

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 90/1992 199

DATE OF DECISION 24.2.1993

K.Prakashan Applicant (s)

Mr.M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

The Sub Divisional Officer,  
Telegraphs, Tellicherry & 3 others. Respondent (s)

Mr.George Joseph, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

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

## JUDGEMENT

(Hon'ble Shri A.V.Haridasan, Judicial Member)

The applicant who claims to have been in casual employment under the first respondent from the year 1984 onwards having put in a total number of casual service of 1651 days from 3.12.84 to the year 1991, is aggrieved by the refusal on the part of the respondents to regularise his services as casual mazdoor and consequential denial of approval, enlistment and other benefits like regularisation in service. He has prayed that the respondents may be directed to grant him temporary status with effect from the date of his first engagement, to enlist his name in the list of casual mazdoors with appropriate seniority and to grant him the consequential benefit of regularisation in service in his turn.

2. The case of the applicant is that he had worked for 120 days in 1984-85, 21 days during 1986, 310 days during 1987, 300 days in the year

1988, 320 days in the year 1989, 320 days in the year 1990 and 260 days in the year 1991. To establish this claim, the applicant has produced Annexure-I certificate issued by the Cable Splicer, Tellicherry. The applicant submitted a representation on 13.12.1991 (Annexure-II) to respondents 1 and 2 requesting that his name may be included in the list of approved casual mazdoors with appropriate seniority and that he may be granted temporary status and regularisation in his turn. Finding that this representation remains to be disposed of and apprehending that he would not be continued in casual employment for the reason that he had laid a claim for temporary status and regularisation, the applicant has filed this application under Section 19 of the Administrative Tribunals Act. He has referred to the observations of the Supreme Court in a recent ruling deprecating the practice of keeping persons as casual labourers for years without giving them the security of service and has also stated that the attitude of the respondents not to consider the claim of the applicant for grant of temporary status and regularisation while persons who had less length of casual service than him had been granted temporary status and regularisation, amounts to violation of the rights of equality guaranteed under Arts.14 and 16 of the Constitution.

3. The respondents in their reply statement have contended that the applicant is not entitled to any relief basing on the Annexure-I certificate issued by the Cable Splicer, who has no authority to issue any such certificate and that as there is no scheme for regularisation of casual mazdoor who commenced work after 30.3.85, the applicant cannot be considered for grant of temporary status or for regularisation. They have also relied on the observations of the Hon'ble Supreme Court in Delhi Development Horticulture Employees Union vs. Delhi Administration, Delhi & others, cautioning against the regularisation of casual mazdoors who got entry through back door without being sponsored by the Employment Exchange.

4. In the rejoinder filed by him, the applicant contended that the contention of the respondents that there is no scheme for

regularisation of casual mazdoors who commenced service after 30.3.85 is neither correct nor applicable to him as he had commenced his service long before that. He is even now working under the Cable Splicer, Mr.Pavithran along with Mr.P.C. Sreenivasan, etc. That after the filing of this application, the Cable Splicer engaging the applicant, was not making the payment on quotation basis without taking any ACG-17 voucher and that if the respondents dispute the genuineness of the certificate issued by the Cable Splicer, he may be allowed to call for the records of the respondents and also to examine the Cable Splicer, who issued the certificate as a witness. He has also produced a certificate issued by the Divisional Engineer (Annexure-III) showing that the applicant had worked for 21 days and has further averred that pursuant to a letter dated 16.1.92 of the first respondent, he had furnished the details as called for on 8.5.92 giving full particulars of his earlier casual service.

5. In the reply to the rejoinder Shri George Joseph, Additional Central Government Standing Counsel under the instructions from the respondents has filed a statement wherein he has stated that Cable Jointers have since been instructed not to engage mazdoors from outside for assisting in their work and that if at all any assistance is required, the same should be got done on contract basis. He has also stated in the statement that the certificate issued by the Divisional Engineer(Annexure-III) certifying that the applicant had worked for 21 days during 1986 to 1989 is not disputed and that as the Cable Splicers are not authorised to issue certificates and as there is no records available in the office to prove the engagement of the applicant prior to 30.3.85, the applicant is not entitled to any relief. It has been further stated that the copy of the representation, alleged to have been submitted by the applicant on 8.5.92 has not been received in the office of the first respondent.

6. We have heard the arguments of the learned counsel for both the parties and have carefully perused the pleadings and documents. It is the case of the applicant that he commenced service as a casual

labour on 3.12.84 and he is still continuing as such. He has given the name of the Cable Splicer under whom he has been working. He has also produced a certificate (Annexure-I) issued by the Cable Splicer, Tellicherry, showing that from 3.12.1984 onwards, the applicant had put in a total casual service of 1651 days. It is seen from Annexure-I certificate that from 1987 onwards, the applicant had put in more than 240 days of service each year. The averment in the application that the applicant has been working under the Cable Splicer from the year 1984 onwards and that he continues to be so working, is not specifically denied in the reply statement. The only contention of the respondents is that since the Cable Splicer is not competent to issue the certificate and since the respondents do not have the records to prove that the applicant had worked as casual labour for the period mentioned in the certificate at Annexure-I, the case of the applicant that he had in fact commenced service in the year 1984 and had put in 1651 days of casual service as on the year 1991, cannot be accepted as genuine. That the Cable Splicers have been engaging casual mazdoors to do departmental work has not been specifically disputed. On the other hand, it is seen admitted in the statement filed by the counsel for the respondents on 17th August, 1992; in paragraph 2 of the statement, it has been stated as follows:-

"Cable jointer have since been instructed not to engage mazdoors from out for assisting in their work. If at all any assistance is required, same is to be got done by on contract basis."

Therefore, it is evident that till the instruction<sup>which</sup> was issued recently, the Cable Splicers and Cable Jointers, who are Group-C employees of the department have been engaging casual mazdoors for departmental work. Annexure-I certificate was issued by a Cable Splicer. The genuineness of this certificate that the certificate was issued by a Cable Splicer is not disputed by the respondents. The respondents

refused to act upon the certificate for the reason that the Cable Splicers are not competent to issue certificates of this nature. As far as a casual mazdoor is concerned, he can seek and obtain a certificate only from the person who engage him. The applicant has produced Annexure-I certificate from the Cable Splicer who had engaged him. Since the averment that the Cable Splicer had issued the certificate, is not in dispute and since the Cable Splicer is a person still in the services of the respondents while Annexure-1 certificate was produced, if the respondents felt any doubt regarding the genuineness of the certificate or the correctness of the details mentioned therein, they should have questioned the Cable Splicer who issued the Annexure-I certificate, verified the correctness of the details mentioned therein and then come out with a statement either accepting the correctness or refuting the same. But the attitude of the respondents is a bland refusal to consider the claim solely on the ground that the Cable Splicer is not authorised to issue a certificate and that there is no record in the office to verify the correctness of the details mentioned in the certificate. We are of the view that this stand of the respondents is unreasonable and obstinate. While the applicant has even in the rejoinder stated that he continues to work under the Cable Splicer and that he is prepared to summon and examine him as a witness, the respondents did not deem it necessary to controvert this statement. In these circumstances, we are of the view that the case of the applicant that he has been working under the Cable Splicer from 3.12.1984 and that he had put in 1651 days of casual service as mentioned in Annexure-I certificate, has to be accepted as true and correct. Since there is a scheme in the department for temporary status and regularisation of casual mazdoors, the applicant is definitely entitled to be considered for the benefit under the scheme. It is true that the Hon'ble Supreme Court in the judgment in Delhi Development Horticulture Employees Union vs. Delhi

Administration, Delhi & others, cautioned against regularisation of casual employees who had gained entry into casual service through back door without the agency of the Employment Exchange. But here is a case where the applicant had been continuously rendering casual service for more than eight years. There is also no indication in the reply statement that the applicant was not sponsored by the Employment Exchange. Since the applicant had been rendering casual service for more than eight years, even if he was not initially sponsored by the Employment Exchange, he is entitled for the benefit of the scheme for grant of temporary status and regularisation in the light of the Government orders contained in O.M No.49914/4/90. Estt.(C) dated 8th April, 1991 wherein it was inter alia stated that "it has been decided, as a one time measure, in consultation with the Director General, Employment and Training, Ministry of Labour, that casual workers recruited before 7.6.88 and who are in service on the date of issue of these instructions, may be considered for regular appointment to Group-D posts, in terms of the general instructions, even if they were recruited otherwise than through employment exchange and had crossed the proper age limit prescribed for the post, provided they are otherwise eligible for regular appointment, in all other respects". Therefore, we are of the view that the applicant is entitled to the reliefs prayed for by him in this application.

7. In the result, the application is allowed. The respondents are directed to enlist the name of the applicant in the list of approved casual mazdoors at an appropriate place giving him credit to his casual service, as evidenced by Annexure-I and to give him an approval card, within a period of two months from the date of communication of a copy of this order. The respondents are also directed to consider in accordance with the extant scheme, the case of the applicant for grant of temporary status from the date on which he became eligible for the same on the basis of the aforesaid casual service and also to consider him for regularisation in a Group-D post in his turn. There will be no order as to costs.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

  
(S.P. MUKERJI)  
VICE CHAIRMAN