

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 615 of 2012

MONDAY, this the 03rd day of March, 2014

CORAM :

HON'BLE Mr. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Smt. E.K. Vijiny,
W/o. Late A.V. Jyothidas,
Casual Labourer (Peon),
National Sample Survey Office (FOD),
Kakkanad-CESEZ, Sub Regional Office,
Kochi – 682 037, and residing at
Ammancheril House, Karumasserry P.O.,
Ernakulam : 683 579.

.... Applicant.

(By Advocate Mr. N. Unnikrishnan)

versus

1. Union of India, represented by
The Secretary to the Government,
Ministry of Statistics and Programme
Implementation, Sardar Patel Bhavan,
New Delhi : 110 001
2. The Director General,
National Sample Survey Office (FOD),
East Block-6, Level 6-7, R.K. Puram,
New Delhi : 110 066
3. The Deputy Director,
National Sample Survey Office (FOD),
CGO Complex, Vellayani P.O.,
Trivandrum : 695 522
4. The Assistant Director,
National Sample Survey Office (FOD),
Sub Regional Office, 3rd Floor, C-Block,
C-1 Wing, Kendriya Bhavan,
Kakkanad, Kochi – 682 037
5. The Employment Officer (EMI),
The District Employment Exchange,
Ernakulam.

... Respondents.

(By Advocate Mrs. Deepthi Mary Varghese, ACGSC (R1-4) and
Mr. M. Rajeev, G.P (R-5)

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This application having been heard on 07.02.2014, the Tribunal on 03.03.14 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant joined duty on 01.08.2008 as casual labourer in the National Sample Survey Office (FOD), Sub Regional Office, Kakkanad, Kochi, at a minimum wage of Rs. 150/- per day. The minimum wage was raised to Rs.180/- by the Government of Kerala vide order dated 28.07.2009, with effect from 01.08.2009 and to Rs.300/- vide order dated 02.05.2011, with effect from 01.04.2011. She had made representations vide Annexures A4 and A5 dated 12.06.2012 for the enhanced minimum wage. All of a sudden she was asked orally not to attend work from 09.07.2012 without any reason. She represented against the denial of employment orally vide letter dated 11.07.2012 at Annexure A-6 to the Deputy Director, National Sample survey Office, Thiruvananthapuram. As her representations were left unanswered, she filed this O.A on 18.07.2012 for the following reliefs :

- (i) Call for the records leading to the denial of employment to the applicant;
- (ii) To declare that denial of employment from 09.07.2012 orally by the respondents to the applicant are bad in law;
- (iii) To declare that the applicant cannot be dispensed from service except in accordance with law and, therefore, she is entitled to be continued in work;
- (iv) To direct the 4th respondent to permit the applicant to work forthwith without any interference;
- (v) To direct to treat the period from 09.07.2012 as duty for all purposes;
- (vi) Issue appropriate order or direction for other reliefs as this Hon'ble Tribunal may deem fit, just and necessary in the interest of justice to the applicant.

2. The applicant contended that she has been continuing from 01.08.2008 and discharging the duties of Office Clerk, Peon and other duties assigned to her from time to time. She is a widow with 02 children. Her work is taken away without any reason orally. There is no justification for denial of employment to the applicant. She was selected on the basis of her performance in the interview on being sponsored by the Employment Exchange. Therefore, she was not appointed de hors the rules. A casual labourer cannot be substituted by another casual labourer. She was selected when Shri Sajimon, Peon, was transferred to Kottayam. Her monthly wages are being paid belatedly. The decision in Umadevi's case does not squarely apply to her case as the respondents do not make direct selection to the post of Class-IV other than through Employment exchange. The persons appointed as casual labourers sponsored by the Employment Exchange have been regularised as Peons by the respondents. She has not only been denied employment but also the chance for regularisation as in the case of others by the respondents.

3. Per contra, the respondents averred that the applicant was paid payments for the days she had worked as daily wager at the rates in force from time to time. The services of the casual labourers are availed on the basis of the requirements at each time. The same does not give any right to anybody for continuation or regularisation when there is no work. The arrears of wages for which the applicant is eligible has been disbursed to her on 17.10.2012 as per the latest revision of wages prescribed by the Government. In the light of the judgement of Hon'ble Supreme Court in Secretary, State of

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Karnataka and Others vs. Umadevi and Others, the applicant cannot claim continuation of her engagement as daily wager for an indefinite period as a matter of right. All those persons mentioned by the applicant of having been regularised, were directly appointed against the regular posts whereas the applicant has been employed as casual labourer. Hence, she has no legitimate claim to equate her case with those persons. The discontinuation of her casual engagement cannot be construed as denial of employment.

4. I have heard Mr. N. Unnikrishnan, learned counsel for the applicant, Ms. Deepthi Mary Varghese, learned ACGSC for respondent Nos. 1 to 4 and Mr. M. Rajeev, learned GP for respondent No. 5 and perused the records.

5. Vide interim order dated 24.07.2012, this Tribunal ordered that the applicant should be permitted to work in the office till the disposal of the O.A. From the facts of the case, it is clear that though the applicant had made three representations, she has not been favoured with any reply. The discontinuation of her engagement as casual labourer was by an oral order without assigning any reason whereas the order Annexure A-1 engaging her as casual labourer was a written one. The respondents have not denied the contention that the applicant was asked orally not to attend the work with effect from 09.07.2012. The engagement of the applicant on daily wage basis may not bestow any claim for regularisation or continuation for an indefinite period. But there is no explanation forthcoming from the respondents how all of a sudden from 09.07.2012 there was no work for the applicant or how the work which she was doing is to be carried out. The arrears of wages for which the applicant is eligible has been disbursed to the applicant on 17.10.2012, as

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per the averments of the respondents. But it was after filing of this O.A. on 18.07.2012. It is obvious that her demand for minimum wages to which she was entitled, provoked the respondents to disengage her. As she was disengaged without any rational basis, it has to be held illegal and unjustified.

6. The respondents have averred in the reply statement that those who were regularised were directly appointed. In support, they have produced copies of the appointment orders of certain persons ar Annexure R-2. A perusal of the memoranda dated 09.11.1987 and 16.05.1990 would show that S/Shri A.R. Madhu and P.K. Salimon were offered temporary post of Peon on the recommendation of the Departmental Promotion Committee (DPC). Recommendation of the DPC is in respect of persons who ~~are~~ already in service only, for promotion. The said memoranda submitted by the respondents themselves go against their submission that the above mentioned persons were directly appointed. The contention of the applicant that she was engaged on daily wage basis when Shri Salimon, Peon, was transferred to Kottayam, is not refuted by the respondents. It would mean that the respondents have appointed her against a regular post. As a casual labourer cannot be substituted by another casual labourer, the respondents are bound to engage the applicant so long as there is work. The engagement of a casual labourer on daily wages is need based; but the need cannot be at the will and pleasure of the respondents for making appointments displacing one casual labourer with another. If the work for which the applicant was engaged no longer exists, how it came out has to be explained and what they propose to do if the need for a casual labourer arises in future, in respect of the applicant.



7. In the conspectus of the facts and circumstances of the case, I am of the considered opinion that the respondents have not acted properly. Hence the respondent No. 3 is directed to consider the representation of the applicant dated 11.07.2012 at Annexue A-6 as per rules and on merit and in the light of the observations made above and communicate the decision thereon as early as possible. Till the applicant is informed of the decision on her representation, the interim order granted on 24.07.2012 will continue to operate.

8. The O.A is disposed of as above with no order as to costs.

(Dated, the 03rd March, 2014)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

CVR.