

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T.A. No.

201/1992

189

DATE OF DECISION

28.9.1992

K. P. Prakashan

Applicant (s)

Mr. M. R. Rajendran Nair

Advocate for the Applicant (s)

Versus
The Sub Divisional Officer,
Telephones,
Tellicherry and three others.

Respondent (s)

Mr. George Joseph, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A. V. HARIDASAN, JUDICIAL MEMBER

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

(Hon'ble Shri S. P. Mukerji, Vice Chairman)

In this application dated 3.2.1992 the applicant who allegedly has been working as a casual mazdoor under the Chief General Manager, Kerala Telecom Circle from 1986 to 1988 for a period of 478 days has challenged the impugned order dated 21.12.91 at Annexure-I rejecting his representation for regularisation as approved casual mazdoor and has prayed that the respondents be directed to grant him temporary status with effect from the date of his casual engagement with all consequential benefits, to enlist his name in the list of approved casual mazdoors, continue giving employment to him and regularise ^{him} in his turn.

2. According to the applicant he had put in 478 days of casual service from 1986 till 1988 after which he is being occasionally engaged by the Junior Telecom Officer, Tellicherry.

His grievance is that he has neither been included in the list of approved mazdoors nor regularised. He has referred to an order dated 8.4.91 according to which casual mazdoors who commenced service on or before 1988 are exempted from the condition of being sponsored by the Employment Exchange for regularisation. He apprehends that his being excluded from the list of casual mazdoors would jeopardise ^{even} his future employment as casual mazdoor. He has averred that he had never abandoned employment and since his juniors are being engaged and regularised, denial of similar treatment to him by the impugned order is violative of Arts. 14 and 16 of the Constitution. He has referred to the ruling of the Supreme Court frowning upon keeping casual workers for long periods without regularisation and has referred to the Scheme of Regularisation of casual mazdoors formulated by the respondents at the behest of the Supreme Court and prays that he should be given the benefit of that Scheme.

3. In the counter affidavit the respondents have stated that the applicant was engaged only in 1987 for specific work for short duration and since the Department has banned recruitment of casual mazdoors after 30.3.1985, those who were initially engaged after that date cannot be considered for regularisation. They have stated that the order dated 8.4.91 referred to by the applicant is in connection ^{with} ~~of~~ relaxation of age and employment procedure for casual labourers for their absorption in the Group D cadre. They have stated that there are specific orders of the Department of Telecommunication to regularise only those casual mazdoors

who commenced work before 30.3.85 and there is no scheme in the Department to regularise mazdoors who commenced work after that date. They have denied that any casual mazdoor junior to the applicant or engaged along with him have been given continuous employment or regularised. They have also referred to the recent decision of the Hon'ble Supreme Court in Delhi Development Horticulture Union case cautioning against regularisation of those casual employees who got employment through the back door without the intervention of the Employment Exchange. They have clarified that the scheme of regularisation of casual mazdoors are applicable to those who commenced work before 30.3.1985.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We had an occasion to go through the Department of Personnel and Training's Office Memorandum dated 8th April, 1991 regarding regularisation of casual workers in Group-D posts relied upon by the applicant. The respondents have taken the stand that, that O.M. does not entitle those casual labourers like the applicant who were recruited after 30.3.1985 to being regularised. We are extracting below para-2 from that O.M. No. 49914/4/90. Estt. (C) dated 8th April, 1991-

"2. Requests have now been received from various Ministries/Departments for allowing relaxation in the conditions of upper age limit and sponsorship through employment exchange for regularisation of such casual employees against Group 'D' posts, who were recruited prior to 7.6.88, i.e., date of issue of guidelines. The matter has been considered and keeping in view the fact that the casual

employees belong to the economically weaker section of the society and termination of their services will cause undue hardship to them, it has been decided, as a one time measure, in consultation with the Director General Employment and Training, Ministry of Labour, that casual workers recruited before 7.6.88 and who are in service on the date of issue of these instructions, may be considered for regular appointment to Group 'D' posts, in terms of the general instructions, even if they were recruited otherwise than through employment exchange and had crossed the proper age limit prescribed for the post, provided they are otherwise eligible for regular appointment, in all other respects. "(emphasis added)

The above will makes it abundantly clear that casual workers who were recruited before 7.6.88 and who were in service as on 8.4.1991 are eligible to be considered for regular appointment to Group -D posts even if they were recruited otherwise than through the employment exchange and had crossed ^{the} upper age limit prescribed for the post. Accordingly, the stand taken by the respondents that since the applicant was recruited after 30.3.85 he cannot even be considered for regularisation is not acceptable.

5. Further, we had an occasion to go through the circular issued by the Ministry of Communications^{O.M} No.49-95/87-SPB-I dated 12.4.1991 on the subject of grant of temporary status and regularisation scheme of casual labourers in the Postal Department. The following extracts from paras 1 and 8 of that circular are relevant:-

" 'Temporary Status' would be conferred on the casual labourers in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service of at least one year. During the year they must have been engaged for a

period of 240 days (206 days in the case of offices observing five days weeks)."

xx xx xx
"8. After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary group D employees for the purpose of contribution to General Provident Fund. They would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary group D employees, provided they furnish two sureties from permanent Govt. servants of this Department".

From the above it is clear that the scheme is applicable to all casual labourers who were in employment as on 29.11.89 and continued to be so employed till 12.4.91. There is no restriction that those who were employed after 30.3.85 will not be covered by the scheme.

6. In the circumstances we allow the application to the extent of directing the respondents to consider the applicant for grant of temporary status and regularisation in accordance with "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme" circulated by the aforesaid order dated 12.4.91 and grant him all consequential benefits based on his proven service between 1986 and 1991. There will be no order as to costs.

Alleged,
28.9.91
(A.V. Haridasan)
Judicial Member

SD
28.9.91
(S.P. Mukerji)
Vice Chairman