

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXX~~

120

199 1

DATE OF DECISION

26-3-1992

Smt. P.V. Vasanthakumari _____ Applicant (s)

Shri C.T. Ravikumar _____ Advocate for the Applicant (s)

Versus

Union of India _____ Respondent (s)

Shri N.N. Sugunapalan, SCGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan - Administrative Member

and

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

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

JUDGEMENT

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

The grievance of the applicant is that though she has been continuously working as Typist on daily wages under the Department of Electricity, UT of Lakshadweep from 15.12.1982 onwards, she has neither been regularised in service nor is being paid salary at the rate applicable to a regular Typist. The case of the applicant can be briefly stated thus: The applicant who has passed the SSLC examination and typewriting Lower in English being successful in an interview, was appointed as a Typist on daily wages @ Rs.8/- by order dated 14.12.82 of the 3rd respondent (Annexure-II). It was mentioned in the above order

would be
that the appointment ~~xxx~~ on daily wages until further orders.

While she was continuously working for six days a week, at her request by order dated 10.7.1987 of the third respondent, she was transferred and permitted to attend the Cochin office until further orders. While working at Cochin, she made an application for maternity leave on 5.7.1979 and the permission being granted by on 10.7.1989 endorsement on the leave application itself, she entered on maternity leave. After availing the maternity leave, the applicant submitted an application on 24.11.1989 along with medical certificate of fitness for permission to rejoin duty. As there was no response to this application, she made another representation on 12.12.1989 to the 4th respondent. On that day the applicant was informed by the 4th respondent that her application dated 24.11.1989 was referred to the third respondent as his concurrence was necessary for her re-engagement. Thereafter, she was served with an office memorandum dated 26.12.1989 by which at Annexure-VIII, she was directed to report for duty with necessary medical fitness certificate informing her that she would be engaged for a minimum of 30 days or till the pending work was over whichever was earlier at the approved rate of Rs.24.75 per day. The applicant rejoined duty and it was while continuing in service ~~like~~ that this application has been filed. Her grievance is that while she was made to work for six days of work till she went on maternity leave, she was being given work only 5 days a week after rejoining duty as per Annexure-VIII order and that inspite of the fact that she has been doing the same work as a

regular Typist and inspite of the fact that there was a clear vacancy of Typist in the Department, after extracting work from her for as long a period as 8 years with only artificial break, she is still being treated as a casual Typist without parity of wages with regular Typists of the Department and without absorbing her regularly in the Department in a post. The applicant submits that this action on the part of the Administration is violative of Articles 14, 16 and 39 of the Constitution of India. As the applicant has been doing the very same work as a regular Typist continuously from 1982 onwards with only artificial breaks, the applicant claims that as observed by the Hon'ble Supreme Court in several rulings, she is entitled to be absorbed in a post of Typist with effect from the date of her initial engagement and to be paid salary with the benefit of yearly increments. The applicant has therefore filed this application under Section 19 of the AT Act praying that the respondents may be directed to regularise the services of the applicant in the post of Typist in the Department from the date of her intial appointment ~~ignoring the~~ deliberate breaks in service created by the respondents, to put her in a regular pay scale as that of a regular Typist and to pay her the arrears of difference in salary from the date of her initial appointment.

2. The respondents in the reply statement have contended that the applicant was engaged as a casual labour Typist on daily wages as a stop-gap arrangement for clearing of arrears of work, that she was permitted to work in Cochin office only on

her request to enable her to seek employment elsewhere and that as regular recruitment to the post of Typist can be done only either by appointment of the local people or on the basis of deputation as per the extant rules, the applicant is not entitled to be regularised in the post of Clerk-cum-Typist as prayed for by her. It has also been contended that as the duties of casual labour Typist is not equal in responsibilities as those of regular typists, the applicant is not entitled to parity of wages with the regular Typists of the Department. The respondents pray that the application may, therefore, be dismissed.

3. The applicant has filed a rejoinder in which she had contended that the case of the respondents that she was engaged as a stop-gap arrangement to clear up the arrears and that she was not granted leave are not true to facts and that if the records available with the respondents are produced, it would be seen that these contentions are false.

4. We have heard the arguments of the counsel on either side and have also carefully perused the pleadings and documents produced. That the applicant, being sponsored by the Employment Exchange and having selected by an interview board, was appointed temporarily as a Typist on daily wages by the third respondent on 15.12.1982 are facts not disputed and borne out by Annexure I. The details of attendance shown in Annexure R2 establish that the applicant has been continuously working till 10.7.1987 in the office of the 4th respondent and from 16.7.1987 to

10.7.1989 at Cochin office. Though the respondents have contended that no maternity leave as such was granted to the applicant, the fact that she was later engaged for duty on production of a fitness certificate is sufficient proof to show that her absence was not unauthorised. So, from the admitted pleadings and the evidence on record, it is evident that right from 15.12.1982, the applicant has been continuously working under the respondents on daily wages for six days a week and that thereafter, on re-engagement, she was required to work 5 days a week from 26.12.1989. The case of the applicant is that though she has been discharging the duties of a Typist, she was being paid wages at the daily rate of Rs.6/- for some period and at the rate of Rs.24.75 from 26.12.1989 and that this is in violation of Articles 14, 16 & 39 of the Constitution of India. The respondents in their reply statement have contended that the duties and responsibilities discharged by the applicant as a casual Typist were not equal to that of a regular typist. The averment in paragraph 3 of the reply statement itself would show that this contention has no force. It is worthwhile to extract what is stated in the reply statement regarding the nature of duties performed by the applicant.

"It is true that Smt. P.V. Vasanthakumari was temporarily engaged as Typist as casual labourer on daily wage basis in the Electricity Division Office vide office order F.No.3/12/82-Estt/2269

dated 14.12.1982 (Annexure-II) of O.A. She was engaged with effect from 15.12.82. There was no post of Typist in the Electrical Division Office, Kavaratti during that time, hence she was engaged on daily wage basis as a casual labourer till regular Typist is posted and as a stop gap arrangement."

As the applicant has been working as a Typist and as the respondents have not made it clear in what manner the duties and responsibilities of a regular Typist are different from the duties and responsibilities discharged by the applicant as a Typist on daily wages, we are not inclined to accept the case of the respondents that the applicant is not entitled to parity in pay with the regular Typist or LDC-cum-Typist of the Department. But for the artificial breaks and the period during which the applicant was kept out of engagement, the applicant has been continuously working as a Typist under the respondents from the year 1982 onwards. We do not find any justification to deny the applicant wages at the rate which the regular Typist of the Department are being paid. In *Jaipal and others vs. State of Haryana and others, AIR 1988 SC 1504*, the Hon'ble Supreme Court observed as follows:-

"Article 39(d) contained in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the Chapter of Directive Principles of State Policy, but it is fundamental in nature. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The doctrine of equal pay for equal work has been implemented by this Court in *Randhir Singh Vs. Union of India*, (1982) 3 SCR 298: (AIR 1982 SC 879), *Dhiren Chamoli vs. State of UP* (1986) 1 SCC 637 and *Surinder Singh vs. Engineer-in-Chief, CPWD*, (1986) 1 SCC 639: (AIR 1986 SC 584). In view of these authorities, it is too late in the day to disregard the doctrine of equal pay for equal work on the ground of one

employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee."

As we have no doubt in our minds that the applicant had been discharging the same duties as that of a regular Typist, we are of the view that the applicant is entitled to be paid wages at least at the minimum of the scale of LD Clerk-cum-Typist in the Department of Electricity, UT of Lakshadweep at least from the date of filing of this application.

5. The applicant has prayed that the respondents may be directed to regularise her services with effect from her date of initial engagement on a casual basis. According to the respondents, as the Government of India has in the order dated 3.7.75 at Annexure R-3 prohibited regular and permanent appointment of outsiders, it is not possible for the Administration to regularise the applicant as a Typist or LD Clerk-cum-Typist in the Electricity Department. It is also contended that the Government of India had in a letter dated 25.10.90 at Annexure R-4 made it clear that regularisation of outsiders in the service was not permitted. According to the respondents as there are large number of local candidates available for appointment as LD Clerk-cum-Typist and as the method of recruitment as per the recruitment rules in force is by conducting the test as prescribed by the Administration from time to time, it is not possible to regularise the services of the applicant, who has been engaged purely on a casual basis

as a stop-gap arrangement. We are not at all impressed with this argument. The very fact that the services of the applicant was continuous from the year 1982 onwards shows that the engagement of the applicant was not a stop-gap arrangement. If several local people were available, the Administration could have engaged anyone of them. Having utilised the services of the applicant for a very long time, it is unjust and immoral to contend that ~~now~~ now local people are available and that the applicant's services cannot be regularised. The Hon'ble Supreme Court has in a catena of decisions deprecated the action of the Government in keeping casual employees without regularising their services for unduly long period and refusing to take them on regular rolls.

In Bhagwati Prasad vs. Delhi State Mineral Development Corporation, (1990) 1 LLJ 320, the Hon'ble Supreme Court has held as follows:-

"The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and eversince, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the seniormost workmen should be regularised.

with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts."

In Daily Rated Casual Labour Employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch vs. Union of India and others, (1988) 1 SCC 122, the Hon'ble Supreme Court has observed as follows:-

"If a person does not have the feeling that he belongs to an organisation engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that management and the governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonable long period of time. Where is any justification to keep persons as casual labourers for years as is being done in the Posts and Telegraphs Department? Is it for paying them lower wages? Then it amounts to exploitation of labour. Is it because you do not know that there is enough work for the workers? It cannot be so because there is so much of development to be carried out in the communications department that you need more workers. The employees belonging to skilled, semi-skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Administrators should realise that if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. Our wage structure is such that a worker is always paid less than what he produces. So why allow people to remain idle? Anyway, they have got to be fed and clothed."

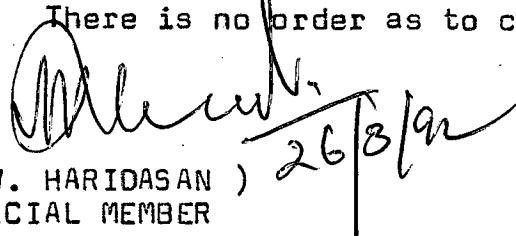
Here it is evident that there is work for a Typist in the Department of the respondents. It is evident from the fact that the applicant was being put to work as a Typist for all these long years though on a casual basis. This is a clear indication of the fact that there is sufficient scope for

employment of a regular Typist in the Department. The instructions contained in the letter of the Government of India at Annexure III and IV that outsiders should not be appointed on a regular basis and that their engagement should be for specific period renewed periodically as per requirement and that regular vacancies should be filled either by the islanders or by deputation of mainlanders cannot be held out as a reason for turning down the claim of the applicant for regularisation in a post because the Administration has extracted work from the applicant for as long a period as seven years paying much lower wages than a regular Typist. The applicant has alleged that out of the gradation list of casual labourers several persons junior had been absorbed in regular service. This has not been specifically controverted in the reply though the respondents have contended that nobody was absorbed as office staff. If posts of field staff in Group D & C can be filled by absorbing of casual labourers, there is no justification for not adopting the same yardstick for office staff like Typists. Therefore, we are of the view that in the interest of justice, the respondents have to be directed to regularise the services of the applicant in the post of Typist or Lower Division Clerk-Cum-Typist in the next arising vacancy, and that till such date she is regularly absorbed, she should be continued in casual employment paying her wages applicable to the Typist or LD Clerk-cum-Typist (regular).

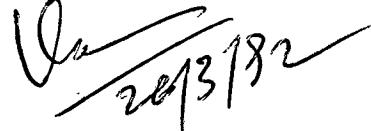
6. In the conspectus of facts and circumstances, the application is allowed in part. The respondents are directed to absorb

the applicant in the regular service as a Typist or LD Clerk-cum-Typist in the next arising vacancy. The applicant should be continued in service as a casual typist paying her wages at the minimum of the scale of Typist or LD-Cum-Typist till she is absorbed in a regular post. The difference in wages at the above said rate and the wages paid to the applicant from the date of this application should also be drawn and disbursed to the applicant within a period of two months from the date of communication of this order.

7. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

26/3/92


(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER

*ps

~~21-9-92~~ CCP-121/92 in OA-120/91

~~21-9-92~~
(23)

Notice for the petitioner
Mr. NN Sugunapalan for respondent

The learned Counsel for the
respondents undertakes to file a reply
to the CCP within 3 weeks with a
copy to the petitioner.

Leave for ~~the~~ further direction

on 2.11.92

S. S. S. S.

or

(SPM)

Court)

21-9-92

2.11.92 Mr. Ravikumar through proxy
(29) Mr. Madhu rep. NN Sugunapalan

The learned counsel for the petitioner states
that the CP(C) can be closed as the order of the Tribunal
has been complied with. Accordingly the CCP is closed
and notice discharged.

Haridasan
(AV Haridasan)

J.M.

2.11.92

S. Mukerji
(SP Mukerji)
V.C.

PO
A
AV Haridasan
MSCLG
order commended
On 9/11/92
BB