

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 112/2011 & O.A 113/2011

Dated this the 22nd day of July, 2011

C O R A M

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

I O.A 112/2011

M.P Prabhakaran Nambiar, S/o M.C.Chandran Nair

R/o Muniyor Kalathil House, N.No.7/321, Perdala Village

Badiyadukka Post, Kasargod.

(By Advocate Mr.R.Sreeraj)

Applicant

Vs.

- 1 Bharat Sanchar Nigam Ltd, represented by the Chairman & Managing Director, Corporate Office Statesman House Barakhamba Road, New Delhi.
- 2 The Chief General Manager, Bharat Sanchar Nigam Ltd, Kerala Circle, Trivandrum.
- 3 The Principal General Manager, Bharat Sanchar Nigam Ltd, Kannur Telecom District, Kannur.
- 4 The Principal General Manager, Bharat Sanchar Nigam Ltd, Kasargod Telecom District, Kasargod..

By Advocate Mr. PMM Najeb Khan

Respondents

II O.A 113/2011

K. Prabhakaran, S/o Janaki, Mazdoor, BSNL,

Perla, Kasargod

R/o Bularkode, P.O. Kudlu, Kasargod.

(By Advocate Mr.R.Sreeraj)

Applicant

Vs.

- 1 Bharat Sanchar Nigam Ltd, represented by the Chairman & Managing Director, Corporate Office Statesman House Barakhamba Road, New Delhi.

- 2 The Chief General Manager, Bharat Sanchar Nigam Ltd,
Kerala Circle, Trivandrum.
- 3 The Principal General Manager, Bharat Sanchar Nigam Ltd,
Kannur Telecom District, Kannur.
- 4 The Assistant Manager, Bharat Sanchar Nigam Ltd,
Railway Station Road, Kasargod..

By Advocate Mr. PMM Najeb Khan

Respondents

The Application having been heard on 11.7.2011, the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

As the legal issues involved in both these OAs are identical, the *applicants* were heard together and are being disposed of by this common order.

2 OA No.112/2011: Brief facts of the case as stated by the applicant are that he was engaged as daily wager in the year 1999 through Employment Exchange and worked till 2002 at Bheemanadi Exchange and Cheruvathur. He submitted a representation to the concerned authority for his regularisation. Thereafter he was engaged as Lineman's Assistant at Cheruvathur on petty contract basis till 2006. Thereafter he worked as such at Badiyadukka till 2009. According to the applicant he was engaged continuously for 10 years from 1999 to 2009 by the respondents. He was disengaged from Badiyadukka on the pretext of want of work and asked to report at his original place of engagement at Bheemanadi-Cheruvathur. They too declined to engage him there on the excuse of his last engagement at Badiyadukka. Thus he was out of employment.

3 OA No.113/2011: In this OA, the applicant averred that he was engaged as casual labour on 16.1.1990 and continuing as such even though there was a ban for such engagement. After litigation before this Tribunal and before the Hon'ble Supreme Court, the respondents have arbitrarily

dispensed with the engagement of casual labours and alternatively treating him as petty contractor to avoid regularisation. According to the applicant he has put in 20 years service with the respondents and is entitled to regularisation in view of the order passed by this Tribunal in OA 846/2009. He represented to the concerned authorities for regularising his service. He was served with the order dated 11.11.2009 (Annx.A2) stating that he worked as petty contractor and not as a Part-time Mazdoor therefore his service cannot be regularised. He submits that whatever may be the designation, the respondents made him work as casual labour thus he is entitled to be regularised. It is also averred that the engagement on contract basis was against the provisions of P&T Manual Vol.II.

4 The ^{applicants} raised the main ground that their claims were not considered by the respondents on par with other casual mazdoors as they are being treated as petty contractors to avoid their regularisation, such action adversely affects their service prospects and amounts to unfair labour practice. Therefore they prayed for a direction to the respondents engage them, regularise their service and pay wages accordingly.

5 Counsel statement was filed by the learned counsel for the respondents. It is submitted that verification of records shows that the applicants were doing petty contract works and they were never engaged as full time mazdoor on daily wages (Annx.R1). Their claim is not supported by any documents showing that they were engaged as Mazdoor and hence they are not eligible for regularisation. They questioned jurisdiction of the Tribunal to entertain such matters when the applicants are not casual labourers.

6 The applicants filed rejoinder reiterating the facts as stated in the OAs. It is further stated that the engagement of the applicants since 1999 was not denied by the respondents. It is also averred that the engagement of the applicants on contract basis was against the provisions of P&T Manual Vol.II.

7 We have heard learned counsel for the parties and perused the records.

8 The main contention of the applicants is that their claim for regularisation was not considered and that they were left without being regularised, to face economic hardship.

9 Admittedly, the applicants rendered their service as petty contractor as per Annx.R1. As such no relationship of employer and employee in law subsists between the principal employer and contractor. Contract labour is not prohibited for work of an occasional or seasonal nature. No notification was issued under Sec.10(1) of the Contract Labour (Abolition & Regulation) Act, 1970 (for brevity CLRA). Section 10 CLRA Act reads as under:

"10. Prohibition of employment of contract labour- 1) Notwithstanding anything contained in this Act, the appropriate Govt may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment; 2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Govt shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant facts, such as (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; (d) whether it is sufficient to employ considerable number of wholetime workmen.

Explanation - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate government thereon shall be final."

10 In the instant case, undisputedly, the applicants alongwith others worked as petty contractors. They received monthly payment from the

principal employer. The applicants could not produce any documents to show employer - employee relationship between the parties. No industrial dispute appears to have been raised. No notification seems to have been issued for abolition of Contract Labour, under Sec.10(1) of the CLRA Act, 1970. The applicants failed to establish the fact that the work assigned to them was of perennial nature. BSNL having its own recruitment rules apparently follows the regular process of selection under the relevant rules. Therefore, on the basis of settled legal position and facts before us, we are of the considered opinion that the applicants failed to establish any case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed.

11 We therefore dismiss these OAs. No costs.

K.NOORJEHAN
ADMINISTRATIVE MEMBER
kkj

Dr.K.B.S.RAJAN
JUDICIAL MEMBER