CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ORIGINAL APPLICATION NO:580/2006
DATED THE 13Th DAY OF DECEMBER,2006

CORAM:
HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN

R.Unnikrishna Pillai
Padinjareplapparambil House,
Aroor P.O., 688 334. ... Applicant

By Advocate Shri Ashok B Shenoy

V/s.

1. Union of India
represented by the
Secretary to Government,
Ministry of Defence,
New Delhi.

2. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Headquarters, Naval Base,
Kochi-682 004.

3. The Administrative Officer Grade II,
Staff Officer (Civilian Personnel),
Office of the Flag Officer
Commanding-in-Chief,
Southern Naval Command,
Headquarters, Naval Base,
Kochi-682 004.

4. The Base Victualling Officer,
Base Victualling Yard,
Southern Naval Command,
Naval Base, Kochi-682 004. ... Respondents

By Advocate Mr.Rajeev for
Mr.TPM I Khan, SCGSC

This OA having been heard on 13th December, 2006, the Tribunal on the same day delivered the following:-

(ORDER)

Hon'ble Smt.Sathi Nair, Vice Chairman

The applicant has been absent on the last three dates.

OA is dismissed for want of prosecution.

Sathi Nair
Vice Chairman

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 580 of 2006

Tuesday, this the 21st day of August, 2007

CORAM :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

R. Unnikrishna Pillai,
S/o. Raman Pillai,
Padinjareplapparambil House,
Aroor P.O. : 688 534,
Alappuzha District (Casual Labourer) ... Applicant.

(By Advocate Mr. P. Ramakrishnan)

v e r s u s

1. Union of India, represented by
The Secretary to Government,
Ministry of Defence, New Delhi.

2. The Flag Officer Commanding in chief,
Southern Naval Command, Headquarters,
Naval Base, Kochi – 682 004

3. The Administrative Officer Grade II,
Staff Officer (Civilian Personnel)
Office of the Flag Officer Commanding-in-Chief,
Southern Naval Command, Headquarters,
Naval Base, Kochi – 682 004

4. The Base Victualling Officer,
Base Victualling Yard,
Southern Naval Command, Headquarters,
Naval Base, Kochi – 682 004 ...
Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The admitted facts in this case are as under :

(a) The applicant was initially engaged on 16.11.1987 till August, 1988 as casual labourer. This was not through any Employment Exchange sponsorship. Thereafter, again he was engaged in September, 1988 till 31.1.1989. As, according to the applicant he

had served for more than 120 days, his retrenchment was challenged in Labour Court vide case No. 5 of 1991. However, the same having been dismissed, the applicant filed I.D. No. 4350 of 1996 before Hon'ble High Court which had, vide order dated 21.2.2002 allowed the Petition with a direction to the Labour Court to pass a fresh award. Fresh award accordingly was passed vide order dated 27.08.2002 (Annexure A/1) whereby it was held that the action of the management of Base Victualling Yard, Southern Naval Command, Naval Base, Cochin, in terminating the services of the applicant with effect from 1.2.1989 was not justified and that he is entitled to reinstatement as casual labourer with continuity in service with effect from 1.2.1989 but without back wages. In compliance of the above order, the applicant was allowed to continue as causal labourer vide order dated 2.7.2003 (Annexure A/2). The applicant accordingly joined and by Annexure A/3, he made a representation for consideration of his case for grant of temporary status in accordance with Casual labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India 1993. Meanwhile, the department has filed Misc. Petition No. 68 of 2003 before the Labour Court for review of the order dated 27.8.2002 in I.D. No. 5/1991, which however, was dismissed vide order dated 24.08.2005 (Annexure A/4). The applicant renewed his request for temporary status after dismissal of the aforesaid review petition, vide Annexure A/5. As there was no response, the applicant has moved this OA seeking the following reliefs:

(i) Declare that the applicant is entitled to be conferred with "Temporary Status" with effect from 1.9.1993, in terms of "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India 1993" issued as per Office Memorandum No. 51016/2/90-Estt.(C) dated

10.9.1993 issued by the Government of India, Department of Personnel and Training, New Delhi;

(ii) Direct the respondents to forthwith confer "Temporary Status" on petitioner with effect from 1.9.1993 and afford him all benefits due thereunder, in terms of "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India 1993" issued as per Office Memorandum No. 51016/2/90-Estt.(C) dated 10.9.1993 issued by the Government of India, Department of Personnel and Training, New Delhi;

2. The respondents have admitted all the facts as stated above but their contention is as under:

(a) Vide Annexure R/2 O.M. dated 12.07.1994, the nodal Ministry (DOP&T) clarified that since it is mandatory to engage casual employees through Employment Exchange, the appointment of casual employees without sponsoring through Employment Exchange is irregular and such casual employees cannot be bestowed with temporary status. It has also been clarified in the said O.M. that for grant of temporary status to such casual employees, there is no age limit prescribed; nevertheless the conditions regarding age and educational qualifications prescribed for regularization in the relevant recruitment rules should, however, be followed.

(b) To substantiate their contention, the respondents have relied upon the recent Constitution Bench judgement in the case of Uma Devi vs. State of Karnataka, 2006 (4) SCC 01.

(c) Applicant's name is not available in the gradation list.

3. Learned counsel for the applicant submitted that when the Labour Court has ordered reinstatement as early as in 2002 and the applicant got reengaged in 2003, his request for temporary status in accordance with rules should have been considered long back in accordance with the 1993 Scheme.

4. Learned counsel for the respondents however, submits that since the applicant's engagement was through back door and in view of the clarification given by the DOP&T, the case cannot be considered for temporary status.

5. Arguments were heard and documents perused. It was in 1988 that the applicant was first engaged before his termination in January, 1989. In Union of India vs. N. Hargopal, 1987 (3) SCC 308, the Apex Court has held as under :

> *"4. It is evident that there is no provision in the Act which obliges an employer to make appointments through the agency of the Employment Exchanges. Far from it, Section 4(4) of the Act, on the other hand, makes it explicitly clear that the employer is under no obligation to recruit any person through the Employment Exchanges to fill in a vacancy merely because that vacancy has been notified under Section 4(1) or Section 4(2). In the face of Section 4(4), we consider it utterly futile for the learned Additional Solicitor General to argue that the Act imposes any obligation on the employers apart from notifying the vacancies to the Employment Exchanges. The learned Additional Solicitor General invited our attention to the speech of the Minister of Labour and Employment and Planning (Shri Nanda) made at the time of the introduction of the Employment Exchanges (Compulsory Notification of Vacancies) Bill. Far from being of any assistance to the learned Additional Solicitor General, the speech appears to be against his submission. In his speech, the Minister quoted from the report of the Training and Employment Services Organisation Committee and observed that the recommendation of the Committee offered a full explanation of the provisions of the Bill. The recommendation of the Committee which he quoted was:*
>
> > *Though we have not, for the present, recommended compulsion on private employers to recruit through the Employment Exchanges, we recommend that they be required on a compulsory basis to notify to the Exchanges all vacancies, other than vacancies for unskilled categories, vacancies of very temporary duration and vacancies proposed to be filled through promotion.*
>
> *The Minister further said:*
>
> > *The main thing is that an obligation is being placed that after this legislation becomes operative, from that date, the employer in every establishment in the public sector shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such Employment Exchanges as may be prescribed. And so far as the private sector is concerned, there is this further qualification that the government concerned may specify by notification that the employer in every establishment in private sector or every establishment pertaining to any class or*

> *category of establishments in private sectors shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such Employment Exchanges as may be prescribed. This is the kernal of this provision. This is the main object, that is, an obligation placed on the employer to notify the vacancies that may occur in their establishment before filling those vacancies.*

The Minister was conscious that there was a likelihood of the Bill being misunderstood as compelling the employers to make appointments through the Employment Exchanges only. He clarified the position saying:

> *The misunderstanding is as if this Bill gives power to the Government to compel the employers to recruit only such persons as are submitted by the Employment Exchanges. That is not so. This compulsion extends only to notification of vacancies. Naturally the employer has to consider the names which are submitted by the Employment Exchanges but there is no compulsion that they must restrict the choice only to the least (sic list) that is submitted to them. Of course, there is also the objection from the other side that it may not go far enough. We believe that even this will make things very much better. In any case, when the Committee reported, they also suggested this much advance. At present, they said, we should have only compulsory notification, but not compel the employers to recruit only out of the list that is sent by the employment exchanges.*

5. *As we said the speech of the Minister, at the time of the introduction of the Bill, is totally destructive of the contention of the learned Additional Solicitor General that the employers are under an obligation to recruit persons for appointment through the Employment Exchanges only. The learned Additional Solicitor General requested us to give a purposive interpretation to the provisions of the Act and insist that employers, in making appointments, should restrict their field of choice to candidates sponsored by the Employment Exchanges. We are unable to appreciate the argument since there is no provision of the Act which requires interpretation by us and which we may reasonably interpret as compelling the employer to appoint persons sponsored by the Employment Exchanges. On the other hand, we have already referred to Section 4(4) which is explicit that there is no such obligation on the part of the employer. We also notice that the object of the Act is not to restrict the field of choice in any particular manner, but to enlarge the field of choice. That is why in his introductory speech, the Minister said:*

> *... a large number of employers, particularly in similar industrial establishments and in construction works, do not employ any scientific method, but depend for their supply of labour on agents or recruit in a haphazard manner from amongst those assembled at factory gates or at works sites. The methods adopted are not always dictated by a consideration of efficient service, but as more a matter of bestowing patronage and favour. This applies in varying degrees to a large number of employers.*

The Minister discussed the existing position and anticipated position in the following words:

> *The Act of notification of vacancies has important consequences. In the first place, so far as the employer is concerned, he will be placed in a position to have a much wider choice for the purpose of selection. Now, what is the present position? Any person knocks at the gate of the factory or the mill or*

other establishment and from those few who are there they choose. Now it would be possible for them to have a wider area of selection. The names of so many others who may not be able to go and knock a t every gate, can be submitted and out of them, the best can be selected. So far as the quoting of selection is concerned, it should improve because of the wider range of choice. On the side of the worker certainly it means a more equitable distribution of employment opportunities. It should not be necessary for a person to be all the day moving from place to place. It should be sufficient for him to register at a place, give all the particulars about his qualifications and then he should be sure that a t any rate, his name will be considered along with other names and there will be some regard for fitness in the choice of people who enter these new places for employment.

6. It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. ***We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges."***

6. From the above, it is clear that what was prevalent as of 1987 has been followed in the case of the applicant and what the Labour Court ordered has been implemented; the order having attained finality, the applicant is entitled to the benefit of continuous service which includes benefit of the grant of temporary status. Absence of the name of the applicant in the gradation list may be on account of the fact that the same was prepared prior to the order of the Labour Court. In fact, the respondents ought to have amended the gradation list once they have decided to implement the Labour Court's order.

7. In view of the above, the ***O.A. is allowed***. It is declared that the applicant is entitled to temporary status with effect from 1.1.1993 but his entitlement shall only be prospective (entitlement of pay and allowances at the prescribed pay scale etc.). Accordingly, his pay will be fixed on notional basis with effect from 1.1.1993 and on actual basis from the date of passing of the

order on temporary status. If according to the seniority, the applicant is entitled to regularization, the same shall be accorded, but subject, however, to his fulfilling the eligibility conditions viz., educational qualifications etc. In case of regularization, applicant's pay fixation shall be initially notional and it will be converted into actual basis from the date of issue of the order regarding regularization of the applicant.

8. The respondents are directed to take suitable steps to pass appropriate orders for grant of temporary status, revision of seniority list, fixation of pay (initially notional and actual from the date of issue of the order) and further regularization in accordance with the rules within a period of eight months from the date of communication of this order.

9. Under the circumstances, there shall be no order as to costs.

(Dated, the 21st day of August, 2007)

Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.