be regularised on the other post of L.D.C because Sri Antony who has lien on that post is working as U.D.C on an adhoc basis. They have also argued that the cadre of L.D.C is an all India cadre and "there is no obligation on the Government to fill up the vacant post if arises at Port Health Organisation, Cochin immediately by Smt. C.M.Leela Chellappan". They have, however, conceded that the applicant was not given exemption from appearing in the Special Qualifying Examination conducted for regularisation of adhoc L.D.Cs and she appeared in the examination and passed the same in 1987. They have also conceded that the applicant has been working as an L.D.C continuously since 1.11.1976. They have also conceded that ~~which the applicant was appointed~~ the post of L.D.C temporarily in 1976, ~~which~~ ~~which~~ was reserved for the Scheduled Caste.

4. Respondent 4 in the counter affidavit has stated that after the sudden demise of her father she approached the Directorate for a job on compassionate grounds and was appointed as an L.D.C in the Port Health Organisation on adhoc basis with effect from 24.8.82 against a temporary

vacancy. She was confirmed as an L.D.C with effect from 10.12.82 vide the order dated 23.1.89. She was subsequently reaffirmed by the order dated 10.3.89. She has argued that on her confirmation the applicant cannot claim her post.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is not disputed that the applicant was originally selected through the Employment Exchange in 1976 after passing various tests and she was fully qualified for the post of L.D.C. She was a member of the Scheduled Caste and the post was admittedly reserved for a Scheduled Caste. She was continuously working against that post without any interruption till now. She also appeared in the Special Qualifying Examination in 1987 for regularisation and she passed ^{which} the test. She had, therefore, every right to be regularised against the post/ she had been holding since 1976. A clear vacancy arose when the post which she was holding as a Scheduled Caste candidate became available on the dismissal of the regular incumbent Shri Joseph on 10.12.1982. An assurance had been given to her earlier on 21.10.81 at Annexure-A5 that "her case will surely be considered sympathetically and favourably as and when such opportunity comes in future in this organisation". In that context, therefore, she has every right to be regularised as an L.D.C at Port Health Organisation, Cochin. Unfortunately overlooking all her representations and the assurance which the respondent department had themselves given to her, the department confirmed respondent No.4 in 1989 against the post held by the applicant and that too with retrospective effect from 10.12.82. It is surprising that the respondent department is relying upon the policy to give regular appointment made on compassionate grounds but allowed respondent No.4 to remain adhoc from 1982 to 1989 when the clear vacancy was available from 10.12.82 itself. The department neither gave the applicant the post of L.D.C which she was holding even after she passed the Special Qualifying Examination nor did they regularise respondent No.4 who was appointed on compassionate grounds ^{but} let her remain on adhoc basis for seven years. The respondents have not shown us the policy statement or any instructions to show that

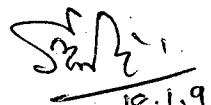
compassionate appointment can be made only against regular vacancies. If that were so, the purpose of such appointment giving immediate relief to the family of the deceased Government servant would be defeated because such appointment could be denied for lack of regular vacancy. We feel that to confront the applicant a Scheduled Caste lady whose husband is working at Cochin, a lady who had been originally appointed through proper selection and had passed the Special Qualifying Examination, with the choice of either to go to Bombay or face termination of services, is to say the least, cruel and against the avowed policy of the Government to help members of Scheduled Castes and women employees. The peremptory statements made/ respondents 1 to 3 in para 15 of their counter affidavit to the effect that there is no obligation on the Government to fill up the vacant post even if it arises at Cochin by posting the applicant, is not only against the spirit of the aforesaid policy, but is indicative of positive bias if not animus against the applicant. By transferring her to Bombay with the alternative of facing termination of her services at this stage when Sri Antony who is still officiating as U.D.C and has not yet reverted back as an L.D.C to render her surplus, supports the impression that the applicant is not being treated on normal terms. The learned counsel for the applicant indicated that with the establishment of Trivandrum as an International Airport some more posts of L.D.C in the Port Health Organisation would be shortly available at Trivandrum and the compulsion of the applicant's transfer to Bombay would not survive.

6. In the conspectus of facts and circumstances and in the interest of law, equity and social justice to the applicant who is a working Scheduled Caste wife whose husband is also working at Cochin, we allow this application set aside the impugned order at Annexure -A12 and direct that the applicant should be retained and regularised as an L.D.C in Cochin ^{if necessary} by creating a supernumerary post of L.D.C at ^{the} Port Health Organisation, Cochin till such time as a regular vacancy of L.D.C is made available to her either at Cochin or at Trivandrum. There will not be any financial involvement ^{if necessary} by the creation of the supernumerary post if the respondents 1 to 3 do not fill up the post of U.D.C by an additional hand or revert Sri.Antony as an L.D.C. The respond-

ents can keep the supernumerary post for the regularisation of the applicant and keep the post of L.D.C on which Sri Antony is holding the lien unfilled so that the work of the organisation in the clerical grade continues to be carried on as before by Sri.Antony, the applicant and respondent No.4. If Sri.Antony is regularised as a U.D.C the supernumerary post can be abolished and the applicant's lien transferred to the post of L.D.C released by Shri Antony. Sri.Antony has been holding the post of U.D.C so far for a number of years and he can continue to do so, so long as the applicant holds the supernumerary post keeping Sri Antony's post of L.D.C unfilled. If Sri. Antony is ultimately regularised as a U.D.C the applicant's lien can be transferred to his post of L.D.C ^{and the supernumerary post abolished.} If, however, Sri.Antony has to be reverted by induction of a regular U.D.C the applicant has to be held against the supernumerary post till such time as she is accommodated against a regular vacancy at Trivandrum. The additional financial burden on the supernumerary post in that remote contingency would however be fully justified for the sake of the compassionate appointment given to respondent No.4 and for granting the rightful claim of the applicant before us. There will be no order as to costs.


 (A.V.Haridasan)
 Judicial Member

18/1/91


 (S.P.Mukerji)
 Vice Chairman