

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.145 of 1995

Thursday this the 15th day of February, 1996.

CORAM

THE HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
THE HON'BLE MR.P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

K.A.Martheena,
W/o Joseph Antony,
Sweeper,
Passport Office,
Ernakulam. residing at
Vayalil House, Vaduthala PO,
Kochi-23.

... Applicant

(By Advocate Mr. R. Sreeraj)

Vs.

1. The Regional Passport Officer,
Regional Passport Office,
Ernakulam.
2. The Chief Passport Officer,
Ministry of External Affairs,
New Delhi.
3. Union of India represented by
Secretary to Government,
Ministry of External Affairs,
New Delhi.

... Respondents

(By Advocate Mr. K.S.Bahuleyan for SCGSC)

The application having been heard on 15th February, 1996 the
Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant who has been working as a Sweeper under respondents ever since 1985 - a decade and more - seeks a declaration that she is eligible to be granted temporary status from 1.9.93, in the light of A3 Scheme. Respondents who oppose the application submit that there is no need for a regular hand, and that a contractor is engaged therefor.

2. Mr. Sreeraj appearing for applicant, relying on decisions of the Supreme Court argued that resorting to contract labour to defeat the claims of workmen who have rendered long years of service, cannot be justified either on moral or on legal grounds.

Learned counsel who argued his case with thoroughness sought support for his contentions from decisions of the Supreme Court in Catering Cleaners of Southern Railway Vs. Union of India and another, AIR 1987 SC 777 and in Sanker Mukherjee and others Vs. Union of India and others, AIR 1990 SC 532. The Apex Court disapproved the method of resorting to contract labour, to defeat the claims of employees who have put in long and continuous years of service. The court pointed out that such unethical practices amount to the resurrection of bonded labour system.

3. Counsel submitted further that applicant had put in more than ten years of service and that she had put in more than 240 days of service during these years. Relying on the scheme A3, he submitted that applicant is entitled to be regularised.

4. Shri Bahuleyan appearing for respondents placed all the relevant circumstances before us, and tried to justify the engagement of a contractor. He submits that there is not enough work to employ a Sweeper. The justification put forward is not tenable. If for more than eight years the department felt the need for a Sweeper, the need could not have vanished when the area in their occupation has increased considerably. The original application states that a Sweeper was engaged while the respondents functioned in rented premises with a floor area of 11,940 sq.ft. The area now occupied by them (their own premises) is much more, namely 15000 sq.ft. The need could not have dwindled or disappeared.

5. We are not making a fact assessment but only following the principles laid down by the highest court in the land regarding considerations to be applied. In State of Haryana Vs. Piara Singh and others 1992(4) SCC 118 the court observed:

"ordinarily the creation and abolition of a post is the prerogative of the executive....The concern of the court is to ensure the rule and law, and to see that the

executive acts fairly and gives a fair deal to its employees...State should not exploit its employee nor should it seek to take advantage of the helplessness and misery of the unemployed persons or the employees...where a temporary or adhoc appointment is continued for a long time the court presumes that there is need and warrant for a regular post and accordingly direct regularisation."

(emphasis supplied)

Apart from the fact that induction of contract labour is unethical and amounts to exploitation, the consideration indicated by the Supreme Court in the passage cited, governs the case on hand. For a decade the services of applicant were found necessary to sweep an area of 11,940 sq.ft. Certainly the need remains when the area has increased to 15,000 sq.ft. It must therefore, be held that the justification put forward for abolition of the post cannot be sustained and that need continues.

6. It was then pointed out by learned counsel for respondents that regularisation of such employees would impose financial burden on the Government of India. In this context we would refer to the decision of the Supreme Court in Chief Conservator of Forests and another vs. J.M. Kondhare etc. 1996(1) SLR 56. Noticing a similar argument, the court pointed out that financial constraint cannot justify, an otherwise unjustifiable course of action. A common defence taken by the Government of India in several contexts is financial constraints and financial discipline. We would point out that our system of governance is dominated by social and constitutional ethos and values, which do not subjugate themselves to financial constraints or policies. Financial concerns

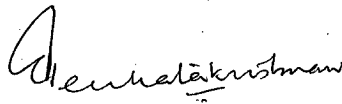
though relevant, are not the foremost consideration in our value system. The egalitarian philosophy of the Constitution, the magnificent visions of the founding fathers reflected in the provisions of the Constitution, and the perceptions indicated by the highest Constitutional Court, must prevail over arguments of parsimony, advanced by the administrator. We hold that financial constraints cannot justify the abolition of the post in question.


7. It was then pointed out that regularisation can be granted only to candidates sponsored by Employment Exchanges. Such a restriction is not found in the scheme and at any rate it cannot apply to those who were in position prior to 7.6.88. We reject this contention also.

8. In the result we allow the application and direct respondents to confer temporary status on applicant from 1.9.1993. All consequences flowing therefrom, will also enure to the benefit of the applicant.

9. We record appreciation of the help rendered by learned counsel on both sides. No costs.

Dated the 15th day of February, 1996.


P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

List of Annexure

Annexure-A3:- True copy of the casual labourers
(temporary status and regularisation)
scheme of Government of India 1993,
Department of Personnel and Training,
New Delhi.