

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A 1233/90 & O.A 1/91

DATE OF DECISION

28.6.1991

In O.A 1233/90

D.Babukuttan and another

Applicants

Mr.M.R Rajendran Nair

Advocate for the Applicants

vs.

The Sub Divisional Officer, Telegraphs, Mavelikara and
2 others

Respondents

Mr.George Joseph, ACGSC

Advocate for the Respondents

In O.A 1/91

V.Pramod

Applicant

Mr.M.R.Rajendran Nair

Advocate for the Applicant

vs.

The Sub Divisional Officer,
Telegraphs, Mavelikara and 2 others

Respondents

Mr.George Joseph, ACGSC

Advocate for the Respondents

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 Judgment? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgment? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

Since common questions of law, facts and reliefs are involved in the aforesaid two applications they are disposed of by a common order as follows.

2. In the first application (OA 1233/90) the two applicants who were stated to have been engaged for a period of 38 days between 1.3.87 and 7.4.87 on muster rolls under SDO, Telegraphs, Mavelikara and had reportedly worked on bills occasionally during 1988, have prayed that the respondents be directed to reengage them in preference to any outsiders and to

declare the policy of entrusting the works to contractors as arbitrary and illegal.

3. According to them there is sufficient work and even fresh hands are being engaged, but the applicants are denied employment even though they are prepared to work anywhere under the department. They have argued that persons who have started their casual service after them cannot be engaged while denying employment to them. According to the respondents the applicants are not in the list of approved casual mazdoors maintained in the Sub Divisional Office, Mavelikara, as only those casual mazdoors who were selected through nomination from Employment Exchange are enlisted as casual mazdoors and casual mazdoor cards are issued to them. They have stated that no record has been produced by the applicants to prove their claims. The applicants never turned up ^{for} work after 7.4.87 ~~and~~ nor did they represent for getting work. They have stated that there being no departmental work, no more mazdoors are required. Only those who are in the list of approved casual mazdoors are engaged for departmental work as and when required. According to them, the applicants abandoned the work after 7.4.87 on their own action and in accordance with D.G., P&T's instruction of 30.3.85 fresh recruitment of casual mazdoors cannot be made. In the rejoinder the applicants have stated that they have

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been regularly reporting to the respondents for work but they have not been reengaged. They are prepared to work with bottom seniority.

3. The applicant in OA 1/91 states that he commenced service as casual mazdoor in January, 1985 under SDO, Telègraphs, Mavelikara on muster rolls. During 1986-87 he has been denied employment. The applicant concedes that he has no records to show details of his service, but avers that the same may be available with the respondents. He has given the muster roll numbers of his casual employment between 10.11.86 and 1.5.87. He has made out the same points as have been indicated in the first application. His further argument is that his being not sponsored by the Employment Exchange, cannot he held out for denying him the approval card because the persons who commenced service prior to 30.3.85 have been exempted from the condition of being sponsored by the Employment Exchange. The policy of the respondents to get the work done through contractors has been stated to be a device to defeat the rights of the applicants to get work and be regularised. ^{His} ~~Their~~ grievance is that the respondents are engaging fresh hands while ^{he is} ~~they are~~ being denied work. In the counter affidavit the respondents have repeated the same arguments as in the first application and have stated that the applicant was engaged for about 77 days during 1986-1987 on a purely casual basis, ^{But} ~~no~~ record was produced by him to substantiate his claim. They have ^{avowed} ~~denied~~ that the applicant never

approached the respondents to seek employment and those casual mazdoors who were regular in attendance were given approval cards and reengaged. The applicant is trying to misguide the Tribunal and ^{convert} it into a recruiting unit. Exemption from being sponsored by Employment Exchange is granted to those who started work before 31.3.85 and continued to be engaged beyond 31.3.85. Such a position does not exist in the case of the applicant. Regarding entrustment of work to the contractors they have stated that this is being done as per the policy of the department and there has been no violation of the Supreme Court directions.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have denied the benefits of reengagement of the applicants on the ground that they were neither engaged through the Employment Exchange nor were they approved casual mazdoors. They, however, have not denied that the applicants in the first case had worked for 38 days and 36 days during March/April 1987 and the applicant in the second application had worked for 77 days between November 1986 and March 1987. In a similar application in OA 203/90 this very Bench observed that the applicant therein not having been recruited through the Employment Exchange before 1984 should not be held against her for regularisation and other benefits. In O.A 21/90 the applicant who

had worked as an approved casual mazdoor between 1.10.83 to 31.12.83 intermittently for a period of 84 days was allowed to get his name included in the list of casual mazdoors with bottom seniority to be given work whenever work is available, according to his turn. In O.A. 202/89 the applicant had been denied work as a casual mazdoor from 1980 on the ground that he had abandoned the work. This Tribunal by its order dated 15.2.90 in that case directed the respondents to include the name of the applicant as the last casual labourer in that list so as to enable him to get casual employment whenever work is available, in accordance with his seniority in that list. Since it is not the fault of the applicants that they had been engaged without being sponsored by the Employment they cannot be allowed to be discriminated against for reengagement.

5. In the light of the aforesaid discussion and reliefs given in similar cases, we allow both these applications ^{to} ~~with~~ the extent of directing the respondents to include the names of the applicants in these two cases as the last casual workers in the list of approved casual labourers and to give them casual employment whenever work is available in accordance with their seniority in that list. There will be no order as to costs.

(A.V.Haridasan)
Judicial Member

(S.P.Mukerji)
Vice Chairman