

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 74/90

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DATE OF DECISION 28-2-1991

Pennamma _____ Applicant (s)

Mr K Ramakumar _____ Advocate for the Applicant (s)

Versus

The Union of India rep. by _____ Respondent (s)
the Director General of Posts,
New Delhi and others.

Mr TPM Ibrahim Khan _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

The Hon'ble Mr. AV 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? Y
4. To be circulated to all Benches of the Tribunal? Y

JUDGEMENT

Shri SP Mukerji, Vice Chairman

In this application dated 21.1.90, the applicant who was working as a Part time Contingent Sweeper in the Head Post Office, Alleppey has challenged the impugned order dated 18.1.90 (Annexure-A) terminating her services as Part time Contingent Sweeper with immediate effect and prayed that the respondents be directed to reinstate her with all consequential benefits.

2 The applicant was admittedly appointed as a Part time Contingent Sweeper at Alapuzha Head Post Office with effect from 9.2.87, since which date she has been working continuously without any break. On ^{the basis} ~~receipt~~ of the Annexure-A impugned order dated 18.1.90, her services were terminated with immediate effect.

According to her, since she had completed 240 days of service

in every completed year, her service could not be terminated summarily without notice. According to her, she has been receiving monthly salary and that two more fresh hands who were also appointed as Part time Contingent Sweepers in April, 1987 are still continuing. She has also alleged that the official who has signed the impugned order had no authority to do so as he was only temporarily officiating for a period of one month and that it was done for some vested interest. She has also challenged the impugned order as violative of the provisions of the ID Act and Articles 14, 16 and 21 of the Constitution.

3 According to the respondents, in accordance with the instructions issued by the Postmaster General, Kerala by Annexure R3(A) dated 5.9.88, casual mazdoors should be the nominee of the Employment Exchange unless the persons so employed were on casual employment before 7.5.1985. As the applicant had not been sponsored by the Employment Exchange, her retention in service was found to be irregular. The Postmaster, Alapuzha accordingly issued orders terminating the applicant's service and filled up the vacancy through Employment Exchange in accordance with the directions of the Superintendent of Post Offices, Alapuzha. However, in compliance with the interim orders of this Tribunal, the applicant was re-admitted on duty with effect from 6.2.1990. As regards retention of services of two casual mazdoors who were inducted in April, 1987, the respondents have admitted that in April, 1987 when

Alapuzha Head Post Office ^{was} converted into a Model Post Office

as casual
they were engaged ^{as} mazdoors on daily wages for washing
and cleaning of counters, though they ^{were} ~~are~~ not actually
employed as contingent sweepers as stated by the applicant.
as compared to the applicant
According to the respondents, since these two casual
mazdoors are doing entirely different work, though on
casual basis, their cases cannot be compared with that
of the applicant.

4 We have heard the learned counsel of both the
parties and gone through the documents carefully. The
impugned order of termination of the applicant's service
without any notice or compensation when the Posts
and Telegraph Department has been considered to be
as
an 'industry' and the applicant/a 'workman' is violative
of the protective and compensatory provisions of Chapter
Industrial Disputes
4A of the ID Act. The respondents have admitted that
the two casual Part time Sweepers who were recruited
in April, 1987 i.e., after such recruitment ^{of} the applicant
have been retained in casual employment. However, it
is not indicated whether these two workers were recruited
through Employment Exchange. Accordingly, the termination
of the applicant's casual service while retaining her
juniors is violative of Article 14 and 16 of the
Constitution.

5 Earlier, a similar case came up for adjudication
in OAK 534/88. In its judgment dated 3.11.89 the Division
Bench of this Tribunal held as follows:

" It is difficult to believe that from January,
1987 onwards for nearly two years the applicant
was being allowed to work as a substitute when

the regular incumbent had retired in December, 86. On a perusal of the attendance register produced by the respondents we are convinced that Anna Daniel, the applicant has been employed as a part-time sweeper from January 1987 onwards in her own right and not as a substitute for her mother Elizabeth Rockey. In these circumstances we are of the view that it will be highly unjust for the respondents to terminate the casual employment of the applicant by filling the vacancy by another provisional employee. The applicant has claimed that she is entitled to be considered for regularisation under the scheme for absorption of casual employees in the regular establishment. But respondents have contended that the scheme for regularisation takes in only casual workers who were employed more than one year prior to 1985. There is nothing on record to show that the scheme for regularisation of the casual mazdoors has been extended to casual labourers who commenced their employment after 7.5.1985. Anyway, since the applicant had been working as a part-time sweeper on a casual basis from January, 1987 onwards, the respondents have to be restrained from terminating her service for filling the vacancy by another provisional appointment.

In the result the application is partly allowed. The respondents are directed to allow the applicant to continue and not to terminate the service of the applicant as part-time sweeper in the office of the second respondent, for filling the vacancy by a provisional employee. It is further directed that, incase the scheme for absorption of part-time employees who started their casual employment in January, 1987, the applicant also may be considered for absorption taking into consideration of her seniority as casual labourer".

6 In Daily Rated Casual Labour employed under P&T Department etc., Vs. Union of India (1988) 1 SCC 122, the Supreme Court held as follows:

"Of those rights the question of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production".

7 The respondents relying on the Postmaster General's circular dated 5.9.88 (Annexure R3(A) does not seem to

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be fully warranted for termination of the applicant's service. Para 2 of this circular is quoted below:

" 2. The following are the instructions.

2.1 Casual mazdoors should not be engaged, as Group 'D' or Postman in a circumventing ban on creation of posts. In other words, casual mazdoor should not be engaged in an office as a continuing augmentation of the sanctioned strength of Group 'D' or postman in any office. If, for justification beyond doubt, engagement of regular casual mazdoor in such augmentation is inescapable, it will require the prior approval of PMG, whether full time or part time. For that, proposal should be made by the Divisional head to the controlling Director who will report it to the PMG through IFA. Upon such specific approval, casual mazdoor will be engaged strictly according to the terms of approval. This does not apply to engagement of part time contingent Sweeper and scavenger strictly according to the standard which will continue to be governed by the existing orders". (Emphasis added).

The above will show that the restriction imposed by the aforesaid circular on employment of casual workers are not to be applied for engagement of Part time Contingent Sweepers, like the applicant whose employment continue to be governed by the orders existing before the circular was issued.

8 The same circular lays down that the casual mazdoors whether full time or part time should be nominees of the Employment Exchange unless the person was in casual employment in the unit before 7.5.1985 on a regular basis. However, the facts remain that it is the respondents who employed the applicant after 7.5. 1985 direct without being sponsored by the Employment Exchange and continued to retain her in service continuously without break for three years. The respondents, therefore, cannot give retrospective effect to the circular of 5th September, 1988 to dismiss the applicant summarily on the ground that she was not

employed through Employment Exchange. They are estopped from doing so by the principle of promissory and equitable Estoppel. In KC Rajeevan and 15 others Vs. State of Kerala and 2 others- (1991) 1 SCC-31 the Supreme Court while dealing with the case of regularisation ~~on behalf~~ of the employees observed as follows:

"9. India is a developing country. It has a vast surplus labour market. Large scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take-it-or leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations enacted from time to time. One such device adopted is to get the work done through contract labour. It is in this backdrop that we must consider the request for regularisation in service".

9 The principle of hire and fire in ~~different~~ ^{public} services has become a historical past and thanks to our Constitution and ^{the} ~~judge-made~~ law, has been considered to be ^{an} anathema to the 'core and conscience' of our Constitution. In that context the impugned order ~~by~~ terminating the services of the applicant who had been engaged as Part time Contingent Sweeper for three years has to be struck down. Accordingly, we allow the application, set aside the impugned order dated 18.1.90 at Annexure-A and direct the respondents that the applicant should be continued as part time contingent sweeper till any casual work ^{er} engaged after she had been employed on 9.2.87 is retained. She should be considered for being given temporary status and then ^{for being} ~~regularised~~ ⁱⁿ ~~for~~ ^{service in}

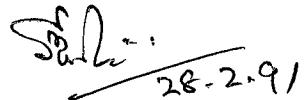
accordance with any scheme for grant of temporary status and regularisation of casual labourers which the Department of Posts may have initiated or propose to initiate.

10 The application is disposed of accordingly and there will be no order as to costs.


28-2-91

(AV Haridasan)
Judicial Member

28-2-1991


28-2-91

(SP Mukerji)
Vice Chairman