

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 280 of 2000

Tuesday, this the 4th day of July, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. Radhakrishnan E.K.,
S/o Imbichikutty,
Casual Labourer,
Passport Office, Kozhikode
Residing at 'Mankunikuzhiyil',
Kunnamangalam Post, Pyngettupuram,
Kozhikode-675 531
2. K.P. Krishnanandan,
S/o Gopalan,
Casual Labourer,
Passport Office, Kozhikode,
Residing at 'Kudalpurakkal House',
Mannur PO, Kozhikode Distt.

...Applicants

By Advocate Mr. Shafik M.A.

Versus

1. Union of India, represented by
Secretary to the Government of India,
Ministry of External Affairs, New Delhi.
2. The Chief Passport Officer &
Joint Secretary (CPV),
Ministry of External Affairs, New Delhi.
3. The Passport Officer,
Passport Office, Kozhikode.

...Respondents

By Advocate Mr. K. Kesavankutty, ACGSC

The application having been heard on 4th July, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

Applicants seek to declare that they are entitled to be conferred with temporary status as per A3 scheme and that any proposal to terminate their service in order to deny them the rights conferred by A3 scheme is illegal and liable to be quashed.

2. Applicants are aggrieved by the intimation given by the respondents orally that they will not be permitted to work under the respondents.

3. Applicants are working as casual labourers. They were first engaged during the year 1992 as sponsored by the Employment Exchange after an interview. Call letters dated 17-11-1992 were issued to them. They worked continuously for a period of 1 year and 54 days. When respondents initiated steps to terminate their services, they along with another similarly placed person approached this Bench of the Tribunal by filing OA 2233/93. That OA was disposed of by directing the department to bring out a seniority list of casual labourers of all the three passport offices in the State and to engage them from the said list in accordance with their seniority based on the length of service. Consequent to the same, the applicants continued upto 6-12-1993 on which date they were terminated as per order dated 6-12-1993. In the meantime, the Ministry of Personnel has brought out a scheme for granting temporary status to casual labourers who are already in service and have completed 240 days of service as on the relevant date. Applicants were re-engaged as per order dated 7-9-1999 with effect from 15-9-1999. They have worked for the requisite number of days for grant of temporary status. Applicants submitted representations for their regularisation. Before passing any order on the same, they are now asked not to attend the office with effect from 2-3-2000 onwards. No written order has been served on them.

4. Respondents resist the OA contending that the applicants worked only for 35 and 28 days in the year 1992 and 180 and 185 days in the year 1993 respectively. Their service was not continuous. They are not eligible for grant of temporary status. Subsequently they were engaged for a period of six months. They are disengaged with effect from 1-3-2000.

5. In the rejoinder filed by the applicants, it is stated that a seniority list was prepared on the basis of the number of days worked as on 6-12-1993 of the casual labourers of all the offices in Kerala under the 1st respondent. As per the same, as on 6-12-1993 the 1st applicant has worked for 284 days and the 2nd applicant for 267 days. That would show that the contentions raised by the respondents are not correct.

6. In the additional reply statement filed, it is stated that

"At present there is no work of casual nature pending in this office and this office has no sanctioned post for engagement of casual labourers. There is no vacant post of Group 'D' or casual labourers in this office".

It is further stated in the additional reply statement that the OA is barred by limitation.

7. The bar of limitation, raised by the respondents, is on the ground that the applicants cannot claim any benefit of the casual work they have done in the year 1992-93 after a period of 7 years. When the respondents say that the applicants cannot claim any benefit of the casual work done by them in 1992-93 after a period of 7 years, it implies that the applicants were approved casual labourers.

8. Though the services of the applicants were terminated as per A2 dated 6-12-1993, they were re-engaged admittedly and they continued on the strength of the re-engagement. Now the applicants are aggrieved by non-conferment of temporary status to them and also on account of the oral order of termination. According to the admitted case of the respondents, the services of the applicants they have terminated with effect from 1-3-2000. This OA was filed on the 10th of March, 2000. That being so, this OA cannot be held to be barred by limitation and is within time.

9. In the additional reply statement, the respondents say that "this office has no sanctioned post for engagement of casual labourers" and also "there is no vacant post of Group 'D' or casual labourers in this office". From this averment it appears that the respondents are under the impression that casual labourers are engaged against sanctioned posts. I am afraid the respondents are yet to learn what is meant by sanctioned post and what is meant by casual labour. There cannot be a disengagement of casual labourer on the ground that there is no sanctioned post. There cannot be any termination of service of the casual labourer on the ground that there is no vacant post. Casual labourers are engaged for the purpose of doing work not against any sanctioned post or against any vacant post. If the engagement of casual labourer is against a sanctioned post, the term casual labourer will lose its meaning. It cannot be any longer a casual labour then.

10. Applicants were for the first time engaged as casual labourers in pursuance of call letters dated 17-11-1992 as borne out by A1. From A2, it is clearly seen that it was decided by the respondents to terminate their services with effect from 6-12-1993 afternoon. A2 is dated 6-12-1993. When the applicants were first engaged in pursuance of A1 and their services were terminated as per A2, when they were re-engaged in 1991 it is not known why no order like A2 is issued if their services are no longer required and are to be terminated. Applicants have specifically stated in the OA that they were asked not to attend the office with effect from 2-3-2000 without any written order. In the reply statement, respondents have admitted that all the casual labourers were disengaged with effect from 1-3-2000. There is no syllable contained in the reply statement denying the averment in the OA that termination of the services of the applicants was done without an order in writing. So, it is only to be taken that the services of the applicants the respondents have effected orally. What is the office procedure which permits the respondents to do so is not brought to my notice. It appears apparently to be a very strange practice. When the OA came up for hearing on 21-3-2000, it was admitted by the learned counsel for respondents that the applicants were engaged as per written orders and they were orally asked not to attend the office from 2-3-2000. In the order dated 21-3-2000 it was stated that when their engagement was by virtue of written orders, it is not known what prevented the respondents from terminating their services by issuing written orders. The reply statement as well as the additional reply statement were filed only subsequent to 21-3-2000. The respondents have felt it very convenient not to state anything in the reply


statement or in the additional reply statement regarding the reason for terminating the services of the applicants orally instead of issuing written orders.

11. Applicants specifically alleged that they have worked for the requisite number of days in order to get the benefit under A3 scheme which deals with grant of temporary status and regularisation to casual workers. Respondents in their reply statement have stated that the applicants have worked only for 35 and 28 days in the year 1992 and for 180 and 185 days in the year 1993 respectively. A8 is the copy of the seniority list of casual workers of the Regional Passport Offices at Cochin, Kozhikode and Trivandrum as on 6-12-1993 prepared in pursuance of the judgment of this Bench of the Tribunal. Both the applicants figure in A8. The 1st applicant is at Sl.No.162 and the other applicant at Sl.No.167. The 1st applicant, as per A8, has worked for 284 days and the 2nd applicant for 267 days. A8 does not tally with the stand taken by the respondents in the reply statement as to the number of days worked by the applicants.

12. The learned counsel appearing for the respondents submitted across the Bar that A8 seniority list produced by the applicant is not authentic. The additional reply statement was filed by the respondents only after production of A8. There is no syllable in the additional reply statement attacking the authenticity of A8. A plea which is not raised cannot be entertained. That being the position, the submission of the learned counsel for respondents that A8 is not authentic, cannot be entertained.

13. Now the position is that apparently there is a conflict between A8 the seniority list published by the respondents and the version of the respondents as to the number of days worked by the applicants in the reply statement.

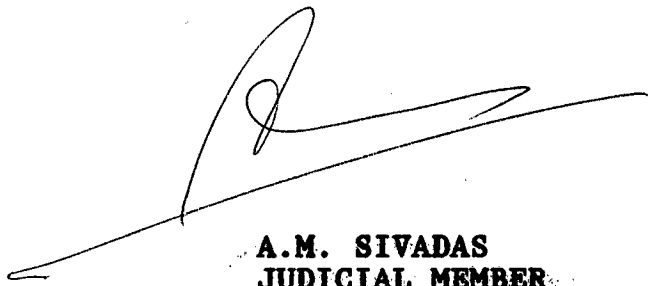
14. The learned counsel appearing for the applicants submitted that as per A3 scheme, temporary status could be conferred on a casual labourer who was in employment on the date of issuance of the scheme and who has rendered a continuous service of 240/206 days in the year 1993. A3 provides for conferment of temporary status on casual labourers provided the condition laid down therein is satisfied. The question here is purely factual whether the applicants have completed the requisite number of days as stipulated in A3 scheme for conferment of temporary status. A8 would go to show that applicants have worked for 284 and 267 days respectively from or immediately after 23-11-1992, till 6-12-1993, when read in the light of A1. In OA 54/97, this Bench of the Tribunal has held that the casual workers who satisfy the criterion of 240 days or 206 days of work as the case may be in a year in future, or if they have already done so, in the first instance will be eligible for the grant of temporary status as a Group 'D' employee, i.e. an unskilled worker. The factual aspect is to be ascertained with reference to the relevant records. As far as factual adjudication is concerned, in any event for the first instance, it is to be done by the administration.



15. Accordingly, the competent authority is directed to consider the case of the applicants for conferment of temporary status as per provisions of A3 scheme and pass appropriate orders within two months from the date of receipt of a copy of this Order. The interim order dated 21-3-2000 shall continue to be in force till orders are passed by the competent authority.

16. The Original Application is disposed of as above. No costs.

Tuesday, this the 4th day of July, 2000



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexures referred to in this Order:

- | | | |
|----|----|---|
| 1. | A1 | True copy of the Call Letter No.1(16) AD/Kzd/91 (Part III) dated 17-11-92 issued to the 1st applicant. |
| 2. | A2 | True copy of the order No.1(35) AD/KZD/93 dated 6-12-93 issued by the 3rd respondent. |
| 3. | A3 | True copy of the OM No. 51016/2/90-Estt(C) dated 10-9-93 issued by the Ministry of Personnel, Public Grievances & Pensions. |
| 4. | A8 | True copy of the relevant extract of the Seniority List of casual labourers prepared by the respondents. |