

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 156/91
XXXXXX 199

DATE OF DECISION 25-2-92

JESSYMOLO

Applicant (s)

Shri M.R. Rajendran Nair Advocate for the Applicant (s)

Versus

Sub Divisional Officer(T) Respondent (s)
Kayamkulam and 2 others

Shri AA Abul Hassan Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

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

JUDGEMENT

N. Dharmadan, Member (Judicial)

The applicant is a Part-time sweeper. She is aggrieved by the engagement of another Part-time sweeper who is at present working in a neighbouring office at Muthukulam Telephone Exchange, in her place without considering her claim for re-engagement in the same place where she was working originally.

2. The applicant was initially engaged as Part-time Sweeper (for short PTS) in the office of the Telephone Exchange, Arattupuzha on 14-8-85, the date on which this Exchange was commissioned. While working in the office

continuously discharging her duties to the satisfaction of the Sub Divisional Inspector her services were terminated orally on 3-1-89. After her termination ^{the} ~~her~~ duties which were formerly done by the applicant were carried out through one Sasidharan Pillai who is also working in that office. inspite of the fact that the applicant has repeatedly approached the first respondent for re-engagement. She also submitted her written representation; but no written reply was given to her. When she met the first respondent she was informed that her request for re-engagement would be considered whenever the need arises for re-engagement of an outsider for carrying out the duties which were discharged by the applicant earlier. Later it is understood that the first respondent has engaged Smt. Bhavani, a Sweeper already working at Muthukulam Exchange, as Sweeper at Arattupuzha Exchange on 17-7-90. Smt. Bhavani is allowed to do the work at Arattupuzha Exchange on alternate days and she is being paid full remuneration for the work she is carrying out in both offices at Arattupuzha and Muthukulam. According to the applicant there is no order, permitting an employee to carry on the duties of two Exchanges and get remuneration of a full-time employee. The engagement of Smt. Bhavani at Arattupuzha is contrary to the assurance given by the first respondent to the applicant who has claimed re-engagement after her termination in 1989. The applicant submitted Annexure-I representation before the 2nd respondent which has not yet been disposed of. Under these circumstances

.....

the applicant has filed this application for declaration that her termination is illegal and for a direction to the respondents to re-engage the applicant with all back wages.

3. The respondents have filed reply statement producing Annexure R-I(A) and Annexure R-I(B), two letters issued by the Assistant Director General (STN) pertaining the employment of Part time casual labourers. They further submitted that the sweeping and cleaning work of Arattupuzha Exchange were entrusted to duly selected approved casual mazdoor who is doing part time work at Muthukulam Exchange. This is done on the basis of Annexure R-I(B). They further submitted that Smt. Bhavani, Part time sweeper at Muthukulam Exchange who was duly selected candidate is allowed 3 hours of duty at Muthukulam Exchange and one hour duty at Arattupuzha Exchange and hence no necessity to re-engage the applicant.

4. Having heard the arguments of the learned counsel on both sides, we are of the view that the applicant's termination as part time sweeper with effect from 3-1-89 appears to be not in accordance with law. Admittedly the applicant was not given any notice prior to her termination. In fact there was no order of termination. The applicant was continuously working in the office at Muthukulam ever since its establishment. It appears that

12

...../

the applicant did not challenge termination in 1989 because she relied on the assurance given by the first respondent that she will be considered for re-engagement whenever there arises need for engaging person from outside. By the engagement of Smt. Bhavani, the need for engaging a Sweeper is undoubtedly ~~xxxxxx~~ but the applicant was not considered.

5. The respondents mainly rely on Annexure R-I(A) and R-I(B), two letters issued by the Assistant Director General dealing with the employment of Part-time employees and their regular absorption. Annexure R-I(A) indicates that the department has discussed the question of regularisation of Part-time casual labourers with Standing Committee of the P & T Board and it has taken a decision that the existing Part-time casual labourers may be absorbed in regular vacancy in accordance with the instructions dated 9-3-83. This was a letter issued on 14-8-84, long before the engagement of the applicant as Part-time Sweeper. However, she is also entitled to the benefit of regularisation under this letter if she satisfies the requirement in that letter. The letter at Annexure R-I(B) dated 15-2-85 discloses that the department has taken a policy decision to abolish the practice of employment of Part-time casual mazdoors in future and also to convert the existing Part-time posts into full time posts by clubbing two part-time posts together. The applicant was

in Arattupuzha Exchange even before this order. So she can also claim the benefit of conversion contemplated in the later part of the letter. She is, therefore, entitled to the benefit of conversion and regularisation in her post as Full Time as stated, in Annexure-R-I(B) letter. As indicated above her absorption as Part time sweeper in 1985 inspite of the policy decision of the department to abolish the practice of engagement of Part-time casual mazdoor and convert the existing Part-time posts into full time by clubbing together two Part-time posts shows that there exists necessity of engagement of the applicant and existence of a post in the office of the first respondent. Since she is allowed to continue for more than 3 years, she is entitled to the benefit of regularisation. This Tribunal had an occassion to deal with a more or less similar issue in OA 74/90, Pennamma V. Union of India & others (unreported). The observed as follows:

".....The respondents reliance on the Postmaster General's circular dated 5-9-88 (Annexure R3(A)) does not seem to be fully warranted for termination of the applicant's service. Para 2 of the circular is quoted below:

2. The following are the instructions:
 - 2.1 Casual mazdoors should not be engaged as Group 'D' or Postman in a circumventing ban on creation of posts. In other words casual mazdoor should not be engaged in an office as a continuing augmentation of the sanctioned strength of Group-'D' or Postman in any office. If, for justification beyond doubt, engagement of regular casual mazdoor insuch augmentation is inescapable, it will require the prior approval of PMG, whether full time or part time. For that, proposal should be made by Divisional Head to the controlling director who will report to the PMG through IFA. Upon such specific approval casual mazdoor will be engaged strictly according to the terms of approval. This does not apply to engagement of part time contingent sweeper and scavenger strictly according to the standard which will continue to be governed by the existing orders."

The above will show that the restriction imposed by the aforesaid circular on employment of casual workers are not to be applied for engagement of part time contingent Sweepers, like the applicant whose employment continue to be governed by the orders existing before the circular was issued..."

xxxxxx xxxxx xxxxx xxxx

9. The principle of hire and fire in public services has become a historical past and thanks to our Constitution and the judge-made laws, has been considered to be an anathema to the 'core and conscience' of our Constitution. In that context the impugned order by terminating the services of the applicant who had been engaged as Part-time contingent sweeper for three years has to be struck down. Accordingly, we allow the application set aside the impugned order dated 18-1-90 at Annexure-A and direct the respondents that the applicant should be continued as part time contingent sweeper till any casual worker engaged after she had been employed on 9-2-87 is retained...."

6. The case of the applicant is that the first respondent has given an assurance to the applicant at the time of termination of her service that her claim for re-engagement would be considered when a need arises for engaging an outsider. But she has not been considered when need arose. Since there was no consideration of the applicant's claim while engaging Smt. Bhavani, it appears there is default on the part of first respondent. His action is against the assurance given by the first respondent. Having regard to the facts and circumstances we are of the view that policy statement contained in Annexure R-I(A) should not stand in the way of the applicant being considered for re-engagement in the post in which she was working originally under the first respondent.

7. Under these circumstances we hold that the applicant is entitled to re-engagement in the post of Part-time Sweeper, at Arattupuzha Telephone Exchange.

We, therefore, direct the respondent to re-engage the applicant within a period of one month from today.

8. The Original Application is accordingly, allowed.

There shall be no order as to costs.

N. Dharmadan

25.2.92

(N. Dharmadan)
Member (Judicial)

S.P. Mukerji

25.2.92

(S.P. Mukerji)
Vice Chairman

25-2-92

ganga