IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 10/90, 105/90 and 107/90 199

DATE OF DECISION 15.7.1991

1. P.J.Pious - applnt. in OA 10/90
2. K.G.Benny - applnt. in OA 105/90
~~3. M.V.Vincent - applnt. in OA 107/90~~ Applicant (s)

M/s K Ramakumar &
~~VR Ramachandran Nair~~ Advocate for the Applicant (s) in all three applications

Versus

UOI rep. by Secy., Min. of Agriculture, New Delhi & Another Respondent (s) in all three applications

1. Mr.KA Cherian,ACGSC- Advocate for Res. in OA 10/90
2. Mr.C.Kochunni Nair,ACGSC Advocate for the Respondent (s) in OA 105/90 & OA 107/90

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? ~~Yes~~ No
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes No
4. To be circulated to all Benches of the Tribunal? Yes No

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

As the facts and question of law involved in these applications are similar, these three applications can be considered and disposed of together.

2. The applicants in these cases were working as Watchmen under the second respondent on casual basis. The applicant in OA 10/90 was first engaged on 25.8.1988, the applicant in OA 105/90 was first engaged on 19.10.1988 and the applicant in OA 107/90 was first engaged on 10.10.1988. All of them ~~are~~ continuously worked till 31.12.1989. The applicant in OA 10/90 claims that he was appointed on compassionate grounds on the death of his brother PJ Micle

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who was employed as a Watchman in the Integrated Fisheries Project. This has been denied by the respondents. Though the applicants in these three cases were continuously engaged till 31.12.1989, they were denied employment from 1.1.1990 onwards. They had worked for more than 240 days during the year. No notice was given to them before their engagement was stopped. The applicants have therefore filed these applications under Section 19 of the Administrative Tribunals Act praying that the termination of their services may be declared illegal and against the provisions of the Industrial Disputes Act and that the respondents may be directed to reinstate them in service with all consequential benefits. They have also alleged that as persons appointed in similar circumstances are still retained in service, the termination of their services is discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India.

3. The respondents in the reply statement have sought to justify the denial of continued employment to the applicants on the ground that the applicant being only casual workers engaged for project work need not be continued to be engaged when there is no work. They have also contended that no notice is required to discontinue the services of casual labourers. The respondents have further contended that in view of the instructions issued by the Government of India that even casual workers should not be engaged otherwise, than through employment exchange, when necessity for casual

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workers arise, they are obliged to notify the employment Exchange and that the applicants who were not sponsored by the Employment Exchange have no right to claim continuous engagement. The averments in the application that persons similarly engaged as the applicants are being continuously engaged are also denied.

4. In a rejoinder filed in OA-10/90, the applicant has stated that S/Shri Santhosh, Biju and Gopalakrishnan have been appointed with effect from 1.3.1990, 25.5.1990 and 14.6.1990 respectively while the applicant has been put out of service.

5. We have heard the argument of the learned counsel for the parties and have also carefully gone through the pleadings and other materials on record. The applicant in OA-10/90 has claimed that he was appointed on compassionate grounds on the death of her brother Micle who was an employee in the Integrated Fisheries Project. Though this claim has been specifically denied by the respondents, the applicant has not produced any evidence to substantiate the case. So that claim of the applicant remain unestablished.

6. The respondents have raised a contention that as the applicants were not sponsored by the Employment Exchange, their initial engagement itself was bad being against the instructions and that therefore they will not be entitled to any benefit flowing from such engagement. But the fact remains

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that the applicants had been continuously engaged for more than a year by the second respondent who is the competent authority to engage casual labourers. Therefore, it is not open for the respondents now to contend that since they were engaged as casual labourers without being sponsored by the Employment Exchange, the applicants are not entitled to the benefits which they have acquired by reason of their continuous service.

7. The applicants have averred that after their services were terminated, persons appointed in similar circumstances have been retained in service. In the reply filed by the respondents to the rejoinder in OA-10/90, the respondents have virtually admitted that persons have been engaged as Watchman even after the services of the applicants have been terminated.

8. It is beyond dispute that the applicants in these three cases have been continuously working as Watchmen on casual basis for more than 240 days immediately preceding 1.1.1990, when their engagement was stopped. The applicantin OA-10/90 and the applicant in OA 105/90 from 19.10.1988 was working from 25.8.1988 while the applicant in OA-107/90 has been working from 10.10.1988. It is also not in dispute that the respondents discontinued the engagement of the applicants w.e.f. 1.1.1990 though all of them worked upto 31.12.1989 without giving any notice. The applicants contended that such a termination of service amounts to illegal retrenchment and is null and void being violative of the provisions of Industrial Disputes Act. The learned counsel for

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the respondents argued that since the applicants were only casual labourers, no notice is required to discontinue their engagement. The Integrated Fisheries Project though is under the Ministry of Agriculture, its activities would bring at within the definition of Industry in the Industrial Disputes Act. It is well settled by now that a casual workers is also a workman. Undisputedly the applicants in these two applications have been continuously working since August and October, 1988 onwards and had completed 240 days immediately preceding 1.1.1990 when they were denied employment. In L Robert D'Souza V. Executive Engineer, Southern Railway and another, 1982(1) SCC, 645 the Hon'ble Supreme Court has observed as follows:

> "There is no dispute that the appellant would be a workman within the meaning of the expression in Section 2(s) of the Act. Further, it is incontrovertible that he has rendered continuous service for a period over 20 years. Therefore, the first condition of Section 25-F that appellant is a workman who has rendered service for not less than one year under the Railway Administration, an employer carrying on an industry, and that his service is terminated which for the reasons hereinbefore given would constitute retrenchment. It is immaterial that he is a daily-rated worker. He is either doing manual or technical work and his salary was less than Rs.500 and the doing termination of his service does not fall in any of the expected categories. Therefore, assuming that he was a daily rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fallin any of the excepted categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with pre-conditions to valid retrenchment, the order of termination would be illegal and invalid."

It was also declared that the termination of service in that case being illegal and invalid, the applicant would be deemed to have continued in service and that he would be

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entitled to full back wages.

9. Since the applicants in these cases have been in continuous service for more than 240 days of working to their credit during the year immediately preceding 1.1.1990 and as the applicants have not been served with notice or paid compensation as is required under Section 25-F of the Industrial Disputes Act, we hold that the termination of the services of the applicants is illegal and void.

10. In the conspectus of facts and circumstances, we allow these applications OA 10/90, OA 105/90 and OA 107/90, declare that the termination of the services of the applicants in these three cases with effect from 1.1.1990 is illegal and void and direct the respondents to reinstate the applicants into service forthwith and to pay them full back wages for the period during which they were kept out of services and had not been employed elsewhere. The action as directed aforesaid should be completed within a period of two months from the date of communication of this order. There is no order as to costs.

15/7/91

(A.V.HARIDASAN)
JUDICIAL MEMBER

(S.P.MUKERJI)
VICE CHAIRMAN

15.7.1991

trs