

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 185 1991

DATE OF DECISION 27.2.92

V.Surendran Applicant (s)

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

Versus

The Sub Divisional Officer Respondent (s)
Telegraphs, Ottappalam &
3 others.

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

CORAM:

The Hon'ble Mr. N.V.Krishnan, Member (Administrative)

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

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

JUDGEMENT

N.V.Krishnan, AM

The applicant has claimed the following reliefs in this application:-..

- " (i) To declare that applicant's services are not liable to be terminated except in accordance with law.
- (ii) To direct the respondents to regularise the services of applicant in the light of the decision of the Supreme Court reported in ATR 1987 SC 2342.
- (iii) To direct the respondent to give work and wages to the applicant as and when the same is available."

2. These reliefs have been claimed in the following circumstances:

- 2.1 The particulars about the services of the applicant are not disputed. The averment made by him in this regard have been more or less admitted by the respondents who concede that the applicant commenced service as a part-time scavenger for half an hour a day and was engaged as such

continuously from 1.4.87 to 6.3.89. Thereafter, he had six different spells of engagements as casual mazdoor commencing from 25.5.89 to 19.1.91, with breaks in between.

2.2 The applicant has already registered his name with the Employment Exchange. As he apprehended that further engagement as casual mazdoor will be denied on the ground that he is not an approved mazdoor, he filed this application on 31.1.1991 seeking the aforesaid reliefs.

3. The respondents have resisted the claims on many grounds.

4. We have perused the records and heard the learned counsel for both the parties. We feel that it would be proper to deal with the objections raised by the respondents *seriatim*.

5. The initial objection raised by the respondents is that the applicant was engaged irregularly by Shri P.S. Narendranathan, Lineman of Kollangode, who was not authorised to employ him as a casual mazdoor. Therefore, the engagement being irregular, no benefit can be claimed by the applicant therefrom.

6. We are not at all impressed by this argument. The learned counsel for the applicant pointed out that payment is made to the applicant only after the bills are passed by superior authorities. Nobody had raised any objection in this regard. If the initial engagement was irregular it ought to have been spotted out immediately or within a reasonable time, particularly when bills for payment are scrutinised. It is too late in the day to resist the claim on this ground. That apart, if the engagement was irregular, the Department can penalize the authority who appointed the applicant and not the worker. This objection is rejected.

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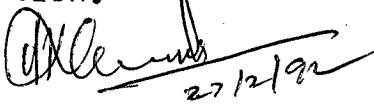
7. It is next contended that there are breaks between engagements after 6.3.89 and that these are not due to non-availability of work. It is contended that the applicant was voluntarily absent.

8. We have considered this and we reject this on two grounds. Firstly, while on the one hand respondents state that the applicant was irregularly appointed by Shri Narendranathan, it is surprising to note on the other hand that, they now state or imply that had he been present, he would have been appointed. Obviously, the two stands are mutually contradictory. That apart, the engagement of casual mazdoors depends on availability of work. It is quite possible that work may not have been available during the periods when the applicant was not engaged or that sufficient work was not available to engage the applicant also as the respondents would have given priority for engagement to persons senior to the applicant. In any case, this not a matter of any consequence, as the applicant has continued to work intermittently from 25.5.89 to 19.1.91.

9. It is contended that as the applicant is not an approved mazdoor as admitted by him in the application, he cannot be given any further engagement. Approved mazdoors are those who have been sponsored for engagement by the Employment Exchange in response to a requisition by the departmental authorities for engagement as casual mazdoors. A list of such labourers is maintained which is the list of casual mazdoors. However, there are occasions when for various reasons casual labourers not sponsored by the Employment Exchange would also have to be engaged. Such occasion may arise when the list of Employment Exchange sponsored employees gets exhausted or many of them abandoned work and create shortage of labour or more work arise suddenly or for any similar reason. Suffice it to say that

a total ban on engagement of casual mazdoors is an utopian idea and hence that ban has been followed more in its breach, like in the present case.

10. Therefore, this application has to succeed and the applicant is entitled to relief. We have disposed of similar cases in the recent past with suitable directions (e.g. OA 803/91) to the respondents. Following those decisions we dispose of this application with a direction to the respondents to include the name of the applicant in the list of casual labourers, it being understood that all approved casual labourers in that list will, enbloc, rank senior to all unapproved casual labourers like the applicant and that amongst the unapproved casual labourers already in that list, the applicant's place shall be determined by his seniority represented by the number of days of casual service rendered by him, which shall be reckoned at 25% of the actual number of days worked, as he was only a part time casual labourer. The respondents are directed to engage him as and when work is available according to his position in the list and likewise he shall be considered for regularisation in accordance with law, according to his turn.


 27/2/92
 (A.V. Haridasan)
 Member (Judicial)


 27.2.92
 (N.V. Krishnan)
 Member (Administrative)

VM.