

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 334/92

DATE OF DECISION 2.9.92

K. L. Luka _____ Applicant (s)

M. G. K. Menon _____ Advocate for the Applicant (s)

Versus
Chief Post Master General,
Kerala Circle, _____ Respondent (s)
Trivandrum and two others.

Mr. K. A. Cherian, 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? *Yes*
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 22.2.1992 the applicant who has been working as a Watchman in the R.M.S office, Kottayam under the Chief Post Master General, Kerala Circle has prayed that the respondents be directed to regularise his services in Group-D cadre and pay to him monetary compensation in lieu of leave and off days denied to him during his service.

2. According to the applicant he was appointed as a part-time Watchman in the R.M.S office at Kottayam after being sponsored by the Employment Exchange with effect from 2.8.1971. Even though he has rendered continuous service without any break for the last 20 years, his requests for regularisation

have been disregarded and he is still continuing as a casual employee. He has alleged that this is in violation of the Department of Personnel's O.M. dated 13.10.1983 and other instructions of the Govt. of India and is in violation of Article 14 of the Constitution. Similarly placed persons have been regularised. He has contended that his duty hours have been from 2100 hrs to 0600 hrs vide the order of the respondents at Annexure A2 dated 1.3.76. In support of his claim he has referred to a number of rulings of the Hon'ble Supreme Court and the decision dated 6.6.91 in O.A.853/90 of this very Bench of the Tribunal.

2. In the counter affidavit the respondents have stated that after his appointment as part-time Watchman with effect from 2.8.1971 the applicant's duty hours upto 29.2.1976 were from 00.00 hrs to 06.00 hrs. but the same were revised by Annexure A2 dated 1.3.76 as 21.00 hrs to 06.00 hrs. They have stated that a Watchman has to attend 12 hours of duty which is equivalent to 8 hours of normal duty for the purpose of wages. Accordingly, for 9 hours of Watchman duty, the applicant has been entitled to wages for 6 hours of normal duty. Accordingly the applicant is a part-time casual labourer. The respondents have denied receipt of any representation from the applicant. They have stated that since the applicant was only a part-time Watchman he should not be given temporary status in accordance with the Scheme of Regularisation and Temporary Status at Annexure A4 dated 12.4.91.

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According to that scheme the casual workers engaged for 8 hours including 1/2 hours lunch time are to be paid daily rate on the basis of the minimum of pay scale for a regular Group D official including D.A., HRA and CCA "but the applicant is a part-time Watchman of 9 hrs watchman duty, which is counted as 6 hrs normal duty for the purpose of wages". They have also stated that as per the statutory Recruitment Rules for Group-D posts, casual labourers have been placed below the ED agents of the same division for the purpose of recruitment vide Annexure R1(a) and "thus if qualified non-test category Group-D/ED Agents are available, they will get preference in appointment over the applicant who is only a part-time casual labourer". In the RMS TV Division there are more than 90 ED agents to be absorbed in Group D posts". They have also referred to the judgment of the Tribunal in O.A 205/91 in support of this averment.

3. We have heard the argument of the learned counsel for both the parties and gone through the documents carefully. The circumstances of this case are similar to those of the applicant in O.A 853/90 which was decided by us by our judgment dated 6.6.91. In that case also the applicant was a part-time Chowkidar who had put in about 17 years of service but was considered to be a part-time Chowkidar even though he was putting ^{daily} in 9 3/4 hours. We repelled the contention that the applicant was a part-time casual labourer with the following observations:-

"The fact that the applicant was working as a part-time Chowkidar and accordingly would not be entitled to the benefits of a full time casual labour should not detain us much. The respondents have conceded that the applicant has been putting in more than 9 hours of work every day. Full time casual worker or a regular employee would put in only 8 hours of work each day. Therefore, the applicant is to be treated as a full-time casual labour even though he has been working as a part-time Chowkidar. The respondents cannot brand the applicant as a casual Chowkidar and get more than 9 hours of daily work from him, do not regularise him and yet treat him as a part-time casual labour merely because he was engaged as a part-time Chowkidar. Accordingly we feel that even though for the purposes of wages he is entitled to the proportionate wages of a Chowkidar who has to put in 12 hours of work, for the purpose of regularisation as a casual labour, since he has been putting more than 9 hours of daily work, he is to be treated as a casual worker."

Accepting the above dictum in this case also wherein the applicant has admittedly been putting in ^{more than} 9 hours of night duty work, he has to be treated for the purpose of regularisation as a full-time casual labourer. In the aforesaid case we had quoted from the Ministry of Home Affairs O.M No.16-5/68-Estt-D dated 5.7.68 to infer that even as a part-time casual labourer, the applicant who had been recruited through the Employment Exchange and has been working for more than 18 years, was ^{relevant} fully entitled to being considered for regular appointment to Class IV post. The extracts are as follows:-

"Part-time casual labourers, who have rendered a minimum period of two years continuous service can be appointed to Class IV posts, borne on regular establishment, which are required to be filled by direct recruitment, subject to certain conditions vide para 2 of this Ministry's Office Memorandum No.16/10/66-Estt(D) dated 2nd December, 1966. A question has been raised as to whether casual labourers appointed on part-time basis should also be made eligible for appointment to Class IV posts borne on regular establishment, which are required to be filled by direct recruitment. It has been represented that, in certain offices casual labourers are employed for a number of years on part-time basis, the work load there being not such as to satisfy their employment on whole time basis. It has been accordingly decided that casual labourers appointed on part-time basis may also be made eligible for the concession sanctioned in para 2 of the aforesaid Office Memorandum No.16/10/66-Estt(D) dated 2.12.66. Accordingly, with effect from the date of issue of this Memorandum, part-time casual labourers shall be filled by direct recruitment, provided they were appointed through Employment Exchange and had acquired experience of a minimum of four years continuous service as part-time casual labour in the office/ establishment to which they were appointed through Employment Exchange."

4. Since the applicant before us is fully covered by the aforesaid O.M, he is also fully entitled to being considered for regularisation in Group-D post.

5. As regards the Scheme of grant of temporary status and regularisation promulgated by the Department of Posts vide Annexure A4 dated 12.4.91, it is clear that in the Department of Posts, temporary status to be conferred on all the casual labourers in employment as on 29.11.89 who have rendered continuous service of at least one year and during that year they must have been engaged for a period of 240 days. Since this condition is fully satisfied in case of the applicant, he is fully entitled to the grant of temporary status, according to that scheme. Even in accordance with the notification dated 16.11.82

amending the Recruitment Rules for Group-D posts in the Telegraph Department, a copy of which is placed at Annexure R1, part-time casual labourers engaged through the Employment Exchange who have put in 240 days of service in each of the preceding four years are eligible for appointment to Group-D posts. Since this condition is also fully satisfied in the case of the applicant, his so-called part-time employment cannot disqualify him from being appointed to a Group-D post in a regular manner.

6. We cannot do better than quote the following observations of the Hon'ble Supreme Court in *K.C.Rajeevan and others v. State of Kerala and others* (1191)1 SCC 31 as follows:-

"This is a clear indication that in the past the Government also considered it just and fair to regularise the services of those who had been in continuous service for two years prior to the cut-off date. The spirit underlying this treatment clearly shows that the Government did not consider it just, fair or reasonable to terminate the services of those who were in employment for a period of two or more years prior to the cut-off date. This approach is quite consistent with the spirit of the rule which was intended to be invoked to serve emergent situations which could not brook delay. Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualification as was done by sub-rule(e). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted if the language of the rule permits, as will advance this philosophy of the Constitution. If this rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment, must be allowed to continue on their jobs

and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since some time as such removal has serious consequences. The family of the employee which had settled down and accommodated its needs to the emoluments received by the bread winner, will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered 'age barred' for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy particularly the concept of right to work in Article 41 of the Constitution. Therefore, if we interpret Rule 9(a) (i) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularisation in service."

(emphasis added)

7. As regards the contention of the respondents that in accordance with the Recruitment Rules ED Agents are to be given preference over casual labourer, it may be noted that this is so in case of normal direct recruitment. However, in accordance with the Scheme of Temporary Status and Regularisation at Annexure A4, referred to above, para 17 thereof states as follows:-

"17. No recruitment from open market for group D posts except compassionate appointments will be done till casual labourers with the requisite qualification are available to fill up the posts in question."

Thus open market recruitment for Group-D posts having been kept in abeyance, the casual labourers in accordance

with the scheme with 3 years of continuous service after conferment of temporary status will have to be accommodated first. The applicant is fully entitled, as discussed above, to being considered for absorption in Group-D posts in accordance with the aforesaid scheme.

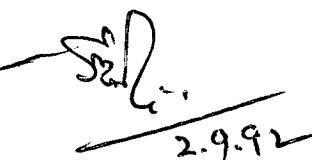
8. In the conspectus of facts and circumstances we allow this application with the following directions and declarations:-

- a) The applicant is entitled to the grant of temporary status and consequential benefits as envisaged in the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme as at Annexure A4.
- b) The applicant is entitled to be regularised in any Group-D post on the basis of the aforesaid scheme by considering him to be a full-time casual labourer putting in more than 8 hours of daily service.
- c) Orders sanctioning the financial and other benefits on the basis of his entitlement as declared above should be issued within a period of two months from the date of communication of this order.

9. There will be no order as to costs.



29/9/92
(A. V. Haridasan)
Judicial Member



29/9/92
(S. P. Mukerji)
Vice Chairman

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