IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 86/89 199

DATE OF DECISION : 31.8.1990.

KK Dharman and 5 others — Applicant (s)

M/s TA Rajan & Alexander Joseph — Advocate for the Applicant (s)

Versus

Union of India rep. by the Secretary, Deptt. of Personnel & Administrative Reforms, New Delhi and another — Respondent (s)

Mr PK Sureshkumar, ACGSC — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. AV Haridasan, Judicial Member

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

JUDGEMENT

Shri NV Krishnan, Administrative Member

The applicants were employed as casual labourers in the Base Victualling Yard, Naval Base, Cochin for various periods from 1982 to 1989. They were paid weekly salary. However, when they reported for duty on 13.1.89, it is alleged they were told that their services have been terminated though written orders were not served on them. It is against such alleged termination that the applicants have approached us seeking a direction to the respondents to reappoint the applicants in service in Group D posts with restrospective effect. In support of this demand it is stated that similarly situated persons have been given

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such relief and that further, the respondents were unjustified in terminating the services of the applicants without complying with Section 25 of the ID Act.

2 The respondents have denied that the applicants are entitled to any relief. They were only casual labourers appointed to unload and transport the goods such as sugar, rice, pluses etc. supplied to the Base Victualling Yard by the Army Supply Corps in rail wagons without any advance notice. Hence, to meet the unforseen demand of labourers to do this job, the applicants were employed on a casual basis as and when such work had to be done.

3 The respondents also state that the applicants cannot benefit by certain instructions which have a relevance.

(i) Thus it is contended that the applicants cannot get the benefit on the instructions of the Ministry of Home Affairs dated 13.10.83 (Annexure R2(b)) for regularisation which is subject to certain conditions, one of which is that they should have been recruited before 21.3.79. As none of the applicants was appointed before 21.3.79, they are not entitled to the benefit of these instructions.

(ii) The respondents further contended that the other instruction relevant in this regard is the Ministry of Personnel letter dated 7.5.85 (Annexure R2(c). That circular relates to the regularisation of casual labourers in Group D posts xxxx even if they had not been initially recruited as casual labourers through the Employment Exchange. This was a one time measure to relieve the hardship of such casual labourers and was applicable to

casual labourers recruited prior to 7.5.85 provided they are otherwise eligible for regular employment in all respects. In this regard, it is submitted by the respondents that the applicants 1 & 2 though recruited before 7.5.85 are over aged for regularisation being 34 years and 34½ years respectively, while the upper age limits for Group D posts according to the Recruitment Rules is 30 years. Hence, the benefit of this circular cannot be given to the first two applicants, even though they were recruited before the issue of Ext.R2(c) circular. The other applicants being recruited after that date are outside the purview of R2(c) circular.

4 We have perused the records and heard the learned counsel.

5 On one issue, namely, that the Base Victualling Yard is an industry and therefore, subject to the provisions of the ID Act, 1947 there has not been much dispute. In this connection, the applicants have filed Annexure IV document which is a letter dated 8.5.84 from the 2nd respondent to the Joint Secretary, Cochin Naval Base Employees Union stating that Shri ER Sreenivasan, Assistant Store Keeper of the Base Victualling Yard, Cochin has been recognised as a ' protected workmen' in terms of sub-Section 3 of Section 33 of the I.D.Act,1947. The learned counsel appearing for the respondents did not contest the proposition that this establishment is an industry in the light of the Annexure-IV letter. However, he contended that even so, the applicants would not be entitled to any relief because the applicants were not retrenched in terms of Section 2(00) of I.D. Act. This

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is due to the fact that 'retrenchment' does not include the termination of services of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry. It was contended that the employment was in the nature of weekly contracts which came to an end at the end of the week when wages were paid and renewed again whenever found necessary.

6 We are not impressed by this argument because there is no written order or contract to establish this point. Further, this submission militates against the earlier objection of the respondents that they were employed to meet the unforseen commitments from time to time which would not have been amenable to execution of regular contracts. We are, therefore, of the view that the services of the applicants have been terminated and this termination amounts to retrenchment under the provisions of I.D. Act.

7 A perusal of Annexure R2(A) produced by the respondents indicates that all the 5 applicants have continuous service for a period of not less than one year as on the date of their termination in January,89 and hence, their retrenchment will be governed by the provisions of Section 25 F of the I.D Act. Admittedly, the condition precedent to retrenchment in accordance with law as mentioned in 25 F have not been complied with by the respondents. Hence, the applicants are entitled to relief under Section 25 F of the I.D.Act.

8 The learned counsel for the applicants has drawn our attention to the Ministry of Personnel O.M. No.49014/2/86 Estt(C) dated 7.6.88, a copy of which has been placed on the file. This OM dated 7.6.88 also contains general instructions for regularisation of casual labourers and the counsel contended that this instruction should apply to all the applicants. No doubt, under clause-(X)of para-1 of this letter, there is a provision that for the purpose of regularisation, casual labourers may be given relaxation in the upper age limit, only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post. In other words, at the time of regularisation, if the casual labourer has become over aged, then his notional age at the time of regularisation should be determined to see if he is within the age limits and this should be done by deducting from his actual age the number of years of service, he has put in as a casual labourer reckoning from the date of his initial engagement. This, however, is permissible only if on the date of initial engagement/he is as casual labourer not overaged.

9 In so far as the applicants 3 to 6 are concerned, it was submitted that no objection has been raised by the respondents that they are over aged at the time of their initial engagement. These 4 applicants, therefore, are entitled for regularisation in the light of the provisions contained in the circular dated 7.6.88.

10 As regards the 1st and 2nd applicants, ~~xxx xxxxxxxxxx~~, the respondents have given sufficient proof that they were over aged when they were engaged for the first time as casual labourers and therefore, they will not be covered by the circular dated 7.6.88. In this regard the counsel for the applicants contended that if at all an objection on the basis of upper age limit had to be taken into account, this should have been done at the time of initial engagement as casual labourers. He claims that such an objection cannot be taken at the time of regularisation. He relies for this proposition on the judgment of the Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation 1990(1) SC-361.

11 We have considered this matter. The facts of that case are quite different because after an enquiry ordered by the Supreme Court it was found that the petitioners therein though engaged as daily rated workers were performing the same work as the regular staff doing other kinds of clerical work and for which the initial recruitment required a minimum educational qualification. It was held by the Supreme Court that if in spite of such requirement, the daily rated labourers were engaged initially without having the necessary educational qualifications, even though they were required to do the same work as the regular staff who were required to possess such qualifications, the respondents cannot reject the claim of the daily rated labourers for regularisation on

the ground that they did not have the minimum educational qualifications. This objection should have been insisted upon only at the time of the initial engagement as daily rated workers.

12 There is no such averment that the casual labourers were doing exactly the same work as any of the Group D employees. That apart, this plea would amount to impugning the provisions of clause-X of the Memo dated 7.6.88. As the direction regarding upper age limit contained in para-X of this circular has not been specifically challenged, the respondents who are duty bound to follow that circular cannot be faulted on this ground and the applicants cannot be permitted to assail the circular by the aforesaid argument.

13 In the result, for the reasons mentioned above, we allow this application in part with the following observations and directions:

(a) The applicants are entitled to the protection of Provisions contained in Chapter V-A of the ID Act, 1947. The termination of their engagements with effect from 13.1.89 amounts to a retrenchment within the meaning of the ID Act. As such retrenchment has not been made in accordance with the provisions of Section 25F of the ID Act, the applicants are deemed to be still engaged as casual labourers and entitled to the benefits that accrue to them under this direction. For this purpose they may be deemed to have been engaged after 31.1.89 for the same number of days as they were engaged in a like period immediately prior to 31.1.89 as disclosed in Annexure R2(A). This is without prejudice to the right of the respondents to retrench the applicants

in accordance with law, if so advised.

(b) The applicants 3 to 6 are also entitled to to regularisation in terms of Clause-X of the Ministry of Personnel O.M. No.F 49014/2/86-Estt.(c) dated 7.6.88 in accordance with their seniority as casual labourers.

14 The application is disposed of with the above directions and there will be no order as to costs.

31.8.90

(AV Haridasan)
Judicial Member

31/8/90

(NV Krishnan)
Administrative Member

31.8.1990.

(1) CCP 4/91 in OA 86/89.

NVK & ND

17-1-91

(14)

Mr TA Rajan for the Petitioners by Proxy.

Mr P.K. Kochunni Nair, Aggse. for Respondents by Proxy.

Respondents pray for time to file a statement. Call on 6-2-91.

17-1-91

6-2-91

SPM & AVH

Mr MC Cherian for petitioner
Mr G Sasidharan for respondents(proxy)

A request is made on behalf of the learned counsel for the respondents to give some time to file a statement. He is directed to file the statement within a week with a copy to the petitioner.

List for further direction on 21.2.91

6-2-91

reply statement filed for the respondents on 15-2-91

SPM & AVH

~~Mr MC Cherian for petitioner~~
Mr TA Rajan for petitioner
Mr Kochunni Nair, ACGSC for respondents

ORDER

We have heard the learned counsel for the parties on the CCP and gone through the documents. Since no time limit has been prescribed in the judgement of this Tribunal dated 31.8.1990 in OA-86/89 a clear case of contempt has not been made out. However, we cannot ignore the inordinate delay which has taken place in implementation of the

aforesaid judgement. The learned counsel for the respondents expressed his regret over the delay and undertakes to implement the judgement within a period of 2 months from today. On the basis of the assurance given by the learned counsel, we close the CCP with the direction that the aforesaid judgement should be implemented in full within a period of 2 months from today.

(AV HARIDASAN)
JUDICIAL MEMBER

(SP MUKERJI)
VICE CHAIRMAN

21-2-1991