

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. No.337/95

Thursday, this the 13th day of July, 1995.

CORAM:

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR.S.P.BISWAS, ADMINISTRATIVE MEMBER

T.B.Manoj,
Thanakulath Thundiyl House,
Kaloor P.O.
Cochin-17.

..Applicant

(By Advocate Mr.K.P.Dandapani)

vs.

1. The Post Master General,
Central Region, Cochin.
2. The Assistant Director of Postal Services,
Central Region, Cochin-16.
3. Jaison, Thodathil, Thevara P.O. Cochin. ..Respondents

(By Advocate Mr.James Kurian, ACGSC for R1 & 2)
Advocate Mr.K.R.B.Kaimal, Amicus Curiae)

The application having been heard on 13th July, 1995, the Tribunal on the same day delivered the following:

ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

Applicant, member of a Scheduled Caste, challenges the appointment of third respondent as a 'Part-time Contingent' Gardener on the ground that it violates the principle of reservation, envisioned by Article 16 of the Constitution of India.

2. At the outset, we must say that the pleadings are vague. Applicant has not produced the order of appointment, - understandably enough. But, respondent department which should and could have produced it easily has not done so, though they contend that 3rd respondent has been granted:

"appointment, or post under the State."

3. The order should form an essential part of the pleadings, when

the controversy is whether appointment is made to a 'post' or 'service' or not.

4. We are unable to ascertain, if a 'contract of service', or 'contract for service', is involved. We are also not in a position to make out whether what is involved is the engagement of a casual labourer or 'engagement on voucher/ACG-17 bill' or appointment to a post, under the Union. Assuming it is the latter, we are not informed of the roster position.

5. Counsel for the departmental respondents invited our attention to Annexure R-1 and contended that provision for reservation has been made thereunder. ~~As we have already~~
xxxxxxx Unless the third respondent has been granted an 'appointment' or 'post', the question of reservation will not arise. At any rate, Annexure R-1 office memorandum issued by the Government of India states only that reservation may be made:

"...generally....suitablyto the extent possible.... no cadre roster need be maintained."

(emphasis supplied)

We do not read this, as a mandate in the matter of reservation.

6. A post, to our mind signifies a unit in a cadre of service under the State, carrying a scale of pay. The State may appoint persons to a post in a cadre. It may also engage persons under a 'contract for service'. Not all, who perform services for the Government are holders of 'posts' or holders of appointment in the sense intended by Article 16 or Article 310 of the Constitution of India. Persons rendering services, will include persons governed by the Industrial Disputes Act or other Acts. Such persons do not hold a post or an appointment under the State. If authority is needed for this proposition, it is found in Bangalore Water Supply Sewage Board vs. A.Rajappa (AIR 1978 SC 548).

7. It is also admitted by counsel on both sides and Shri K.R.B.Kaimal appearing as Amicus Curiae that the employment in question, is employment referable to the Industrial Disputes Act and that the person in question will be a 'workman' within the contemplation of the Industrial Disputes Act. Nothing has been brought to our notice to suggest that the incumbent of the post (in a loose sense) is governed by any statutory rule, expressly or by implication. On the strength of the decision in Bangalore Water Supply vs. Rajappa, we hold that incumbent of the post (in a loose sense) is not the holder of an appointment/office/post under the State.

8. What is more,- there is a candid admission in the reply statement of the departmental respondents that the 'post' is of "part-time contingent post" and that there is only one "part time contingent" 'post' of Gardener. Assuming it to be a 'post', there could be no reservation of a single post in the light of decisions in Dr.Chakradhar Paswan vs. State of Bihar and others (AIR 1988 SC 959) and Smt.Chetana Dilip Motghare vs. Bhide Girls Education Society, Nagpur and others (AIR 1994 SC 1917).

9. There is yet another aspect which merits notice. Departmental respondents say that third respondent was appointed pursuant to the directions in O.A.1478/94. If that be so, the directions in O.A.1478/94 cannot be demolished by the directions in the present Original Application or another application. For that reason also, the application must fail.

10. Application is without merit and the pleadings being vague as they are, we decline relief. Original Application is dismissed.

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11. We record appreciation of the help rendered by Shri K.R.B.Kaimal as Amicus Curiae.

12. There shall be no order as to costs.

Dated the 13th July, 1995.



S.P.BISWAS
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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List of Annexure

Annexure R1: Copy of Department of Personnel &
Administrative Reforms Office Memorandum
No.36011/18/81-Est(SCT) dated 16-7-81.