

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.10/98

Friday, this the 10th day of December, 1999.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Rema.P.

D/o late P Gopi Pillai,
Thadatharikath Veedu,
Kaduvapara, Pachapalode,
Thiruvananthapuram.

- Applicant

By Advocate Mr PV Mohanan

VS

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan,
New Delhi.

2. The Director,
Central Plantation Crops Research Institute,
Post Kudlu,
Kasaragode.

3. The Honorary Secretary,
Central Plantation Crops Research Institute,
Research Centre,
Departmental Canteen,
Palode. - Respondents

By Advocate Mr C.N.Radhakrishnan(for R.1 to 3)

The application having been heard on 10.12.99, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

The applicant seeks to set aside A-6, to declare that termination of her service as Wash Maid from Departmental Canteen of the 3rd respondent is illegal and to direct the respondents to reinstate her as Wash Maid granting status of a Council's employee with all attendant benefits.

2. On the death of applicant's father when he was working under the respondents, the applicant applied for appointment on compassionate ground. She was appointed with effect from 4.11.91 as Wash Maid in the Central Plantation Crops Research Institute Centre Tiffin Room in the pay scale of Rs.750-940. While so, A-5 order dated 7.11.96 terminating her service was issued. Aggrieved by the same she approached this Bench of the Tribunal by filing O.A.1331/97. While the said O.A. was pending the appeal preferred by the applicant against A-5 order was disposed of as per A-6. In that circumstance, the applicant sought permission to withdraw O.A.1331/97 with liberty to impugne the appellate order by filing fresh application and permission was granted.

3. Respondents resist the O.A. contending that the applicant was appointed on 4.11.91 as Wash Maid, Departmental Tiffin Room, CPCRI, Palode on compassionate ground. As per order dated 13.10.94, the Indian Council of Agricultural Research took a decision that employees of Canteen/Tiffin Room in position as on 1.10.91 will be treated as regular auxiliary employees of the Council with effect from 1.10.91. Since the applicant was appointed only with effect from 4.11.91, her case for regularisation was referred to the competent authority, the 1st respondent for a decision. The 1st respondent after due consultation with the Internal Finance Advisor of Council did not agree for the regularisation of the applicant due to the reason that she was not in position in the Tiffin Room as on 1.10.91. Accordingly termination order was issued to the applicant on 7.11.96.

4. A-2 contains the terms and conditions under which the applicant was offered the post. There it is clearly stated that the incumbent of the post is declared as holder of civil post under the Central Government. So it is the admitted position that the applicant was a holder of civil post. Her services were terminated as per A-5 dated 7.11.96 on the ground that her case for regularisation as Council's employee was not approved by the competent authority in the council. The learned counsel appearing for the applicant submitted that no approval of the competent authority in Council was necessary for regularisation of the applicant and on that ground an appeal was preferred against A-5 order and A-6 is the order passed against the appeal preferred by the applicant and the earlier O.A. was withdrawn with permission as A-6 order was passed.

5. In A-5, the only ground stated for termination of the applicant is that her case for regularisation as Council's employee was not approved by the competent authority in the Council. So the appeal also could only be against that ground. But in A-6, there is absolutely no mention as to the necessity of the approval of the competent authority in council for regularisation of the applicant. What is stated in A-6 is that the Council has not approved the appointment of the applicant under CPCRI for the reason that her father was not an employee of the Council at the time of his death and as such she is not entitled for appointment on compassionate ground under ICAR. The termination is not on the ground that the applicant was not entitled to get appointment on compassionate ground. The compassionate appointment is not finding any place in A-5 and A-5 is totally absent about the non-entitlement

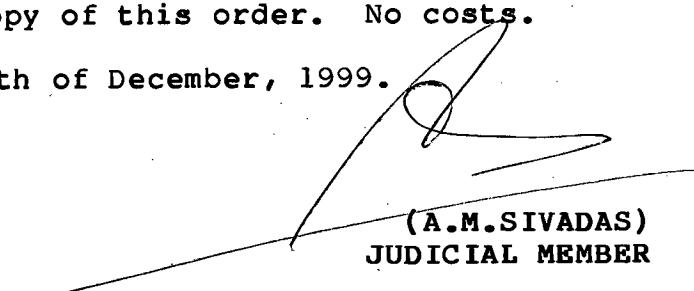


of the applicant for appointment on compassionate ground. So it is a case where a new ground is stated in A-6 which is not contained in A-5 and also there is no mention about the objection raised by the applicant as to the ground stated for her termination in A-5.

6. In the reply statement it is stated that the applicant was appointed on 4.11.91 as Wash Maid, that Tiffin Room of CPCRI, Palode was registered with the Director of Canteen, New Delhi and that till the final disposal of the Writ Petition No.6189-7044/83 by the Supreme Court, the applicant as well as other Canteen/Tiffin Room staff were governed by the rules and regulations framed by the Director of Canteens and they were not Council's employees. If that is so, the applicant's services can be terminated only as per the rules and regulations framed by the Director of Canteens. A-5 is not based on the rules and regulations framed by the Director of Canteens. That being the position, the termination of the services of the applicant cannot be held good in law. A-6 also cannot be held good in law for the reason that it is based on a ground which is contained in A-5 and challenge raised by the applicant in his appeal.

7. Accordingly, A-6 is set aside. It is declared that the termination of the applicant as Wash Maid from the Departmental Canteen of the 3rd respondent is illegal. Respondents are directed to reinstate the applicant as Wash Maid with all consequential benefits within six weeks from the date of receipt of a copy of this order. No costs.

Dated, the 10th of December, 1999.


(G. RAMAKRISHNAN)
ADMINISTRATIVE MEMBER
(A.M. SIVADAS)
JUDICIAL MEMBER

List of Annexures referred to in the Order:

1. A-5: True copy of office memorandum F.201(1)/94 Confl dated 7.11.96 issued by the 3rd respondent.
2. A-6: True copy of proceedings No.F.4(123)89 Estt. dated 25.7.97 issued by the 2nd respondent.