

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 266/1992 ~~188~~
~~XXXXXX~~ ~~XXXX~~

DATE OF DECISION 62.11.82

K.V. Remanan Applicant (s)

Mr. M.R. Rajendran Nair Advocate for the Applicant (s)

Versus

The General Manager, Telecommunications,
Ernakulam and two others. Respondent (s)

Mr. P. Sankarankutty Nair, 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? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

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

In this application dated 6.2.1992 the applicant has challenged the impugned order dated 27.8.91 at Annexure-I by which his representation dated 12.8.1991 for re-engagement as casual mazdoor was rejected on the grounds that his absence was for more than six months and rules do not permit any fresh intake of mazdoors after 31.3.85. He has also prayed that the respondents be directed to re-engage him as casual mazdoor and enlist him and regularise him in his turn. The brief facts of the case are as follows.

2. While the applicant states that he had been employed as casual mazdoor for 61 days during 1986 and 1987 as certified by the Junior Engineer, the respondents have stated that he was not recruited as mazdoor in the Department but was engaged for 49

days on a casual basis from 1.3.86 to 30.4.87 for some specific work. The applicant has alleged that several mazdoors who had been like him previously engaged, have been re-engaged but he has been denied work as he was not an approved mazdoor. He has also alleged that the respondents are entrusting works to contractors while has been denied work. He has referred to a number of decisions of the Tribunal by which persons similarly placed like him have been directed to be re-engaged.

3. The respondents have stated that engagement of fresh mazdoors has been banned by the order dated 30.3.85 at Annexure-RI. They have also denied that any ineligible fresh hand is being engaged. Giving some works on contract is unavoidable and has always been in practice in the Department. They have also referred to the recent judgment of the Supreme Court in Delhi Development Horticulture Employees Union vs. Delhi Administration (AIR 1992 SC 789) in which the Hon'ble Supreme Court mentioned that an illegal employment market has developed through engagement of persons otherwise than through the Employment Exchange and regularising them after they have continued for 240 days in a year.

4. In the argument note the applicant has submitted that the judgment in O.A. 713/91 in which the applicant therein did not have any proof of his past service and the Department did not admit his past service, cannot be attracted in this case. In O.A. 401/90 the Tribunal directed the respondents to re-engage the applicant with bottom seniority if work is available when the applicant therein had only 18 days of past service. In O.A. 203/90 the Tribunal observed that the applicants therein not being

sponsored by the Employment Exchange should not be held against their claim of regularisation and other benefits. It has been argued that the applicant was registered with the Employment Exchange and even in accordance with the recent judgment of the Supreme Court in Delhi Horticulture Employees Union vs. Delhi Administration (AIR 1992 SC,789), re-engagement cannot be denied to him if work is available and persons junior to him or persons who are not sponsored by the Employment Exchange with lesser period of casual service are being engaged. The Supreme Court in that case directed the casual mazdoors to be kept in a panel to be considered for regularisation if they have registered with the Employment Exchange.

5. In the reply to the argument notes, the respondents have stated that in O.A 713/91 the Tribunal observed that even if the previous service is accepted, the orders and instructions do not allow the applicant the benefits claimed. They have argued that the judgment in O.A.713/91 precludes the benefits claimed by the applicant in this case also. The Tribunal in that case further observed that in the light of the observations of the Supreme Court in Delhi Horticulture Employees Union case the approach of the Tribunal has to change. They have argued that since none of the applicants are sponsored by the Employment Exchange the decision of the Supreme Court will not apply to them.

27 6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Even though employment of casual labour was banne

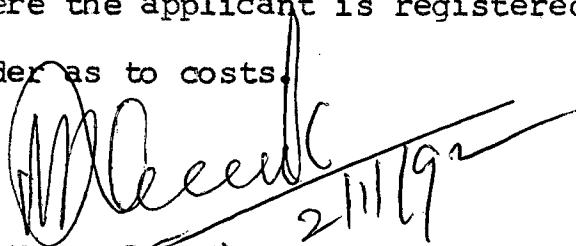
after 30.3.1985, according to the applicant's own statement, he had been given casual employment for 61 days during 1986 and 1987. The respondents have conceded that he had been given employment for 49 days on a casual basis between 1.3.86 and 30.4.87 for some specific work. In Delhi Development Horticulture Employees' Union vs. Delhi Administration, Delhi and others, JT 1992(1) S.C. 394, the Hon'ble Supreme Court observed as follows:-

"Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour." (emphasis added)

In view of the above observations we are extremely reluctant to give any direction for reengagement of

the applicant in casual service on the basis of his previous unauthorised casual employment. Such a direction will be unfair to those who have got themselves registered earlier than the applicant and are still waiting for the casual employment.

7. In the facts and circumstances, we see no merit in the application and dismiss the same. We however make it clear that this will not stand in the way of the applicant who is already registered with the Employment Exchange, to be considered for casual service in case work is available and fresh hands whose date of registration is subsequent to that of the applicant are taken in for such employment within the area of registration of the Employment Exchange, where the applicant is registered. There will be no order as to costs.


(A. V. HARI DASAN)
JUDICIAL MEMBER


(S. P. MUKERJI)
VICE CHAIRMAN

njj