

13
5

1

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKLULAM BENCH**

OA NO.87/2006

Wednesday.....this the 14th day of June, 2006

CORAM:

HON'BLE MR. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

B.Ambika Devi
Part time Sweeper cum Cleaner
Office of the Executive Engineer
Postal Civil Division, Manacaud PO
Thiruvananthapuram- 9 : Applicant

(By Advocate Mr.Thomas Mathew)

Vs.

1. Executive Engineer
Postal Civil Division
Manacaud PO
Trivandrum – 695 009
2. Chief Post Master General, Kerala Circle
Trivandrum
3. Director General
Department of Posts
New Delhi
4. Union of India represented by its Secretary
Department of Posts, New Delhi : Respondents

(By Advocate Mrs.Mariam Mathai, ACGSC)

The application having been heard on 05.06.2006, the Tribunal on 14.6.2006 delivered the following :



ORDER
HON'BLE MR. K.B.S. RAJAN, JUDICIAL MEMBER

The question for consideration in this case is whether the applicant who has served the respondents' organization for more than seven years as part time sweeper and whose services have since been terminated by verbal orders, is entitled to her claim of full time employment or at least continuance in the same status. This question has to be answered only with reference to the spirit behind some policy letters issued by the respondents and a few of the policy letters are as under:-


"D.O.P. Lr. No. 45-14/92-SPB.I. Dated 16.9.1992

Regularisation of Part-time Casual Labourers as Full-time

The All-India RMS Employees' Union, Mail guards and Class IV have represented that though the 1984 orders have been reiterated in this office Circular Letter No. 66-9/91-SPB.I, dated 20.9.1991, for treating part-time casual labourer as full-time on the basis of 50% service being counted, bulk of the casual labourer in Tamil Nadu, Kerala, Gujarat and several other circles are continuing to work as part-time including those working for 7 hours a day.

2. The matter has been examined and I am directed to say that if part-time casual labourers are working for five hours or more, it may be examined whether they can be made full time by readjustment or combination of duties. It is, however, reiterated that there should be no engagement of fresh casual labourers.

3. The nature of action taken may kindly be intimated. In case there are some casual labourers who are engaged for more than 5 hours even after action is taken as suggested in para 2 above, the circumstances under which such casual engagement cannot be liquidated should be intimated to this office with number of such workers and the jobs they perform."



G.I. Dept. of Post, Lr. No. 45-14/92-SPB-I, dated 28.4.1997.

Providing full-time employment to part-time casual labor working in the Department of Post

The question for providing full-time employment to part-time Casual Labor working in the Department, has been under consideration for some time. Instructions have already been issued vide this office memo of even number, dated 16.2.1992 (Sl. No. 307 of Swamy's Annual, 1992) for combining two or more part time Casual Labour positions so as to give full time employment to casual labour. The feedback received from various circles shows that despite resorting to this, there are still many part-time casual labourers who could not be provided with full-time employment.

2. As the Department has received several representations in this regard, it has now been decided that in order to provide full time employment to part-time casual labourer wherever feasible, apart from combining duties of various part-time positions, the feasibility of adding work hours of vacant ED posts of this purpose may be examined and suitable action for forming full time Casual Labour positions taken. It may please be noted that the orders issued in this behalf should specifically mention the full particulars of ED posts which are lying vacant and are proposed to be brought under reduction. The prescribed periodical establishment review may be carried out by the prescribed authority including the work and staff hours of the casual employees.

3. The above instructions may be implemented without delay. The other terms and guidelines stipulated in our earlier dated cited above will remain unchanged.

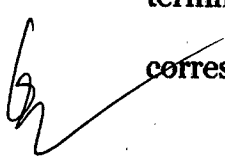
4. This issues with the concurrence of Integrated Finance vide their Dy. No. 1205/97, dated 28.4.1997.

2. The spirit behind the above policy decision as could be discerned is that attempt shall be made to make part time employee as full time employee. Thus it is to be seen whether the respondents have acted in accordance with this spirit in



the instant case. Of course, right to terminate the services of a casual labour for other reasons of proved misconduct is available in tact with the respondents. In this case, as the termination is stated to be on the basis of some misconduct, it has also to be seen whether the action of the respondents in terminating of the services of the applicant is legally sustainable.

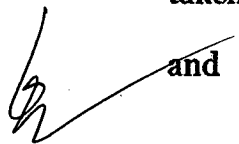
3. The axiomatic principle is that an employer can retain the services of his employee till such time work is available. There can be no doubt in this regard. If for any reason, the particular nature of work is no longer available, even a confirmed employee has to be rendered surplus and he has no right to claim to continue to work in the very same organization. Earlier, the applicant was asked to perform part time duty for a period of four hours a day, which later on was reduced to three hours in view of reduction in the space to be cleaned. No fault could be fastened on the respondents against this decision. But subsequently, there seems to be no development whereby the very requirement of a sweeper could be done away with. Thus, when the requirement of a part time sweeper does exist, and the respondents be permitted to terminate the services of the applicant who has in fact rendered more than seven years of service in that capacity. The respondents have stated that termination of the services of the applicant is not on account of availability or otherwise of work but on the ground that the applicant is habitually tampering with the records and hence this termination. And, to substantiate the same they have referred to the internal correspondence which have come to the possession of the applicant vide




Annexure A-6 and A-7

4. Now the bare minimum facts of the case as contained in the OA and the resistance of the respondents against the OA.

(a) Facts as contained in the OA: Applicant was a part-time sweeper cum cleaner with a duty of 4 hours daily except Saturdays and Sundays being holidays. She has registered her name in the Employment Exchange in 1970. Consequent on the shifting of the office of the Civil Postal Division, the duty hours were reduced from 4 to 3 hours. The Director General, Department of Posts vide letter dated 16.9.92 directed the authorities under him that "if part-time casual labours are working for 5 hours more it may be examined whether they can be made full-time by adjustment or combination of duty." Further, Government of India, Ministry of Communications, Department of Posts, vide letter dated 28.4.1997 has ordered that "it has now been decided that in order to provide full-time employment to part-time casual labourer wherever feasible, apart from combining various part-time positions, the feasibility of adding work hours of vacant E.D. Posts, for this purpose may be examined and suitable action for forming full-time casual labour positions taken.". Applicant's husband died in the year 1993 leaving behind her and two minor female children and she has the responsibility to



look after the family consisting herself and two female children now aged 17 and 16 years and her mother aged 70. She made representation dated 21.1.03 requesting that her part-time position may be made full-time in combination with the vacant post of Group 'D'. In Annexure A/7 letter dated 4.6.03 addressed to the Asstt. Director (Recruitment), Office of the Chief Postmaster, Kerala, the 1st respondent has stated that the applicant has been engaged as Sweeper cum Cleaner with effect from 9.3.98 and she has been continuing as such. Applicant has rendered an unblemished service of more than seven years 10 months and paid wages at the rate of a part-time casual labourer every month from 9.3.1998 onwards. When the applicant attended for duty in the morning of 7.2.06, the 1st respondent did not permit the applicant to perform her duties stating that the Chief Postmaster General has given instruction that part-time sweepers/cleaners are not to be placed continuously. It is learnt that the first respondent has initiated steps to replace an outsider as part-time Sweeper cum Cleaner in the post of part-time Sweeper cum Cleaner, Postal Civil Division, Thiruvananthapuram, which the applicant has been holding with effect from 9.3.98 continuously. Aggrieved, the applicant has filed this O.A. seeking the following main reliefs:

 "Declare that the action on the part of the 1st respondent in

denying part-time casual work to the applicant with effect from 7.2.2006 is highly illegal, arbitrary and in violation of all canons of justice and fair-play;

Declare that the applicant ~~applicant~~ is entitled to be continued as part-time sweeper-cum-cleaner as before and direct the respondents to re-engage the applicant with all back wages for the period for which the applicant has been kept out of work;

Declare that the applicant is entitled to full time work in terms of Annexure A4 order passed by DG Posts and direct the respondents to consider applicant's claim as prayed for in Annexure A9 representation."

(b) The following is the contention as contained in the counter and also as reiterated at the time of arguments:-

Consequent upon the transfer of a regular Mazdoor to the Department of Telecom, Smt.B. Ambika Devi was engaged on day to day basis for the work of sweeping and cleaning the rented office building which was having more than 2500 sq. ft. carpet area for four hours as per the calculation of the justified working hours. Subsequently, the office was shifted to a departmental building where the carpet area is lesser than the rented building, the working hours have been reduced to three hours according to the norms for calculation of working hours. No formal appointments have been made by the department through the approved formalities as there is no sanctioned post available for regular appointment till date. As keeping the office premises clean and neat is the responsibility of



the department the applicant was permitted to do the duty on day-to-day basis and payment made to her as per the actual working days. The instructions issued by the Directorate are meant for the part-time casual labours who have been appointed through the approved norms and by test/interview and with due satisfaction of the Departmental Promotion Committee of selection procedures. The applicant has not been appointed by the Department as a part-time mazdoor/sweeper by following any departmental procedure but on an as is where is basis. There is no other part time post or ED post available in the Civil Wing Office to combine with the part-time sweeper working hours. The applicant is also habitually leaking official records by making copies of internal correspondences with various offices as is evident from the annexures marked as A6 and A7 of the OA. The discontinuation of the work is because of the suspicion that official records kept in the office were being shuffled. As the applicant was not a regular employee of the Department no action under CCS (Conduct) Rules could ~~not~~ be initiated but to discontinue her from the day-to-day basis service. The statement that she had not been permitted to ~~not~~ perform her duty citing the instruction of the Chief Postmaster General is purely fictitious and not true.

5. Arguments were heard and documents perused. That the applicant is a



part time casual labourer is not denied. The spirit behind the instructions of the Respondents as contained in the very first paragraph above has to be kept in mind. Attempt should have been made to ensure that the status of the part time casual labourer is got improved and in the event of the same not being possible, at least the status as available should have been allowed to be continued as long there is work for a part time sweeper. Disengaging the applicant on grounds of suspicion and that too without show cause notice is certainly not in order. The Applicant has relied upon the following judgments:-

(a) 1989 SCC (L&S) 246

(b) AIR 1996 SC 1669 = (1996) 3 SCC 364

(c) (1995) 31 ATC 125 (129 - to be checked)

6. In the second authority (*State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364) relied upon by the applicant, the Apex Court has observed as under:-

13. *The first decision on this aspect is that of the House of Lords in Ridge v. Baldwin (1963) 2 All ER 66. and the oft-quoted words are that of Lord Reid, to wit:*

"Then there was considerable argument whether in the result the watch committee's decision was void or merely voidable. Time and again in the cases I have cited it has been stated that a decision given without regard to the principles of natural justice is void and that was expressly decided in Wood v. Woad². I see no reason to doubt these authorities. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to



the person affected a proper opportunity to state his case."

7. If the termination is on the above ground of suspicion that the applicant is habitually tampering the records, then it means that a decision has been arrived at against the applicant about her honesty and integrity and her services have been terminated without even a show cause notice. The applicant may not be a regular employee but certainly a part time casual labourer (vide Annexure A-20) and though for such casual labour, the provisions of CCS (CC &A) Rules are not applicable, nevertheless, there is always an in-built system of Principles of Natural Justice, which cannot be ignored while taking any punitive action against any employee. In the instant case since the decision taken was on some suspicion as contained in the Counter, without affording any opportunity to the applicant, the termination becomes thoroughly illegal.

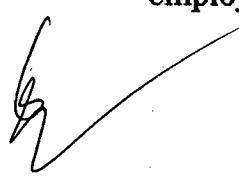
8. The respondents have relied upon the latest judgment of the Apex court by a Constitution Bench in the case of Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., 2006 AIR SCW 1991, wherein it has been held as under:-

"34. Therefore, consistent with the Scheme for public employment, this Court while laying down the law has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or

casual wages, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right."

9. The above does not apply in this case as the point involved in this case is not regularization etc., but continuance in the very same capacity. Here the dictum of the Apex Court in the case of State of Haryana v. Piara Singh, (1992) 4 SCC 118, comes in to play. In that case, the Apex Court has held:

"46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

10. Though there has been a reference to the case of Piara Singh (*supra*) in the Constitution Bench Judgment relied upon by the counsel for the respondents,, the same is only with reference to legitimate expectation and not on the above point that an ad hoc employee should not be replaced by another ad hoc employee. Hence, what is to be seen is whether in the instant case the
- 

termination is legal, when it is not the case of the respondents that they have converted the part time job to a full time Group D post (in which event, the same could be filled up by a regularly recruited candidate). The work is just as for a part time employee and obviously, the respondents would be getting the work done only through another part time worker. If so, the dictum of the Apex Court in the case of Piara Singh (supra) gets violated. At the same time, it is not that once an individual has been appointed as a casual labourer, he cannot at all be disengaged. In order to maintain the decorum and discipline of the Institution, for valid grounds of misconduct, a casual labourer could always be disengaged and in his place another on the same status could be engaged. But in such cases, the termination would be legally valid only if the authorities follow the principles of natural justice and pass a detailed and speaking order and not by means of any oral order, as in this case. Such a regular and systematic procedure has not been followed in this case. The respondents have, on the basis of mere suspicion disengaged the services of the applicant, that too by an oral order. Hence, the action on the part of the respondents suffers from twin concurrent mistakes (a) violation of principles of natural justice and (b) their act not being in conformity with the dictum of the Apex Court in the case of Piara Singh (supra).

11. The applicant had alleged that though she was performing the duties, the respondents have got the payment made by entering a fictitious name and for this purpose an MA was also filed to call for the cash book. The respondents have produced the same and there does not seem to be any entry in the alleged

fictitious name. In any event this has nothing to do with the main issue involved.

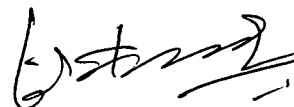
12. In view of the above, the OA succeeds and the oral order of termination is set aside and it is declared that the applicant is entitled to continue in the work of a part time sweeper. The respondents shall within a period of three weeks from the date of communication of this order, re-engage the applicant. However, the applicant is not entitled to wages for the past period from the date of termination. She would be entitled to the wages from the date she performs her duties as a part time sweeper. Any delay on the part of the respondents in re-engaging the applicant beyond the above stipulated period of three weeks would make the applicant entitled to wages for such period covered by the delay. It is however made clear that it is left to the respondents to proceed against the applicant for any of the alleged misconduct by observing due process of law i.e. Principles of natural justice and by issue of show cause notice and consideration of the same dispassionately and judiciously.

Costs easy.

Dated, the 14th June, 2006.



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER

cvt.