

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO. 595/2012

Dated the 21st day of December, 2012

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

K.N.Latha W/o Sivaraman ,Casual Labourer BSNL,
residing at Edachirappilly, Maradu P.O, Ernakulam-682304.

Applicant

(By Advocate Mr. T.R. Mohanakumar)

Vs.

- 1 The Chairman cum Managing Director
Bharath Sanchar Nigam Limited Corporate Office,
4th Floor, Janpath, New Delhi - 110001,
- 2 The Principal General Manager (Telecom),
BSNL, BSNL Bhavan, Kalathiparambil Road, Kochi-16.
- 3 The Chief Accounts Officer (TR) R, Bharath Sanchar
Nigam Limited, New CTO Building, Central Telegraph Office
BSNL Bhavan, Karakattu Road, Ernakulam, Kochi-16.
- 4 The Assistant General Manager (Administration)
O/o Principal General Manager, Telecom, BSNL Bhavan,
Kalathiparambil Road, Kochi-16.
- 5 The Divisional Engineer Vigilance
O/o Principal General Manager Telecom, BSNL Bhavan,
Kalathiparambil Road, Kochi-16.

Respondents.

(By Advocate Mr.T.C.Krishna)

The Application having been heard on 12.12.2012 the Tribunal delivered
the following:

O R D E R

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the refusal of the respondents in not
granting her conferment of temporary status and regularisation under the provisions
of Casual Labourers (Grant of Temporary status and Regularisation) Scheme 1989.

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2 According to the applicant, on completion of her SSLC (X Std.) she joined the Telecom as a Part-time Sweeper cum Scavenger for 6 hrs per day in the office of Divisional Engineer (Planning) at Pavureth building, Ernakulam from 1.6.1984 to 8.6.1984 for 8 days and thereafter from 1.9.84 to 30.11.1984 (for 70 days). She annexed Annx.A3 as proof of her engagement. It is further averred that she was further engaged as full time for 8 hours per day in the office of the General Manager, Telecom, Ernakulam SSA from 1.1.1986 to 31.12.89 without break. A certificate in this regard issued is produced as Annx.A4. She further averred that she was engaged as casual labour from 1.1.1990 to 31.12.1994 without break. A certificate in this regard issued by the Asstt.General Manager (Admn) is produced as Annx.A5. According to the applicant she has put in more than 15 years as casual labour in various sections of the respondent office. The applicant submitted her representation dated 7.2.2001 (Annx.A6) addressed to the 2nd respondent requesting for her regularisation which was forwarded to the Assistant General Manager (Estt) by Annx.A7. She has produced a copy of communication issued on behalf of the Principal General Manager TD, Annx.A8 stating that by a communication dated 15.2.2001 certain clarification was sought from the Chief Accounts Officer(TR)R who in turn informed to the Assistant General Manager that some work such as assisting in office work, special cleaning of section, delivery of letters and allied work are being got done through the applicant due to urgency/leave in the (TR) Rural Section. She further averred that it is evident from Annx.A8 that her services were utilised for similar works by different sections. She alleged that despite her regular engagement in the respondent BSNL for so many years she was not granted the temporary status or regularisation. She was constrained to file another representation, Annx.A10, to General Manager (OP). She alleged that even those casual labourers who worked in Creches were regularised by the respondent and the applicant was discriminated against. The applicant further averred that one Sri P.A.Pareeth, Divisional Engineer, Vigilance, BSNL, Ernakulam conducted an investigation on the engagement of casual labourer in the Division. In the investigation report dated 15.7.2003 submitted to the Principal General Manager Telecom, there was a mention of the applicant being engaged as Peon during the period 1.1.2003 to 30.6.2003 on daily wages. Thereafter the applicant was engaged through Contractors on 1.7.2006. The service under the the contractor was

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dispensed with on 4.9.2009. Again she submitted representations Annx.A12 and A13 stating that her termination was illegal and she is entitled to regularisation in accordance with the Scheme of 1989.

3 The applicant is claiming her regularisation on the grounds that she has rendered more than 15 years full time service, instead her service was terminated w.e.f. 4.9.2009, she was not given any notice before termination, the respondent department formulated a scheme for conferring temporary status and regularisation to casual labourers in 7.11.1989 which was modified in 17.10.90 according to which she is entitled to be conferred with temporary status.

4 The respondents filed reply statement opposing the O.A. They submitted that the applicant was engaged for part-time sweeping work in the leave vacancy of a part-time official for a period of only 8 days from 1.6.84 to 8.6.84 and in the leave period of another part-time official from 1.9.85 to 30.11.85 (70 days). Thereafter she worked as a labourer under contractors. They denied that she was engaged by any departmental authority or appointed as casual mazdoor after following the normal recruitment procedure. If she was engaged by the respondent as casual labour, she should have been issued with a casual labour employment card and the payment of wages would have been done through muster rolls. No such evidence was produced by the applicant to prove that she was engaged as casual labour. They further stated that her representation Annx.A6 itself proves that she was working in various sections on remuneration through ACG 17 as a labour under contract as laid down in Rule 418 of Chapter 9 P&T Manual Vol.II. It is further submitted that the Govt of India has taken a policy decision that no casual labour/mazdoor are to be engaged in any of the offices of the Telecom Department and in case of any exigencies, contract labourers are to be engaged. They further submitted that by Annx.A13, the applicant had admitted that she was working on contract basis from 2001 to 4.9.2009. Therefore, the claim of the applicant that she was engaged as full time casual labourer from 1.1.86 to 4.9.2009 is misconceived. They further submitted that the Govt of India imposed a ban on recruitment of casual mazdoors in the year 1984 and further on 14.8.1984 issued orders to strictly follow the instructions in this regard. It is further submitted that the Annexure A-4 certificate produced by the applicants is manipulated and fabricated as the same differ from Annx.R4(g) produced by the respondents. They submitted that casual

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labourers who have rendered a continuous service of at least 240 days in an year could be granted temporary status. Infact, those casual labourers who were not granted temporary status, filed O.A 1027/91 and this Tribunal directed by its order dated 08.04.1993 to consider the case of those who were engaged before 07.06.1988 for grant of temporary status. The applicant's engagement as a part-time labourer was only for 78 days, she cannot be granted temporary status. The work of cleaning and sweeping is now being done on contract basis.

5 The applicant filed rejoinder mainly reiterating the facts as stated in the OA. She further submitted that the respondents have granted temporary status on 29.12.1989 to 9 casual labourers who are similarly situated like the applicant and she alone was not given such benefit. As regards payment of wages by ACG 17 form is concerned, the applicant averred that all the casual labourers including the casual labourers regularised are being paid through ACG 17.

6 The respondents filed additional reply and stated that the applicant was engaged only to do piece-work as laid down in Rule 418 of Chapter 9 of the P&T Manual Vol.II on Contract basis for which payments were made by ACG17.

7 Heard learned counsel for the parties and perused the records.

8 The main contention of the applicant is that her claim for regularisation was not considered and that she was left without being regularised, to face economic hardship.

9 It is true that the Government of India has formulated a scheme for casual labourers for grant of temporary status and regularisation of service. The scheme was applicable to casual labourers working in the Government of India and its subordinate offices on the date of issue of the order. The scheme envisages temporary status to all casual labourers in employment on the date of issue and who had rendered a continuous service of at least 240 days in a year. In the pleadings the undisputed period of engagement with the respondents is only 78 days that too on leave vacancy. The fact that for other periods during which she was stated to have been engaged directly with the respondents could not be established by the applicant. The engagement of the applicant according to the respondents was to do piece-work as laid down in Rule 418 of Chapter 9 of the P&T Manual Vol.II on Contract basis for which payments were made by ACG 17. Therefore, no employee employer relationship subsists. The respondents pointed out that for non-

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consideration of her case for conferment of temporary status, in 1989 along with others, She has approached this Tribunal after 23 years. Moreover, they produced Annexure R-4(g) which is Annexure A-4 in the O.A. The last period of engagement is shown as 01.01.1989 to 31.01.1989 in the copy taken from the office file at Annexure R-4(g) while Annexure A-4 shows the period as 01.01.1989 to 01.12.1989. They affirm that, month is shown as December 1989 instead of January 1989 by inserting the numeral 2. It is a fact that she could not get casual service period for conferment of temporary status in 1989 and later in 2000 when BSNL became a Corporation, because she was not directly engaged as casual labourer by the respondent.

10 The applicant rendered her service as a petty contractor. As such no relationship of employer and employee in law subsists between the principal employer and contractor. Contractor labour is not prohibited for work of an occasional or seasonal nature. No notification was issued under Sec.10(1) of the Contract Labour (Abolition & Regulation) Act, 1970 (for brevity CLRA). Section 10 CLRA Act reads as under:

"10. Prohibition of employment of contract labour- 1) Notwithstanding anything contained in this Act, the appropriate Govt may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment; 2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Govt shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant facts, such as (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; (d) whether it is sufficient to employ considerable number of whole time workmen.

Explanation - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate government thereon shall be final."

12 In the instant case, undisputedly, the applicant along with others worked as petty contractors. They received monthly payment from the principal employer. The applicant could not produce any documents to show employer - employee



relationship between the parties. No industrial dispute appears to have been raised. No notification seems to have been issued for abolition of Contract Labour, under Sec.10(1) of the CLRA Act, 1970. The applicant failed to establish the fact that the work assigned to her was of perennial nature. BSNL having its own recruitment rules apparently follows the regular process of selection under the relevant rules. Therefore, on the basis of settled legal position and facts before me, I am of the considered opinion that the applicant failed to establish any case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed.

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I therefore dismiss this OA. No costs.

Dated 21st December, 2012



K. NOORJEHAN
ADMINISTRATIVE MEMBER

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