

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 87/2011

Monday, this the 9th day of January, 2012.

CORAM

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

1. Attakidave,
S/o Muzammil A.C.(late),
Cook, JNSS Hostel, Kadmat Island,
Residing at Bankil House,
Kadmat Island-682 521.
2. B.P.Hamzakoya,
S/o Kidav S.C.(late),
Cook JNSS Hostel Kadmat,
residing at Belippura House,
Kadmat Island-682 521.
3. N.Muthukoya,
S/o Andari.B.C.(late),
Cook JNSS Hostel, Kadmat,
Residing at Neduvilam House,
Kadmat Island-682 521.
4. T.P.Hamzakoya,
S/o Basha.B.P.,
Cook, JNSS Hostel, Kadmat,
Residing at Thiruvathappura House,
Kadmat Island-682 521.
5. Abdul Muthalif.P.P.,
S/o Abdurahman T (late),
Cook, JNSS Hostel, Kadmat,
Residing at Puthiyappura House,
Kadmat Island-682 521.
6. Mohasin.P.P.,
S/o Abdul Hameed Haji (late),
Cook, JNSS Hostel, Kadmat,
Residing at Puthiyappura House,
Kadmat Island-682 521.
7. Abdul Kareem.S.P.,
S/o Abdul Rahiman.M.C.
Cook, JNSS Hostel, Madmat,
Residing at Safiyappura House,

Kadmat Island-682 521.

8. Mohammed Nisar.A.C.,
S/o Kidave S.C.(late),
Cook, GHS, Kadmat,
Residing at Ayyechetta House,
Kadmat Island-682 521.
 9. Beebi Kadeeja K,
D/o Mohammed.A.C.,
Cook, Government Nursery School, Kadmat,
Residing at Kadiyyammada House,
Kadmat Island-682 521.
 10. K.P.Badar,
S/o Kasmi S.K.(late),
Cook, SB School, Kadmat,
Residing at Kunhippura House,
Kadmat Island-682 521.
-Applicants

(By Advocate Mr PV Mohanan)

v.

1. Administrator,
Union Territory of Lakshadweep,
Kavaratti-682 555.
 2. Director of Education,
Department of Education,
U.T of Lakshadweep,
Kavaratti-682 555.
-Respondents

(By Advocate Mr S Radhakrishnan)

This application having been finally heard on 05.12.2011, the Tribunal on 09.01.2012 delivered the following:

ORDER

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

The applicants are all casual labourers working for more than 10 years in the respondents' organization and their grievance is that while they were expecting regularisation of their services as had been done in respect of many of the seniors, the respondents have thrown open the vacancies for being filled up by direct recruitment and the applicants could not participate in the selection due

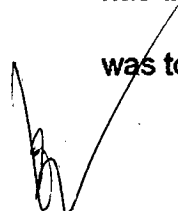


to the enhancement of the qualification to Matriculation. This OA has been filed seeking the following reliefs:-

- (i) To direct the respondents to absorb/regularise the service of the applicants as Cook/Helper in the time scale of pay of Rs.2550-3200 (pre-revised) in the Department of Education with all consequential benefits.
- (ii) To declare that the applicants are absorbed as Cook on a time scale of pay of Rs.2550-3200 (pre-revised) with effect from the date on which Rank No.10 Sri KK Koyamma in Annexure A-1 is absorbed with all consequential benefits including arrears of pay.

2. At the time of admission hearing, there was an interim order in favour of the applicants in that the services of the applicants shall not be terminated during the pendency of the O.A. based on the appointment, if any made pursuant to the notification for direct recruitment vide Annexure A-9. The said order continues.

3. Respondents have contested the O.A. According to them, the case of the applicant cannot be brought within the purview of regularization of casual labourers vide order dated 10-09-1993 as the same is an one time affair as held in the case of *Union of India vs Mohanpal* [2002(4) SCC 573] as followed in *Union of India vs Gagan Kumar* [(2005) 6 SCC 70]. The new Recruitment Rules having been in force since 29-01-2001 and a conscious decision having been taken to have the vacancies filled up in accordance with the said Rules, vide order dated 10-03-2011, the decision in the case of *Dr. K. Ramulu and another vs Dr. S. Suryaprakash Rao and others* [(1997) 3 SCC 59] applies to the facts of this case. Hence, the applicant has no case. It has also been stated that there has been no sanctioned post of cooks at the time such cooks were recruited. It was to meet certain fortuitous contingencies that such cooks were engaged.



4. Counsel for the applicant submitted that the services of all the casual labourers who were senior to the applicants have been regularized and these were as late as December, 2007, which is posterior to the VI Pay commission Recommendations. It is only appropriate that the applicants' services are also so regularized and even if the respondents should go as per the revised Recruitment Rules, they should in all fairness ensure that those who have put in decade of service get regularized, if need be by relaxation of the qualification for which provision exists.

5. Counsel for the respondents has reiterated the stand taken in the reply as referred to above.

6. Arguments were heard and documents perused. In fact an identical case has been dealt with, in OA No. 631 of 2011 and the decision therein is as under:-

"The so called conscious decision to apply the revised Recruitment Rules to the vacancies had been taken as late as in March, 2011. The revised Recruitment Rules came into force in January, 2011. Vacancies upto December, 2007 were already filled up by way of regularization of some of the casual cooks. It is not the case of the respondents that such cooks whose services were regularized, were engaged against any vacancies at the time of their initial engagement. The character of their engagement is identical to that of the applicant. In so far as the conscious decision taken, and in so far as placing reliance to the decision in Ramulu are concerned, in Ramulu the decision to keep the vacancies unfilled was taken prior to the amendment to the Rules, whereas, in the instant case, the recruitment Rules stood revised on 29-01-2011, while decision to keep the vacancies to be filled up as per the revised recruitment rules took place only on 26-02-2011. This decision amounts to no conscious decision taken at the time when the vacancies arose. In that view of the matter, the case is similar to the decision in Y.V. Rangaiah (1983) 3 SCC 284, as could be seen from para 12 of Ramulu's case wherein the Apex Court has stated as under:-

12. The same ratio was reiterated in Union of India v.

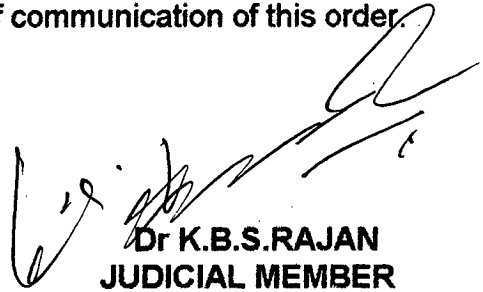
K.V. Vijeesh (1996) 3 SCC 139 . Thus, it could be seen that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. Shri H. S. Gururaja Rao, contends that this Court in Y.V. Rangaiah v. J. Sreenivasa Rao (1983) 3 SCC 284 had held that the existing vacancies were required to be filled up as per the law prior to the date of the amended Rules. The mere fact that Rules came to be amended subsequently does not empower the Government not to consider the persons who were eligible prior to the date of amendment. It is seen that the case related to the amendment of the Rules. Prior to the amendment of the Rules two sources were available for appointment as Sub-Registrar, namely, UDCs and LDCs. Subsequently, Rules came to be amended taking away the right of the LDCs for appointment as Sub-Registrar. When the vacancies were not being filled up in accordance with the existing Rules, this Court had pointed out that prior to the amendment of the Rules, the vacancies were existing and that the eligible candidates were required to be considered in accordance with the prevailing Rules. Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As a proposition of law, there is no dispute and cannot be disputed. But the question is whether the ratio in Rangaiah case would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force. It is true, as contended by Mr H.S. Gururaja Rao, that this Court has followed the ratio therein in many a decision and those cited by him are P. Ganeshwar Rao v. State of A.P. 1988 Supp SCC 740 P. Mahendran v. State of Karnataka (1990) 1 SCC 411, A.A. Calton v. Director of Education (1983) 3 SCC 33 , N.T. Devin Katti v. Karnataka Public Service Commission (1990) 3 SCC 157, Ramesh Kumar Choudha v. State of M.P.(1996) 11 SCC 242 In none of these decisions, a situation which has arisen in the present case had come up for consideration.

Counsel for the applicant also relied upon the decision of the High Court in OP (CAT) 142 of 2010 decided on 04-11-2011 to hammer home the point that the decision of the apex Court in Y.V. Rangaiah that "Posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules" has been followed in such cases.

In view of the above, if there were any vacancies prior to 29-01-2011 they ought to be filled up by the rules that existed at the time of occurrence of the vacancies. By virtue of the fact that the applicant has been working as cook for over a decade, even as per para 53 of the decision in the case of State of Karnataka vs Umadevi, (2006) 4 SCC 1, regularisation should be made subject to fulfillment of other conditions, if any. If for any specific reason, the new rules are to be pressed into service, then again, invoking the provisions of power to relax the rules in respect of certain class or categories of persons, the applicant's case could be considered. In fact in respect of certain other cases, such an observation had been made by the Tribunal and the respective OAs disposed of. (See decision in OA No. 284 of 2010)

In view of the above, the OA is allowed. Respondents are directed to consider the case of the applicant for regularization against one post of Cook that had occurred after the last regularization of 2007 but prior to introduction of the new Recruitment Rules. The decision thereof shall be communicated to the applicant within a period of three months from the date of communication of this order."

7. In view of the identical nature of this case as in the aforementioned case, without any hesitation, the above order could be adopted for disposal of this case also. Accordingly, the OA is allowed. Respondents are directed to consider the case of the applicants for regularization against any appropriate post that had occurred after the last regularization of 2007 but prior to introduction of the new Recruitment Rules. The decision thereof shall be communicated to the applicant within a period of three months from the date of communication of this order.


Dr K.B.S.RAJAN
JUDICIAL MEMBER