

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 25.5.90

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 328/89

1. N. Gopal
2. Anandhan N. A.
3. P. P. Gopal
4. K. D. Jose
5. V. K. Prabha
6. M. Sarojini
7. M. Celin
8. Janaki C. K.
9. Janat
10. Marykutty Joseph
11. Bhama M. G. and
12. Magi

Applicants

Vs.

1. Union of India represented by
Defence Secretary, New Delhi
2. M. M. Lyngdoh, Lt. Col.
Principal Tutor, School of Nursing
I. N. H. S. Sanjivini, Cochin-4 and
3. S. Alagunachi Amma, Capt.
Mess Secretary F. N. Mess,
I. N. H. S. Sanjivini, Cochin-4

Respondents

M/s. P. K. Muhammed & T. K. Sreenarayana Das Counsel for the
applicants

Mr. K. Prabhakaran, ACGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

for.

The question that falls/consideration in this case is whether the twelve applicants who are engaged by the Officer-in-Charge, Probationary Nursing Officers Mess in the Indian Naval Hospital Ship Sanjivani as private servants and paid from the 'Mess Servants Grant' under Army Instructions 172 of 1963, are Government servants entitled to regularisation.

2. According to the applicants they were provisionally engaged as Civilian Mess Bearers, Cook, Dish Washers, Sweepers and Masalages between 1983 and 1988. Some of them are working from 1983 onwards. They are all well experienced hands with good record of service. They are fully qualified for regular appointments and entitled to be considered and appointed in the existing vacancies in which they are now working.

3. The Nursing School in which the applicants are working is attached to Indian Naval Hospital Ship Sanjivani. It is a hospital ship of the Indian Navy which provides medical cover to all defence personnel under Southern Naval Command and ex-defence service personnel. This school of nursing / functioning under the above Naval Hospital Ship Sanjivini from 1983. Probationary nurses are undergoing training in this school and they are authorised to receive a monthly

allowance as 'Mess Servants Grant' under Army Instruction 172 of 1963.

4. The claim of regularisation by the applicants is strongly objected to by the respondents in their counter-affidavit. They submitted that the applicants are not government employees and this application does not pertain to a 'service matter' concerning ~~xx~~ the government servants. The applicants are only personal servants. They are employed in different categories and the numbers of them varies from time to time depending upon the requirements. But the respondents admitted that the method of appointment of the applicants and the payment of their salary ^{are} in the following manner:

"The officer-in-charge, Mess does not distribute the amount to Probationary Nurses for employment of their individual servants. Instead, the Officer-in-Charge engages Mess Servants as private servants in the mess for the convenience of all Probationary Nurses. The applicants in the Original Application are employed by the Officer in Charge, Probationary Nursing Officers Mess as private servants and the grant received for the Probationary Nurses is paid as salary to them. They are employed as private servants in the mess on behalf of the Nurses by the Officer-in-Charge, Mess and their employment is in no way connected with the affairs of the state."

6. Upward revision of the 'Mess Servants Grant' by 20% is being done by the President and it is evident from Ext. R-2 and Annexure-N produced by the applicants. ~~xxxxxxxxxxxxxxxxxxxx~~ that the applicants though not appointed after following the formalities for the absorption of government employees their pay is being

paid every month from the Government of India, Ministry of Defence on the basis of contingency bill submitted by the second respondent, Principal Tutor, School of Nursing, INHS Sanjivini, Cochin-4. The nature of appointment and work of the first applicant, as stated in Annexure-A and certified by the second respondent are as follows:

"Shri Nand Gopal is working in probationer Nurses Mess of INHS Sanjivani Naval Base, Cochin as a Bearer for the last two years and is reliable honest, hard working and takes responsibility. He possess a good character.

Sd/- Miss K J Sabavathi
Lt. Col. MNS
Principal Tutor "

Similar certificates had been issued in respect of other applicants also.

7. We heard the arguments and gone through the records carefully. From the facts and the documents produced in this case including Payment Registers of Wages from May 1983 it is crystal clear that the applicants are employees in the Nursing School attached to Indian Naval Hospital Ship Sanjivani. When we lift the veil and look into the actual position and working of the establishment it would be clear that the applicants are integral part for the working of the above Nursing School and they were appointed by the Officer-in-Charge of the Nursing School and are paid directly from the Government of India, Ministry of Defence. These factors are sufficient for holding that the applicants are government

employees. The Supreme Court in Catering Cleaners of Southern Railway Vs. Union of India and others (1987)1
SCC 700 observed:

"the work of cleaning catering establishments and pantry cars is necessary and incidental to the industry or business of Southern Railways, and employees working in that establishment even if through a third agency are employees entitled to benefits and protections provided under law."

According to Fazal Ali J. in M. Karunanidhi Vs. Union of India, AIR 1979 SC 898

"the word 'public servant' has been used (in the Penal Code) in the widest possible sense so as to include not only government servants who are receiving salary from the government, but also other dignitaries who are in the pay of the government."

Speaking on behalf of the Constitution Bench in this case the learned Judge further observed at page 912:

"We are of the opinion that so far as the second limb 'in the pay of the government' is concerned, that appears to be of a much wider amplitude so as to include within its ambit even public servants who may not be a regular employee receiving salary from his master."

(emphasis supplied)

This passage was quoted with apparent approval by the Supreme Court in another Constitution Bench case reported in R. S. Nayak Vs. A. R. Antulay AIR 1984 SC 684, while considering whether an M.L.A. is a public servant or not.

8. The Supreme Court had held in Supdt. of Post Offices Vs. P. K. Rajamma, AIR 1977 S.C. 1677 that an extra-departmental agent connected with the Postal Department is a Govt. servant governed by its rules and Article 311

of the Constitution of India. The Kerala High Court in the case reported in Narayanan Vs. Southern Railway, 1977 KLT 857 held that a licenced porter working under the Railway Administration is a Railway employee under the Indian Railways Act, 1890.

9. It will depend on the facts of each case.

Whether or not, the relationship in a given case is that of an employer or employee is a question of fact to be assessed on the available materials. If it actually exists, when we lift the veil and examine the facts, that some of the essential requirements are absent would not affect the relationship.

10. In the instant case as indicated above the applicants were engaged ^{as} absorbed by the Officer-in-Charge as probationers and they are asked to work according to schedule of work in each categories and there appears to be disciplinary control over them. There is over-all supervision of work and they are receiving salary on monthly basis as disclosed from the Payment Registers. The amounts are received from the Govt. of India on the basis of the contingent bills. There is therefore, no room for doubt in the actual relationship of employer and employees between the applicant and the respondents. It is also very clear that the employment of the applicants is in connection with the service of the Union of India.

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That is sufficient to make the applicants in this case as government employees as claimed by them.

11. Under these circumstances it is abundantly clear that the applicants are entitled to be considered for regularisation under the existing rules and regulations if they are all otherwise suitable and fit for the same. The Madras High Court in C. P. Mathew Vs. The Union of India, 1983 (1) LLJ 84, held that if there is at least an element of public employment involved in the relationship the employees would be entitled to protection of Article 14 and 16 of the Constitution of India. This is again repeated by the Calcutta High Court in Ganesh Chandra Mukerjee Vs. National Textiles Corporation and others, 1983 (1) LLJ 244.

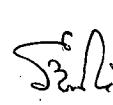
12. The conclusion is impeccable that the applicants who are in the service of the Nursing School attached to the Indian Naval Hospital Ship Sanjivani from its inception are entitled to regularisation if they are otherwise fully qualified and eligible for the same.

13. In the result we have no hesitation in allowing the application and granting the reliefs to the applicants. Accordingly we direct the respondents to consider them for regularisation in service if they are qualified for the same under the existing regulations. This shall be done by the respondents as expeditiously

as possible, at any rate within a period of six months from the date of receipt of the copy of this judgment.

14. There will be no order as to costs.


25.5.'90
(N. Dharmadan)
Judicial Member


25.5.'90
(S. P. Mukerji)
Vice Chairman

kmn

MRIC & ND

(28)

Mr. P. K. Mohamed
done for respondents.

The CCP has been filed by the original applicant. It is stated that copy has been served on the ACGSC. None is present for respondents. Issue notice to respondents to file reply within 3 weeks. Call on 13.11.91

15/10/91

pk

Sufficient number
of copies and
filed with the
CCP for issuing
notice.

(29)

(11)

NVK & ND

Mr. PK Mohamed for the petitioner.

Mr. K Prabhakaran, ACGSC for respondents.

The learned counsel for respondents seeks some more time to file reply to the CCP. 2 weeks' time granted. Call on 27.11.91.

13.11.91

NVIC 8 AV H

Mr. Cherian for petitioner (proxy)
Mr. Prabhakaran

The respondents seek 2 weeks' time to file a statement, which is granted.

Call on 16.12.91

27.11.91

Notice to Respondents

issued

pk

R, 3, 4, 5 served

R, 2 served

R-1 awaiting

27.11.91

(26)

SPM & AVT

(2) Mr. P.K. Mohamed for applicants
Mr. K. Prabhakaran & Respondents

At the request of the learned
Counsel for the Respondent, I fix
for further directions on 9/1/92.

2 Smti
16/1/92

SDM&D

9/1/92 (3) Mr. P.K. Mohamed
Mrs. Jalega Sreenivasan for AGSC.
The learned Counsel for the
Respondents submitted that the Respondents
have filed a reply to the CCP with copy
to the learned Counsel for the petitioners
List for further directions on CCP

on 17.1.92

2 Smti
9/1/92

Mr
17.1.92
(1)

Counter filed
on 21/1/92
PL/92

SPM & AVT

Mr. P.K. Mohamed
Mr. K. Prabhakaran

The learned Counsel for the Respondent
indicated that because of lack of vacancies
for petitioners, who have been screened for
regularisation, cannot be accommodated.
Now that the Communication of the Govt.
has been received for adjusting them
against 5 regular vacancies orders are
under issue and the same will be
available in a short time.

List on further directions on the
CCP. on 27.1.92

2 Smti
17.1.92

Mr. P.K. Mohammed
Mr. K. Prabhakaran

SPM&AVH

At the request of the learned counsel for the original respondents, list for further directions on 7.2.92.

S. P. Mukerji
21-1-92

7.2.92

SPM & AVH

Mr. P.K. Mohammed
Mr. K. Prabhakaran

The learned counsel for the respondents stated that posting orders have been issued in compliance of our judgment in O.A.328/89. The learned counsel for the petitioner does not wish to press the CCP. Accordingly the CCP is closed and notice discharged.

FO issued
FILED
DATA

A. V. Haridasan
(A. V. HARIDASAN)
JUDICIAL MEMBER

S. P. Mukerji
(S. P. MUKERJI)
VICE CHAIRMAN

7.2.92

SPM & ND

Mr. P. K. Mohammed for the petitioner
 Mr. K. Prabhakaran & close the respondents

On request. list for further
 direction on the CCP on 1.2.91

15/1/91 *by S.D.L.*

SPM & AVH

Mr. P. K. Mohammed for petitioner
 Mr. K. Prabhakaran for respondents

The learned Counsel for the
 respondents is directed to file a statement
 on the CCP within a week with a copy
 to the learned Counsel for the original
 applicant. list for further direction
 on 11.2.91

by S.D.L.
11/2/91.

SPM & ND

Mr. P. K. Mohammed for the petitioner
 Mr. K. Prabhakaran, ACGSC for the respondents

The petition is filed by the applicant in O.A. 328/89
 with the complaint that the respondents have not so far
 implemented the direction even though the time already
 granted expired.

Today when the matter was taken for hearing it was
 brought to our notice that the respondents have filed an
 application for extension of time specifically for
 implementing the direction. We xxxx granted three months
 time for implementing the direction on the understanding
 that within the extended time, the direction in O.A. 328/89
 will be implemented. In the light of the statement, we
 see no merit in the CCP and we close the same.

by S.D.L.
11.2.91

31.5.1991

CCP No. 37/91

SPM&AVH

Mr. P.K. Muhammed through proxy counsel.
Mr. K. Prabhakaran, ACGSC.

At the request of the learned counsel for the respondents list for further directions on 17.6.91. The learned counsel for the respondents may file reply if any in the CCP by that date.

31.5.91

SPM & ND

Mr. P K Muhammed for applicant
Mr. K. Prabhakaran ACGSC

The learned counsel for the respondents ~~xx~~ undertakes to file reply to the CCP, within one week with a copy to the learned counsel for the applicant. List for further direction on the CCP on 27.6.91.

17.6.91

27.6.91

SPM & ND

Mr PK Muhammed for the applicant.
Mr K Prabhakaran, ACGSC by proxy.

The learned counsel for the petitioner seeks some more time to file rejoinder to the reply filed by the respondents. He may do so within 1 week with copy to the learned counsel for the respondents.

List for further directions on CCP on 15.7.91.

27.6.91

15 7 91

SPM & ND

Mr. P K Muhammed
Mr. K. Prabhakaran.

At the request of the learned counsel for respondents, who has received the rejoinder recently, list for further directions on 19.7.1991.

15.7.91

15.7.91

28

Mr. P. K. Muhammed for the petitioner

Mr. K. Prabhakaran, ACGSC for respondents

Heard learned counsel for both parties. The learned counsel for the respondents brought to our notice Annexure R-1 which indicates that in accordance with the Tribunals' order in O.A. 328/89 the twelve applicants therein were considered by the CERC for regularisation. The learned counsel for the respondents further states that on the basis of the recommendation five of the applicants have also been absorbed. In any case we feel that there is sufficient compliance of our judgment in O.A. 328/89. If the petitioners are aggrieved by the manner in which the order has been implemented, they may if so advised, seek appropriate redressal in accordance with law. The CCP is closed and notice discharged.

Copy of the order be given to learned counsel for both sides by hand.

19.7.91

b/sd/-

23/2
Mr. BCI

*to Cmnd
PULU ChGOD
Pulur*