

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.-196/95

FRIDAY, THIS THE 24TH DAY OF OCTOBER, 1997.

G-O-R-A-M:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S. K. GHOSAL, ADMINISTRATIVE MEMBER

E.P. Maggie W/o Velayudhan
Casual Labourer
Panampilly Nagar Telephone Exchange,
Kochi.

resident of Thonipparakkal House,
Vaduthala P.O., Kochi-23.

..Applicant

By Advocate Mr. M.R. Rajendran Nair,

Vs.

1. The Divisional Engineer (Administration)
Office of the General Manager,
Telecom, Ernakulam.
2. The General Manager,
Telecom, Ernakulam.
3. The Chief General Manager,
Telecom, Kerala Circle,
Trivandrum.
4. E. I. Poullose,
Elanjikkal, P.O. Muringoor
Via Chalakkudy.

..Respondents

By Advocate Mr. James Kurian, ACGSCfor 1-3

By Advocate Mr. P. I. Davis for R4

The application having been heard on 15.10.97, the
Tribunal on delivered the following:

O-R-D-E-R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The applicant in this case feels aggrieved by the
alleged denial of the status of a casual worker, as
employed by the respondent Department, i.e. the Department
of Telecommunications, for the work that she has turned out



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as Sweeper-cum-Scavenger at Panampilly Nagar Exchange. She has sought the relief of a declaration that she is entitled to be enlisted by the Department as a casual mazdoor with appropriate seniority considering her past service and further that she is entitled to be granted temporary status as a group 'D' employee and to subsequent regularisation in that capacity.

2. As regards her past service, the applicant has stated that she worked as a part-time Sweeper-cum-Scavenger at Chittoor Exchange from 20.1.87 to 28.12.87 for a total period of 342 days. She has also claimed to have worked as a water carrier girl in a temporary vacancy at Cochin Auto Exchange w.e.f. 22.3.88 for a period of four months.

3. On behalf of the departmental respondents i.e., the respondents 1 to 3, it has been admitted that the applicant had worked from 20.1.87 to 28.12.87 for four hours a day on a part-time basis in the exigency of service and as a purely temporary arrangement and further that on the posting of a regular person, her services were then terminated. The claim of the applicant that she had been appointed to work in the Auto Exchange, Kochi w.e.f. 22.3.88 has, however, been specifically denied by the departmental respondents. The main defence of these respondents is that her employment at the Panampilly Nagar Exchange has not been on the basis of a contract between the Department and the applicant and further that the applicant has not been employed by the department in any other capacity in the said Panampilly Nagar Exchange in 1995, though so claimed by the applicant.

4. The respondents have further resisted the claim of the applicant for the grant of temporary status as a casual



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worker or for being considered as entitled to be regularised on the ground that such a claim based only on her past service as a part-time Sweeper-cum-Scavenger at Chittoor Exchange from 20.1.87 to 28.12.87 is evidently time-barred.

5. The learned counsel for the applicant at the stage of arguments did not press the point that the applicant was formally employed by any of the respondents at 1 to 3 for the work that she did at Panampilly Nagar Exchange in 1995. In the pleadings made on behalf of the applicant it is also stated specifically that the applicant was engaged on a contract basis for certain cleaning operations i.e. as a Sweeper-cum-Scavenger at Panampilly Nagar Exchange. However, the main thrust of the arguments advanced by the learned counsel for the applicant is that the so-called contract arrangement was a mere facade and a sham⁴⁹ and that there was actually no valid arrangement for contracting out these cleaning jobs at Panampilly Nagar Exchange. He has asserted that no properly executed contract in this behalf has been effectively operated by the Department. Effectively and for all practical purposes the applicant was employed by the department itself. The alleged contractual appointment is only a thin veneer behind which the Department wants to conceal the real nature of the employment and in the process deny the legitimate rights of the applicant as a casual worker employed by the department, the learned counsel for the applicant has further contended.

6. In order to deal with the above aspect of the case i.e. the real nature of the appointment of the applicant in 1995 in Panampilly Nagar Telephone Exchange, which would have a decisive influence on the fate of this Original



Application, it was considered necessary by us to call upon the department to produce the vouchers relating to the payment for the jobs like cleaning including sweeping at Panampilly Nagar Exchange in 1995. We also allowed the impleadment of the fourth respondent one Shri E.I. Poulouse in whose favour the contract for this job was reportedly awarded by the Department.

7. The said fourth respondent has also filed a reply statement before us dated 12.7.95. In that statement he has maintained that the department had called for quotation⁴⁹ for supplying man-power for^{Re 49} cleaning of the premises of the Panampilly Nagar Exchange as a stop-gap arrangement along with the work of arranging furniture and the cleaning jobs in the canteen. He has further averred that his quotation of Rs. 55/ for a male labourer and Rs. 45/ for a female labourer was accepted by the Department and that the contract was accordingly awarded to him. In the said statement, he has said inter alia, that the applicant along with others were engaged by him or his son for carrying out the work and that he had entrusted to his son the actual supervision of works on the spot.

8. The learned counsel for the applicant has however expressed his doubt about the genuineness of the vouchers produced by the Department as well as the veracity of the statement filed by the fourth respondent. He has alleged that no such action was actually taken by the department in inviting quotations and in awarding the work in favour of the fourth respondent, though so mentioned in the reply statement filed by the fourth respondent.

9. In our considered view, the case of the applicant to



be declared as eligible for being enlisted as a casual worker and to be granted temporary status and regularisation in turn will have to be examined in the specific context of her claims that even after 22.3.88 when she stopped working as a part-time Sweeper-cum-Scavenger at Chittoor Exchange, she was employed for certain periods directly by the Department as a casual worker, including the period in 1995.

10. The applicant, we must observe, has not produced any certificate for any employment for any such subsequent period, issued on behalf of the Department, unlike for the period from 20.1.87 to 28.12.87, when she had worked as a part-time Sweeper-cum-Scavenger at Chittoor Exchange. For that period from 20.1.87 to 28.12.87 a certificate was actually issued on behalf of the department as evidenced by the Annexure A1. Further, it is not her case that based only on the period of service of 342 days as a part-time Sweeper-cum-Scavenger at Chittoor Exchange from 20.1.87 to 28.12.87 she should now be treated by the Department as a casual worker ⁴⁹ ~~as~~ on their roll and thereafter be granted the temporary status and eventually regularised as a group 'D' employee. That claim, if made, in any case will have to be dismissed as hopelessly time-barred for the purpose of any relief under the present Original Application. We do not consider it necessary or relevant to dilate on the aspect any further.

11. What remains therefore for us to consider is whether in the light of the facts and circumstances of the case, the applicant can be deemed to have worked as a casual worker directly employed by the Department in the year 1995.



for the purpose of getting certain cleaning jobs done. The applicant has not corroborated, with any evidence, the averment that the appointment of the 4th respondent for getting cleaning job done on a contract basis at Panampilly Nagar, as claimed by the Department, was not done following the normal procedures for awarding such contracts and that on the contrary, the applicant was effectively employed and paid for by an officer of the Department itself. We have no other material either, before us to doubt the veracity of the statement made by the 4th respondent, corroborating the statement of the Department, i.e. the official respondents, that certain jobs, including the cleaning job of the Panampilly Nagar Exchange, in the year 1995 actually were got done on a contract basis through the 4th respondent. The applicant herself has admitted in the O.A. that she was engaged as a contract worker at Panampilly Nagar Exchange in 1995, though that contract is only a sham and a fiction according to her.

12. In the light of the detailed discussions of the pleadings in this case and the arguments of the learned counsel on either side, which we have referred to above, we are unable to agree with a mere assertion made on behalf of the applicant that she was actually or effectively employed by the Department directly as a casual worker in 1995 in the Panampilly Nagar Exchange.

13. In the event, the application fails and it is dismissed accordingly. There will be no order as to costs.

Dated the 24th October, 1997.



S. K. GHOSAL
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN