

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 25 OF 2012**

Wednesday, this the 31<sup>st</sup> day of October, 2012

**CORAM:**

**HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

1. Sheela Kurian,  
Manavalan House,  
Karayamparambu,  
Karukutty.
2. Lekha P.A,  
Edakkara Vayalil,  
Airapuram, Perumbavoor. - Applicants

(By Advocate Mr. P. Ramakrishnan)

**Versus**

1. Union of India, represented by  
Secretary to Government,  
Ministry of External Affairs,  
New Delhi – 110 001.
2. The Joint Secretary (CPV) and  
Chief Passport Officer,  
Ministry of External Affairs,  
New Delhi – 110 001.
3. The Regional Passport Officer,  
Regional Passport Office,  
Panampilly Nagar,  
Cochin – 682 036. - Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 09.10.12, the Tribunal on 31.10.12 delivered the following:

**ORDER**

**HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

The applicants have filed this Original Application seeking the following main reliefs:-

- "(A) Issue an order quashing and setting aside Annexure A-4.
- (B) Issue an order directing the respondents to engage the

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applicants as daily rated clerks in accordance with their seniority as shown in Annexure A-1 seniority list."

2. The applicants averred that on being sponsored by the Employment Exchange, they were engaged as Daily Rated Clerks in the Office of R-3 in July/April, 1992. They were working continuously in the Regional Passport Office (RPO for short), Cochin till August, 1996 when they were transferred to RPO, Trivandrum. They were sent back to RPO, Cochin in August 1997 and their service were terminated with effect from 15.03.1999. The first applicant was offered further engagement in 1999 itself but she could not join as she was in advanced stage of pregnancy. The 2<sup>nd</sup> applicant worked from 09.02.2000 to 06.11.2000. Her services were terminated on 04.12.2000. Therefore, both the applicants have more than seven years of service and they are ranked at Sl. No. 96 and 131 in the Combined Seniority List of Casual Labourer maintained by the respondents. They came to know that their juniors at Sl. No. ranging from 168 to 180 were re-engaged on 10.11.2008. Since their request were not considered by the R-3, they filed O.A No. 147/2009 before this Tribunal. The O.A was disposed of directing the respondents to re-engage the applicants when need arises in preference to their juniors and freshers (Annexure A-2). This order was confirmed by the Hon'ble High Court in O.P. No. 1680/2011. In fact, during the pendency of O.A No. 147/2009, the respondents again engaged two more Daily Rated Clerks, who were at Sl. No. 163 and 171 of the Combined Seniority list of Casual Labourer. In this O.A, the applicants are challenging the impugned order (Annexure A-4) turning down their request for re-engagement as Daily Rated Clerks.

3. The respondents contested the O.A and filed reply statement. They

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submitted that the service of the applicants was terminated on 15.03.1999 due to administrative reasons. However they were offered re-employment once again in 1999. The first applicant did not take up the offer, while the 2<sup>nd</sup> applicant worked briefly in RPO, Cochin and her service were terminated on 04.12.2000. They submitted that this Tribunal in O.A No. 147/2009 directed to consider engagement of the applicant as and when need arises. The Ministry did not approve the engagement of Casual Labourer in future and this decision was conveyed to the applicants vide Annexure A-4. They added that the juniors in the seniority list of the applicants Shri Rajesh C and three others were re-engaged in compliance with the judgment dated 21.06.2010 of the Hon'ble High Court of Kerala in W.P. (C) No. 32981/2009 and Shri K. Anil Kumar and one another in W.P. (C) No. 25647/2009 and subject to the outcome of SLP filed before the Hon'ble Supreme Court. According to the respondents, no fresh Casual Labourer is being engaged now.

4. Arguments were heard and records perused.

5. This is the 3<sup>rd</sup> round of litigation. After their services were terminated in 1999/2000, the applicants filed O.A. No. 530/2005 praying for their re-engagement as Daily Rated Clerks. The O.A was disposed of with a direction to the respondents to consider their representation. When they came to know that their juniors like Shri C. Rajesh and three others were re-engaged on 10.11.2008, they filed O.A. No. 147/2009. In the order of this Tribunal, the respondents were directed to engage the applicants as and when need arises in preference to their juniors and freshers. When the respondents intimated the decision of R-1 i.e. Ministry of External Affairs, New Delhi turning down their request for re-engagement, the applicants



filed the present O.A challenging the same(Annexure A-4).

6. The applicants have produced at Annexure A-1, an extract of the list of Casual Labourers, who were engaged as Daily Rated Clerks in the three RPOs i.e. Cochin, Kozhikode and Thiruvananthapuram. The date and year of engagement of such Casual Labourers are not shown. The names are arranged in the order of the number of days of engagement which range from 2284 to 112. 212 names figure in the Combined Seniority List of Daily Rated Clerks. The respondents have not stated whether service of anyone other than those re-engaged on the orders of Hon'ble High Court are being utilized now and, if so, the reasons for the same. It is also not known whether such engagement is done in other RPO's in the country. The applicants have noted in their Annexure A-3 representation that an examination was scheduled to be held on 21.05.2006 for recruitment of Clerks in RPOs. This Tribunal has permitted the applicants to appear for the examination. However, the examination was cancelled by Respondent No.1. In all probability, the services of the Casual daily rated Clerks were never utilized against sanctioned posts and this may account for cancellation of the Direct Recruitment Examination scheduled in May, 2006. The respondents might have resorted to such engagement of Casual Labourer through Employment Exchange only to cope with the additional quantum of seasonal work which could not be managed by regular staff. The applicants were not engaged after 1999/2000.

7. In various judgments, the Apex Court has laid down the law against continuous engagement of full time Casual Labourer from 1985 onwards. Based on such judgments , the DoPT has enumerated general terms and conditions for employment of casual labourers in its O.M No.49014/2/86-



Estt.(C), dated 07.06.88. Railways being the biggest Central Government employer utilized Casual Labourers, in large numbers as many projects were being taken up to lay new railway tracks and other infrastructure developmental work. Such Casual Labourer, engaged in open line were granted temporary status and regularized in a systematic manner. Those casual labourers, who were engaged in projects demanded regularization on the same lines and this resulted in the land mark judgment of the Hon'ble Supreme Court in the case of **Inder Pal Yadav and others Vs Union of India and others**. Later, on the scheme of grant of Temporary Status and Regularisation)1993 was implemented in all Central Government Departments, as a one time measure to regularize the Casual Labourers in Group D cadre. Group C Casual Labourers are not granted temporary status as per the aforesaid scheme. In other words, long term engagement of Casual Labourer in Group C cadre was never permitted unless it is for a short span of 89 days through the Employment Exchange. Under the guise of this provision, it appears that the respondent department resorted to large scale engagement of Daily Rated Clerks, by perhaps giving a break after every 89 days. Such rampant irregular practice on the part of various Government Departments resulted in another judgment being delivered by the Apex Court in the case of **Umadevi and others Vs Secretary State of Karnataka and others**. This judgment went elaborately into the issue of public employment de hors the Constitutional Scheme, resulting in violation of Articles 309, 16, 14, 226, 38 and 39(a), 32, 136, 141 and 142 of the constitution. Relevant portion is extracted below.

“ Persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, have been approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts



have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. Such an argument fails when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right

(Paras 4, 43 and 45)

It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable



citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it.

(Para 45, 49 and 13)

Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. The courts cannot impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly. A direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking may cause the temporarily or casually employed in a public sector undertaking may cause the financial burden on such undertaking to become so heavy that the undertaking itself may collapse under its own weight.

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(Para 19)

The State should not be allowed to depart from the normal rule and indulge in temporary employment in permanent posts. Regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and appointments to non-available posts should not be taken note of for regularisation xxxxxxxxxxxxxxxxxxxxxxxx. The direction to make permanent can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. It is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. The approving of such acts also results in depriving many of their opportunity to compete for public employment. It would also mean that appointments made otherwise than by a regular process of selection would become the order of the day, completely jettisoning the constitutional scheme of appointment. "

(Para 26, 33 and 13)

8 In this Original Application, the applicants are only praying for a

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direction to the respondents to re-engage them as daily rated clerks, 12 years after their last spell. But it is only a step away from their intention to request for absorption in service as is reflected in their Annexure A-3 representation. It is a fact that those who get recruited through the regular selection process from open market face stiff competition. Hence, the action on the part of the respondents in utilizing Daily Rated Clerks for years together is tantamount to allowing back door entry. It is the respondent department which should be made answerable for adopting irregular practices especially so when guidelines have been issued by DoPT based on the judgments of the Apex Court to all concerned, almost three decades back, to desist from such practices.

9 The respondents submit that they no longer need Casual Labourers on daily wages. In fact they have informed the applicants in 2001, itself as is seen from Annexure A-3 that Ministry of External Affairs is not permitting further engagement of Casual Labourers. Now, many Passport Seva Kendras have been opened with TCS as Technology Partner. When the processing of passport application is totally computerized and TCS is overseeing such work, there may not be any need to engage daily rated clerks in RPOs. O.A No. 147/09 filed by the applicants was disposed of with a direction to engage the applicants in case of need in preference to juniors and freshers. According to the respondents, no freshers are taken and juniors in the seniority list were engaged to avoid contempt proceedings and subject to the outcome of SLP. Under such circumstances and in the absence of work, the respondents cannot be faulted for not engaging the applicants.

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10 In view of the foregoing, there is no merit in the O.A. It is accordingly, dismissed. No costs.

(Dated 31<sup>st</sup> October, 2012)

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

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