

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.223/2005

Thurs day, this the ^{1st} day of *February*, 2007.

CORAM:

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER

Beefathummabi A.K.,
Casual Copyist,
O/o the Addl. Sub Divisional Officer,
Kalpeni, Lakshadweep. Applicant

(By Advocate Shri N.Nagaresh)

Vs.

1. Union Territory of Lakshadweep
represented by its Administrator,
Kavaratti, Lakshadweep.
2. Collector cum Development Commissioner,
Union Territory of Lakshadweep
Kavaratti, Lakshadweep.
3. Additional Sub Divisional Officer
Kalpeni, Lakshadweep. Respondents

(By Advocate Shri Shafik M.A.)

The application having been heard on 17.1.2007
the Tribunal on...15.2.07...delivered the following:

ORDER

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER

The applicant was appointed on casual basis, as Copyist in February 1997 and according to her she continued to function so till 2005. In the year 2004 as well as in 2005 vacancies arose for the post of Gumastha, for which, the applicant applied, but she could not be selected as the 2004 vacancy was to go for reserved category.

2. Another Casual Copyist was engaged by the respondents much later than the applicant and she had lesser number of days of service than the applicant and

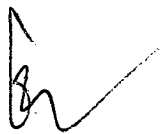
thus, is junior. The applicant was disengaged on 18.2.2005 and she had made a representation on 20.2.2005 for her re-engagement. By that time, the other casual Copyist was also disengaged. However, later on, the applicant came to know that since mid of March 2005, the other Casual Copyist (Smt. P.P.Cheryabi) came to be re-engaged. The applicant has challenged her non-engagement in preference to the said Cheryabi. The applicant has impleaded her also as private respondent.

3. The respondents resisted the O.A. According to them the services of the applicant were terminated due to non-availability of adequate work of copying. It has also been stated that not any junior to the applicant has been re-engaged in service and there is no proposal to engage any fresh hand as Casual Copyist. Any occasional copying work is being managed by the Administration with the assistance of other Group 'D' staff like Gumastha.

4. As regards the contention of the applicant regarding re-engagement of Cheryabi, the respondents have stated that, her engagement was not by ASDO where the applicant was engaged, but by the Environment Warden, Environment and Forests Unit., Kalpeni. Since these are two independent organizations, there is no violation of any rule in engaging the said Cheryabi.

5. The applicant has filed a rejoinder in which she had given certain particulars of work done and also the amount paid to private respondent. As such, it is contended by her that, the said private respondent should be treated as junior to the applicant and the respondents have thus violated the rules.

6. When the matter came up for consideration, in order to ascertain whether the private respondent could be treated as junior to the applicant, clarifications were sought as hereunder.



- a. The appointing authority in respect of the applicant and Smt. P.P.Cheriyabi at the initial time of engagement.
- b. The authority which appointed Smt.P.P.Cheriyabi, after engagement.
- c. The amount paid to Smt.P.P.Cheiryabi as wages on her re-engagement and the Head of expenditure to which the amount has been debited.
- d. Any authority or orders to distinguish such payments as payments from plan expenditure and non-plan expenditure.

7. The respondents have in their additional reply statement furnished the information as under.

- (a) Smt.P.P.Cheriyabi got her engaged as casual labourer under Sea shore plantation scheme for which funds were available.
- b) The amount paid to Cheriyabi was debited under Major Head 3435 Ecology and Environment- 01 00 50 other charges (Plan).
- c) Cheriyabi was not engaged by ASDO and she was paid wages until she got her regular employment on 25.6.2005.

8. In addition to the above information, the respondents have stated that the O.A.277/1996, 1040/99, 1194/1994 which contain more or less similar facts, were all dismissed by the Tribunal and another case of similar nature was dismissed by the Hon'ble High Court of Kerala in O.P.No.18719/1999.

- h* 9. Counsel for the applicant submitted that, when two persons are employed on casual basis, if work was not available for any one, both of them could be re-

trenched and if work was available only for one, the senior should be retained. On disengagement of both, if subsequently work became available then it is the senior who should have been re-engaged. He has further submitted that, the minor niceties, as to two different units engaging casual labourers would not make much difference, as in both cases the ultimate authority is the Administrator, Kavarathi.

10. Per contra, counsel for the respondents submitted that, the two units where the two casual Copyists worked are distinct and in the case of the private respondents, her second engagement was from a different unit. As such, comparison cannot be made and in any event, according to the counsel, the private respondent is no longer in casual service and at present there is no work available .

11. Arguments were heard and the documents perused. A casual labourer does not have any firm route to crystallize his right to continue. It is purely depending upon the availability of work. In the instant case, since according to the respondents no work is available, a direction cannot be issued to re-engage the applicant. All that can be done in this case is, a direction to the respondents that in case there be any requirement of casual Copyist or other casual labourer, the applicant be also informed and preference be given to her while engaging fresh casual Copyist/casual labourer. The same is ordered.

12. With the above directions the O.A. is disposed of. No costs.

Dated the ..15th.....February, 2007.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER