

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHM.G. Road,
Kochi - 11.MONDAY THE 12TH DAY OF OCTOBER, 1992.P R E S E N T

Hon'ble Mr. S.P. Mukerji Vice Chairman
and
Hon'ble Mr. A.V. Haridasan Judicial Member

ORIGINAL APPLICATION NO.1027/91

..... A. Mohanan ... Applicant
Versus
UOI, SDO(T), Palghat & ... Respondents
2 others
Mr. MR Rajendran Nair ... Counsel for applicant(s)
Mr. George Joseph ... Counsel for respondent(s)

O R D E R

Heard the learned counsel for the parties in part, on all the group of cases about re-engagement of casual labourers. Shri TPM Ibrahim Khan, ACGSC on behalf of all other counsel appearing in all these applications fairly suggested that a further time be given to the respondents to thrash out a scheme for re-engagement of casual workers who had been engaged prior to a certain date and considering their case on the basis of the length of casual service put in by them. He also mentioned the inevitability of the departmental staff engaging casual labour for emergency work when there is no time to approach the Employment Exchange or consult the list of approved mazdoors. He however, accepted that such casual employment outside the Employment Exchange or outside the list cannot continue for more than a few days or after the emergency situation is removed. He also accepts the possibility of maintaining the Sub Division-wise panel of casual workers for the purpose of re-engagement so that the element of arbitrariness is removed and the doubts expressed by the Hon'ble Supreme Court about such casual engagement of labour are avoided. The learned counsel for the applicant mentioned that most of the complications and arbitrariness in such

appointments have arisen because of the imposition of a rigid and unrealistic ban on employment of casual mazdoor on one hand and the unavoidable situation of engaging casual mazdoor to meet local emergency needs continuously. This aspect also should be kept in mind in the light of the Supreme Court judgement, in the preparation of the scheme of re-engagement of casual mazdoors. Shri Ibrahim Khan stated that after detailed discussion with the departmental officers and the Senior Central Govt. Standing Counsel, he will be able to come up with certain concrete suggestions in the above light within a period of 4 weeks. The main objective of having such a scheme is to mitigate further litigation and give justice and equity to the casual employees and to avoid the scope of arbitrary and motivated action by the local staff.

We feel that in the interest of justice and in the interest of the respondents themselves for better administration, such a scheme acceptable to all concerned will be welcome. The adjournment therefore is necessary and we grant the same. List for further arguments on 23-11-92.

A copy of this order and our order dated 1-7-1992 be made available to Shri TPM Ibrahim Khan and the SCGSC and also to the learned counsel for the applicants by hand.

A copy of this order be placed on all these connected case files, no need to file on record.

SD/-
(AV. HARIDASAN)
JUDICIAL MEMBER

12-10-92

SD/-
(SP. MUKERJI)
VICE CHAIRMAN

CERTIFIED TRUE COPY
Date 16-10-92

Encl:- Alongwith copy of order dated 1-7-92

Deputy Registrar

To

16/10/92

Original Application No. 1027/91, 1691/91, 1200/91, 1458/91, 1485/91, 1622/91, Counsel for applicant Mr. MR Rajendran Nair Counsel for respondents Mr. George Joseph, ACGSC

1027/91, 1691/91, 1200/91, 1458/91, 1485/91, 1622/91, Mr. MR Rajendran Nair Mr. George Joseph, ACGSC

23.11.92

Mr. MR Rajendran Nair
Mr. Sasidharan Chempazhanthiyil
Mr. Poly Mathai for SCGSC
Mr. TPM Ibrahimkhan, ACGSC

We have heard the learned counsel for all the parties in the bunch of cases at Sl.No.14 to 117 in the cause list of today. The General suggestions which emerged from the discussions are as follows:

- a) There should be two deadlines for recognising casual service for the purpose of re-engagement. It was felt that any casual service prior to 1.1.1981 and after 12.6.1988 should not be recognised for the purpose of re-engagement. The Department itself has recognised 1.1.1981 as the date of commencement of 10 years of service for the purpose of regularisation. The deadline of 12.6.1988 is based on the order issued by the Department banning totally engagement of casual labour.
- b) The condition of being sponsored by the Employment Exchange having been relaxed till 12.6.1988, that condition will not apply for recognising casual service between 1.1.1981 and 12.6.1988.
- c) As a time measure, applications will be invited from all those who have been in casual employment between 1.1.1981 to 12.6.1988 on a Sub Division wise basis for preparing Sub Divisional list of such casual mazdoor which only will be tapped exclusively for future engagement of casual employees. The aforesaid list will be prepared strictly on the basis of length of casual service put in by ignoring the breaks.
- d) The burden of proof of casual service between the aforesaid two dates will be on the casual employees but the respondents shall not reject summarily any certificate of such employment merely because the certificate had been issued by an authority not competent to issue the same. The periods & details indicated in the certificate shall be verified by the respondents through their own records.

- e) Any bald statement of casual employment shall not be accepted. The applicants shall have to indicate in case there is no certificate, at least the muster roll Nos. and the details of their casual employment in time and place and names of officers if possible, under whom they worked.
- f) The Department will implement the ban of casual employment scrupulously and shall not engage any person who is not in the approved list without first giving employment to those who are included in the aforesaid list, except in case of emergency. Engagement under emergent condition will be recognised as such only if it does not last beyond 7 days. Even an engagement under emergency condition shall not be made outside the aforesaid list if persons from the approved list or in the aforesaid 1981 list are immediately available.
- g) It is made clear that the aforesaid suggestions have been made for the limited purpose of reengagement and not for regularisation for which a separate scheme is under operation.

The learned counsel for the respondents Shri TPM Ibrahimkhan joined by the learned counsel for the respondents in other cases also sought some time to get instructions of the Department on the aforesaid suggestions. Accordingly, list for further arguments on 18.12.92.

Copy of this order be given to S/Shri MR Rajendran Nair, G.Sasidharan Chempazhanthiyil, George CP Tharakan and TPM Ibrahimkhan by hand.

A Copy of this order be placed on all these connected case files.

Sd/-
(A.V.Haridasan)
Judicial Member

Sd/-
(S.P.Mukerji)
Vice Chairman

23.11.1992

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.271/92

Tuesday, this the 20th day of December, 1994.

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P Sudarsanan,
S/o Padmanabhan,
Kannampurath House,
Vayalar West P.O.
Kakkarappally.

- Applicants

By Advocate Mr MR Rajendran Nair

Vs.

1. The Sub Divisional Officer,
Telephones, Alleppey.

2. The Chief General Manager,
Telecommunications,
Kerala Circle, Trivandrum.

3. Union of India represented by
Secretary to Government,
Ministry of Communications,
New Delhi.

- Respondents

Advocate Shri S Parameswaran, Amicus Curiae.

(Common Order in OA No.1402/93 and connected cases)

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

Applicants, erstwhile Casual Labourers in the Telecom Department, seek regularisation of their service. Some of them complain that persons with lesser length of service than them have been regularised, or redeployed, overlooking their claims.

2. The Telecom Department had been engaging casual employees for a good length of time. A decision is said to have been taken to dispense with that practice. Yet, casual employees continued to

contd.

be engaged under different circumstances, and for different reasons. Senior counsel for respondents submits that casual employees will not be engaged hereafter as there will be no work for them. According to him, as at present there are about 6,000 casual employees in the queue waiting for absorption or work. In answer, applicants would submit that casual employees are still being engaged under different guises, and at times in a surreptitious manner. They submit further that directions issued earlier in OA 1027/91 and other cases by a Bench of this Tribunal laying down guidelines and evolving a scheme for engaging casual labourers, have not mitigated their problem, or eliminated unwholesome practices.

3. The main grievance brought into sharp focus by applicants is that there is arbitrariness in engaging casual labourers. They submit that no principle is followed in this matter. Counsel for applicants pray that a scheme may be framed by us.

4. We do not think that it is for us to frame schemes. The decision of the Supreme Court in J & K Public Service Commission vs. Dr Narinder Mohan & others etc, AIR 1994 SC 1808, persuades us to this view. A power in the nature of the power conferred under Article 142 of the Constitution can be exercised by the Supreme Court and the Supreme Court alone. Framing of a scheme by the Apex Court in exercise of that power cannot be precedent for a Court or Tribunal to resort to a like exercise. The Apex Court exercises an exclusive power in these realms, and the rule of precedent cannot operate where there is no jurisdiction.

5. It is another matter to issue ancillary or consequential directions related to the issue before the Tribunal for achieving the ends of justice, or enforcing the mandate of law. That is all that can be done and needs be done in these applications.

6. The circumstances of the case warrant issuance of directions to enforce the mandates of Articles 14 and 16, and to interdict arbitrariness in the matter of engaging casual labourers. The course which we propose to adopt finds affirmation and support in Delhi Development Horticulture Employees' Union vs. Delhi Administration, AIR 1992 SC 789. In a similar situation, the Supreme Court observed:

"..it is not possible to accede to the request of petitioners that respondents be directed to regularise them. The most that can be done for them is to direct respondent Delhi Administration to keep them on panel...give them a preference in employment whenever there occurs a vacancy.."

(Emphasis supplied)

7. To ensure such preference and eschew arbitrary preference, we direct respondent department:

i. To maintain a panel of casual employees from which employees will be chosen for engagement;

ii. such panels will be drawn up on Sub Divisional basis, and those who had been engaged in the past as casual employees will be included in the panels;

iii. principles upon which ranking will be made in the panel will be decided upon by respondent department in an equitable and lawful manner;

iv. Sub Divisional Officers or the officers higher to them will notify the proposal to draw up panels by news paper publications by publishing notice in one issue each of 'Mathrubhumi', 'Malayala Manorama', 'Deshabhiman' and 'Kerala Kaumudi', so that those who claim empanelment will have notice of the proposal;

v. those desirous of empanelment should approach the Sub Divisional Officers under whom they had worked with proof of eligibility for inclusion in the panels, within reasonable time to be fixed by respondents, which shall in no event be less than 30 days from the date of publication of notice. Those who do not make claims as aforesaid cannot claim empanelment later; and

vi. the Sub Divisional Officers shall prepare panels showing names of casual employees in the order of preference, and shall cause those to be published on the notice boards of all the offices in the Sub Division. Copies will also be forwarded to the Employment Exchanges in whose jurisdiction the Sub Divisional Officer functions. Learned Government Pleader for the State, whom we have heard on notice, undertakes that such lists will be displayed on the notice boards of the Employment Exchanges.

8. We do not think it necessary to issue any other direction. If applicants or others similarly situated have any individual grievances regarding preferential treatment to others, or hostile treatment against themselves, it will be for them to raise their individual grievances before the appropriate forum. When a fact adjudication is called for, that can be made only on the basis of evidence. General or conditional directions cannot govern cases to be decided on facts.

9. We direct respondent department to draw up panels in the manner indicated in paragraph 7 of this order within four months of the last date for preferring claims pursuant to publication of notice in the four Dailies. Whenever there is need to engage casual employees in any Sub Division, such engagement will be made only

from the panels, and in the order of priority reflected therein.

10. Applications are accordingly disposed of. Parties will suffer their costs.

Dated the 20th December, 1994.

A. Venkatakrishnan
PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

Chettur Sankaran Nair
CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

ps21