

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 199 of 2000

Thursday, this the 31st day of August, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. V.K. MAJOTRA, ADMINISTRATIVE MEMBER

1. Susan Samuel, D/o. M Samuel,
Thevalapurathu House,
Kannamangalam South Chettikulangara.P.O.
Mavelikkara.
2. Premachandran.P.S.
S/o Sreedharan.A.V.
Pallamthazhathu House,
Pennukara.P.O.
Chengannur. - Applicants

By Advocate Mr MR Rajendran Nair

Vs

1. The General Manager,
Telecom,
Thiruvalla.
2. The Chief General Manager,
Telecom, Kerala Circle,
Trivandrum.
3. Union of India represented by
the Secretary to Government of India,
Ministry of Communications,
New Delhi. - Respondents

By Advocate Mr MR Suresh, ACGSC

The application having been heard on 31.8.2000, the Tribunal
on the same day delivered the following:

O R D E R

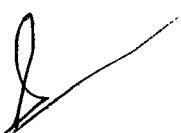
HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicants seek to quash A1 and A3 and to direct
respondents to engage them for casual work as and when work is
available without any restriction on the number of working
days in preference to freshers and juniors.



2. Both the applicants are casual mazdoors whose names have found a place in the panel of casual labourers eligible for future employment. They were given work from 1-4-1999 onwards. In the meantime, the Department of Telecommunications issued certain directions as per A1 stating that while hiring labourers for work of contingent nature shall not last more than 30 days at a time and that the maximum period of individual labourer hired should not exceed 100 days a year. Empanelment of casual mazdoors like the applicants are not brought into the purview of the said order as per A3. Pursuant to A3, applicants are not being given work on the pretext that they were completed 100 days engagement in that year. Fresh mazdoors are being recruited through the Employment Exchange and they are given work. Applicants say that A1 order is illegal and arbitrary, that engagement of newly recruited people by denying engagement to eligible casual mazdoors like the applicants is violative of Article 14 of the Constitution of India and the principles contained in the Industrial Disputes Act and that restriction of work to the applicants to the period of 30 days at a time and 100 days a year is only to defeat the legal claims for regularisation, which is arbitrary and amounts to unfair labour practice.

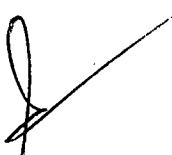
3. Respondents resist the OA contending that A1 and A3 orders of the Department of Telecommunications were made available to all cases of engagement of casual labourers and



the departmental officers are not empowered to hire any individual casual labour beyond 100 days in a year and as such hiring of the applicants were to be discontinued.

4. It is pertinent to note that the grounds raised in the OA have not been denied in the reply statement filed by the respondents.

5. A reply statement is filed by the Deputy General Manager, Telecom, Tiruvalla on behalf of all the respondents. From a reading of the statement it appears that the 3rd respondent is not in the party array. The 3rd respondent is the Union of India. A1, one of the impugned orders, is issued by the Government of India. In the reply statement it is stated that departmental officers are not empowered to hire any individual casual labour beyond 100 days in a year in the light of A1. When the validity of A1 is challenged, it is not known why respondents felt it very happy not to deny the grounds raised in the OA. We asked the learned counsel appearing for the respondents, what is the rationale in issuing A1. A1 dated 15-6-1999 says that the instructions contained in the OM dated 12-2-99 will not however apply to hiring labourers for works of contingent nature including repairs lasting not more than 30 days at a time and that the maximum period for which an individual labourer can be hired during a year should not exceed 100 days. The learned counsel for respondents did not enlighten us on this aspect. It appears from the reply statement that respondents have no rationale for issuing A1 and it is affirmed by the non



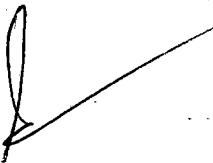
elightenment to our querry by the learned counsel for respondents. It cannot be a case of simply prescribing a particular number of days of work for empanelled casual labourers. They had to be engaged as and when work is available on the basis of seniority in the panel. A2 shows that both the applicants are empanelled casual labourers.

6. In Ghaziabad Development Authority & Others Vs. Vikram Chaudhary & Others [(1995) 31 ATC 129], it has been held by the Apex Court that:

"What the learned Judge appears to have intended to lay down is that so long as the appellant has work on hand, it has no power to terminate the contingent employees engaged on daily wages and that in the event the appellant needs to terminate their services, the principle of last come first go should be followed and in the event of there being need for re-employment, preference be given to the displaced respondents. The observation made by the learned Judge is consistent with the well-established principles of natural justice and equity, justice and good conscience. Therefore, the learned Judge had rightly extended those principles with regard to the persons employed by the appellant on daily wages."

7. Following the principle laid down, A1 is liable to be quashed. A3 is an order issued based on A1. When A1 is liable to be quashed, A3 also is liable to be quashed.

8. Accordingly, the Original Application is allowed quashing A1 and A3 and directing the respondents to engage the

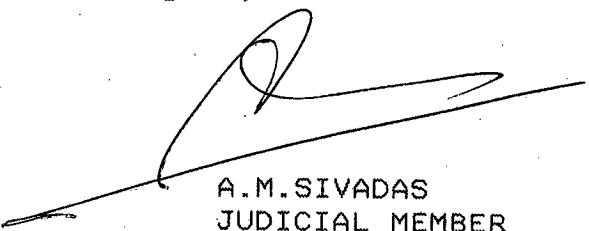


applicants for casual work as and when work is available without any restriction on the number of working days in preference to freshers and juniors. No costs.

Dated, the 31st of August, 2000.



V.K. MAJOTRA
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexures referred to in this Order:

1. A1 True copy of the Order No. 269-4/93-STN-II(Pt.) dated 15-6-1999 issued by the 3rd respondent.
2. A3 True copy of the Order No. TFC/28-2/EMP/99 dated 21-10-1999 issued by the 2nd respondent.