

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 37/90

T. A. No.

109

DATE OF DECISION 30.8.1991

Kathiyammadu Kasim Koya _____ Applicant (s)

M/s.M.K.Damodaran,C.T.Ravi Kumar & Alexander Thomas Advocate for the Applicant (s)

Versus

Administrator, Union Territory of Lakshadweep, Kavarathy Island and 2 others Respondent (s)

Mr.N.N.Sugunapalan,SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? NO
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 30.12.89 the applicant who has been working as a casual labourer in the Fodder Unit of the Department of Animal Husbandry under the Union Territory Administration of Lakshadweep has claimed equality in wages with the regular Class IV employees of Lakshadweep Administration from the date of his initial appointment. The brief facts of the case are as follows.

2. The applicant has been working as a casual labourer continuously in the Fodder Unit of the Department of Animal Husbandry of Lakshadweep Administration since 10.5.77. His daily wages at present is Rs.24.75 per day. According to him his duties include providing fodder to cows and bulls, taking care of cattle and other related activities of milking operation etc. He claims that his work

5/2

is similar to that of Class IV employees of Bull Attendant and Milkman who are in the scale of Rs.750-940. He has referred to the rulings of the Supreme Court in Dhirendra Chamoli vs. State of U.P., 1986 1 SCC 637 and Surinder Singh vs. Engineer-in-Chief, C.P.W.D, 1986 1 SCC 639, for claiming 'equal pay for equal work' even as a casual worker. He has also referred to the circular of the Department of Personnel dated 7.6.88 directing that casual workers doing the same work as regular employees are to be paid at 1/30th of the pay at the minimum of the relevant pay scale plus D.A. for doing 8 hours of work per day and his representations have been of no avail.

3. The respondents have not filed any counter affidavit but the learned counsel for the respondents during the course of arguments stated that the counter affidavit filed in similar other cases in O.A 41/90, 44/90 and 45/90 should be adopted. In those counter affidavits apart from delineating the work of the applicants therein with the work of regular Class IV employees which are not relevant to this case as those applicants belonged to other Departments, the main burden of the respondents pleading was that the work of the casual labourer being different from the work of regular employees, the principle of 'equal pay for equal work' cannot be invoked. In spite of several adjournments given to the respondents, their learned counsel could not file any statement delineating in detail the items of tasks assigned to the regular employees and those of the casual employees nor did they produce any supporting documents like the Work Allotment Register

to show whether the applicant has been working as a casual labourer independently or as being attached to regular Group D employees.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant has been in continuous employment as a casual worker since 10.5.77 and is getting daily wages at the rate of Rs.24.75 per day. He has claimed wages of Class IV Bull Attendant or Milkman in the scale of Rs.750-940.

In accordance with the Department of Personnel's O.M. of 7.6.1988 his claim would boil down to a daily wage of 1/30th of Rs.750/-, that is the minimum of the Class IV pay scale plus dearness allowance for working 8 hours a day. Since the respondents have not rebutted the averment of the applicant that his duties are similar to those of Bull Attendant or Milkman, we see no reason why his unrebuted pleading should not be accepted. A mere bland denial that the duties of casual labourer are not similar to those of Class IV employees, will not mitigate the obligation of the respondents to deny them specifically. As stated earlier, their counter affidavits in cases of other Departments, cannot be invoked effectively for denying the averment made by the applicant in this case. It is true that normally the burden of proof would lie on a party which claims a right and in this application the burden would lie on the applicant.

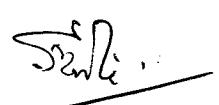
He has discharged the burden by a positive averment that his duties comprising ~~of~~ feeding and taking care of the cattle and milking are similar to those of Bull Attendant and Milkman of the Department who are regular Class IV employees in the scale of Rs.750-940. At this stage the burden

would shift on the respondents to specifically deny the same with cogent reasons and evidence. The respondents have not taken the trouble of even filing a counter affidavit specifically related to this application concerning the Animal Husbandry Department. Even a bland denial of the averment has not been forthcoming. The applicant must therefore be given the benefit of non-denial.

5. In the facts and circumstances we allow the application with the direction that the applicant is entitled to a daily wage of 1/30th of the minimum of the Class IV scale of Bull Attendant/Milkman, i.e., Rs. 750-940 plus dearness allowance for 8 hours of work per day in accordance with the Department of Personnel's O.M No.49014/2/Est(c) dated 7.6.1988 for the period he worked as a casual labourer in the Fodder Unit of the Animal Husbandry Department. The arrears of wages and allowances, however will be paid to him for the period commencing from three years prior to the date of filing of this application. The payment of arrears should be made good within a period of three months from the date of communication of this order. There will be no order as to costs.


(N.Dharmadan)
Judicial Member

n.j.j


(S.P.Mukerji)
Vice Chairman

18.6.92.

CCP 48/92

Mr. PV Mohanan for Damodaran
Mr. Sugunapalan through proxy

At the request on behalf of the SCGSC, list for further directions on CCP on 23.6.92.

ph

ND

S. S. S.
SPM

16.6.92

ND

Mr. PV Mohanan.
Mr. P. K. Madhusoodhanan

(20)

Rejoined to 30.6.92 for trial hearing.

ph

ND
23/6.

30.6.92. Mr. PV Mohanan for petitioner
Mr. P. K. Madhusoodhanan rep. SCGSC

No reply to the CCP has been filed. Issue notice to respondents 1&2 under Rule 8(b) of the Contempt of Court Act returnable on 28.7.92.

ND

SPM

28.7.92.

Mr. Damodaran through proxy
Mr. NN Sugunapalan

The learned counsel for respondents states that a statement is being filed today reporting compliance of the judgment. Accordingly list for further directions on 4.8.92.

ND

SPM

28.7.92

4.8.92

Mr. Damodaran through proxy
Mr. Madhu rep. SCGSC

The learned counsel for the petitioner states that the arrears have been paid to the applicant. Accordingly the CCP is closed and notice discharged.

Mr. Mukherji
(N. Dharmadan)
Judicial Member 4.8.92

S. S. S.
(SP Mukherji)
Vice Chairman

ph

ph