

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 182/98

Wednesday the 24th day of March 1999.

CORAM

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Sudha.T.
W/o Sankaran
Part-time Sweeper/Casual Labourer
Mannar Telephone Exchange
Mannar.
R/o Varottil, Kurattuserry
Mannar P.O. Applicant.

(By advocate Mr M.R.Rajendran Nair)

Versus

1. The Sub Divisional Officer, Telegraphs Mavelikkara.
2. The Telecom District Manager Alappuzha. Respondents.

(By advocate Mr M.H.J.David J, ACGSC)

The application having been heard on 24th March 1999, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash Annexure A-6 and to declare that the part-time service rendered by her is liable to be counted for conferring temporary status and to direct the respondents to confer temporary status to her with effect from 29.11.89 with all consequential benefits and also to declare further that she is liable to be treated at par with temporary Group-D employee with effect from 29.11.92 and further to direct the respondents to treat her at par with temporary Group-D employee with effect from the said date with all consequential benefits.

2. The applicant says that she is engaged as a part-time Sweeper in Mannar Telephone Exchange from January 1988 onwards. She had rendered more than 240 days of work in every year of her engagement. She is fully entitled to be conferred with temporary status as per the terms and

conditions of the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme. She submitted a representation to the first respondent requesting for conferment of temporary status with effect from 29.11.89 with all consequential benefits. Since the same was not considered, she approached this Bench of the Tribunal by filing OA No. 526/97. The said OA was disposed of permitting the applicant to submit a comprehensive representation to the second respondent and directing the second respondent to consider the same and to pass a speaking order. Pursuant to that, the applicant submitted a representation and the same was disposed of by rejecting her request as per Annexure A-6.

3. Respondents say that the Tribunal has no jurisdiction to entertain this original application, that the applicant is doing work on contract and is not doing on part-time basis and that the scheme is not applicable to the applicant.

4. Learned counsel appearing for the respondents submitted that the contention raised as to the jurisdiction of this Tribunal to entertain this original application is not pressed.

With regard to the contention that the scheme is not applicable to the applicant, the respondents cannot be heard to say so, in the light of the order passed by this Bench of the Tribunal in OA 526/97, a copy of which is produced as Annexure A-4.

5. The only question that survives for consideration is whether the applicant is a part-time casual labourer or is one engaged by the respondents on contract basis. The definite stand of the applicant is that she is working as a part-time casual labourer under the respondents. Annexure A-1 is a receipt dated 14.10.97 issued by the applicant. There it is stated that an amount of Rs.150/-



was received from J.T.O. towards wages for cleaning bathroom and latrine for the month of September and "this is a contract basis only." Learned counsel appearing for the applicant submitted that the applicant was forced to issue the receipt (Annexure A-1) containing that it is only on contract basis and and it was not issued stating the same voluntarily by the applicant. If the applicant was working on contract basis, it is not known what was the necessity to specify in A-1 that at the rate of Rs. 5/- per day she was paid one month's salary i.e. Rs. 150/-. It would have been ~~enough~~ enough to issue a receipt for Rs. 150/- if it was a contract work. From the first sentence in A-1, it appears that the applicant was working not on contract basis.

6. The respondents in their reply statement have stated that there is a departmental Sweeper, namely, Thankappan and he does the sweeping in Mannar Telephone Exchange. When the said Thankappan was appointed is not mentioned in the reply statement. If there was an appointment, there cannot be any difficulty in specifying on what date he was appointed. It is not known whether the said Thankappan was appointed earlier to the engagement of the applicant or along with the applicant or subsequent to the engagement of the applicant. That does not serve any purpose.

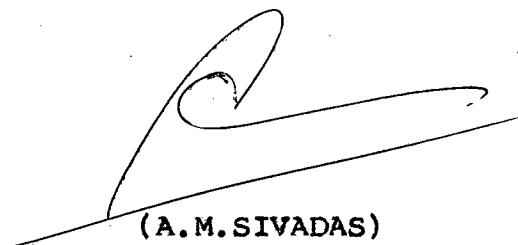
7. According to the respondents, the applicant is working on contract basis and, therefore, there is no question of considering the conferment of temporary status to her. No doubt, if she is working on contract basis, there is no question of conferring temporary status. On the other hand, if she is working as a part-time

casual labourer, if she satisfies the conditions contained in Annexure A-2, she is entitled to be conferred with temporary status. As per the provisions contained in paragraph 418 to 436 of the P&T Manual Volume 2, "all work done or supply made under agreement is termed 'contract' and in agreements for such work, which should invariably be in writing, there should generally be a stipulation as to the quantity of work to be done or material to be supplied and the time within which the work or the supply is to be completed". If the applicant is working on contract basis, there should necessarily be a contract reduced to writing and that the contract reduced to writing should contain the stipulation as to the quantity of work to be done and the time within which the work is to be done. The respondents in a very vague manner have stated that the applicant is working on contract basis. When it is vaguely stated, it can be either an oral contract or a written contract. In the light of the provisions contained in P&T manual volume 2 mentioned above, there cannot be an oral contract and the contract can only be a written contract. If there is written contract, it is not known what prevented the respondents from mentioning the date of the contract, the conditions contained in the contract and also producing a copy of the contract. In the facts and circumstances of the case, it can only be said that the plea of the respondents that the applicant was appointed on contract basis is rejected. Annexure A-6 impugned order says that the applicant is not entitled to any of the ⁱⁿ beliefs claimed in her representation for the reason that she is working on contract basis. It is also pertinent to note that in Annexure A-6 also apart from vaguely saying that the applicant is working on contract basis, no particulars as to the contract are given. The contract alleged by the respondents appears to be imaginary and fictitious and not real. The respondents have not even stated whether

the contract is oral or ~~written~~ and ~~no~~ ~~details~~ details as to the contract are given. It appears that the respondents have exercised pressure on the applicant to add the sentence in Annexure A-1 that she is working on contract basis, presumably with the intention, rather a malafide intention to set up a false plea of a contract. The said attitude is only to be deprecated.

Accordingly the impugned order Annexure A-6 is quashed. It is declared that the part-time service rendered by the applicant is liable to be counted for conferring temporary status. Respondents are directed to consider conferment of temporary status ~~on~~ the applicant in the light of the provisions contained in the Scheme. If it is found that the applicant is entitled to be conferred temporary status, she will be entitled to all the consequential benefits also. This shall be done by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

Dated 24th March 1999.



(A.M. SIVADAS)
JUDICIAL MEMBER

aa.

Annexures referred to in the order:

1. Annexure A-6, true copy of the order No. E27/0A-526/97/15 dated 30.9.97 issued by the Deputy General Manager, Telecom, Alappuzha.
2. Annexure A-1, true copy of the receipt dated 14.10.97 given by the applicant.
3. Annexure A-2, true copy of the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme dated 11/89 No. 269-10/89-STN issued by the Asstt. Director General, Telecom, New Delhi.
4. Annexure A-4, true copy of the order dated 20.8.97 in OA 526/97 of this Tribunal.