

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.374/1997

Tuesday this the 10th day of June, 1997.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

C.K. Surendran,
Sweeper-cum-Telegram Delivery
Messenger, Telegraph Office,
Mavelikkara, residing at Kuttithoppil,
Punnamood, Mavalikkara.

..APPLICANT

(By Advocate Mr. M.R. Rajendran Nair)

Vs.

1. The Divisional Engineer,
Telecom, Mavelikkara.
2. Telecom District Manager,
Alapuzha.
3. The Chief General Manager, Telecom,
Kerala Circle, Trivandrum.
4. Union of India, represented by
Secretary to Government of India,
Ministry of Communications,
New Delhi.

..Respondents

(By Advocate Mr. Varghese P. Thomas)

The application having been heard on 10.6.1997, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant commenced his service as a "Part-Time" Sweeper in the office of the first respondent in April, 1991 doing two hours work per day. His working hours was later enhanced to three hours with effect from May, 1992. His services were abruptly terminated replacing him by another Part-Time employee. Aggrieved by that he submitted a

representation on 26.4.93 seeking re-engagement. This representation was turned down on the ground that his engagement was on a contract basis. This was challenged by the applicant in O.A.1381/93. The respondents contended that the applicant was engaged only as a contract Part-Time Casual Labourer and therefore he had no right to continue. This contention was considered by the Tribunal and the Tribunal in its order observed as follows:

"Though the applicant entered service as contract employee, he attained a statutory status of an employee getting protection of relevant statute governing the relation between the employee and the employer."

For the said reason the Tribunal quashed the termination of services of the applicant and directed his re-instatement. Accordingly he was re-instated. The present grievance of the applicant is that though after re-instatement he is now being engaged continuously for eight hours work a day and has completed 240 days in more than one year, the respondents are not granting him the benefit of temporary status which is available to him in accordance with the scheme framed by the Government for grant of temporary status and regularisation of casual labourers. He has made a representation. His representation was initially rejected on 26.7.95 on the ground that he is not an approved mazdoor. The applicant followed up the matter further by making representations to the Telecom District Manager (A-5 and A-6). Finding no response to these, the applicant has filed this application for a declaration that he is eligible to be conferred with temporary status as per A-2 Scheme and for a

direction to the respondents to grant him temporary status with all consequential benefits.

2. Opposing the granting of the prayers in the application, the respondents have filed a reply statement. The contention raised by the respondents in the reply statement is that the applicant not being an approved mazdoor but being only a contract worker is not entitled to the grant of temporary status and regularisation. The claim of the applicant that he has been working for eight hours a day and have completed 240 days of such work for more than one year has not been specifically denied in the reply statement.

3. As the pleadings in this case are complete and the matter relates to the grant of temporary status to a casual labourer, as agreed to by the learned counsel on either side, we proceeded to hear the matter for final disposal.

4. The claim of the applicant that he is entitled to the benefit of temporary status in accordance with the Scheme (A2) is resisted by the respondents on the ground that the applicant is not an approved Mazdoor but only a contract worker. This contention was earlier raised by the respondents in O.A.1381/93. The Tribunal has already held that though the applicant commenced his service on the basis of a contract by his continuance and efflux of time he has attained the status of an employee on a casual basis. It was on the basis of that finding the application was allowed quashing the termination of his services and ordering reinstatement. In the face of the adjudication of the issue whether the applicant was a casual worker or a contract labour by the Tribunal and the categoric finding of the Tribunal that the applicant has attained the status of a casual labourer, it is futile for the respondents to raise

the same contention over and again that the applicant being a contract employee cannot be considered as a casual labourer to be eligible for temporary status and regularisation. Therefore, this contention of the respondents is overruled.

5. Now we have to examine what relief the applicant is entitled. The applicant in his application has stated that though he was initially engaged as a Part-Time Casual labourer he has been performing the duties for eight hours a day for more than one year. Though there is no specific denial of this contention, we are of the considered view that this factual aspect has to be gone into and determined by the competent authority in the department. Therefore the course open for us now is to direct the respondents to consider this aspect and if they find that the applicant has performed eight hours a day work as a casual labourer for the requisite length of time, to grant the benefit accruing to him under A-2.

6. In the light of what is stated above, we dispose of this application with the following declaration and directions:

- (a) The contention of the respondents that the applicant being a contract employee does not come under the scheme for grant of temporary status is overruled.
- (b) The second respondent is directed to look into the claim of the applicant that he has been performing eight hours work a day for more than one year and if the claim is found to be correct to grant to him temporary status with effect from the relevant date;

(c) If the applicant is found to be a full time casual labourer and if he has not so far completed the requisite length of service to grant him temporary status even now, to allow him to continue in service subject to availability of work and to consider granting temporary status in his due turn;

and

(d) The second respondent shall pass a speaking order on the claim of the applicant that he has been working as a full time casual labourer for more than one year, within a period of two months from the date of receipt of a copy of this order.

7. No order as to costs.

Dated the 10th day of June, 1997.

P. V. Venkatakrishnan
P. V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

A. V. Haridasan
A. V. HARIDASAN
VICE CHAIRMAN

ks.

LIST OF ANNEXURES

1. Annexure A2: True copy of the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme No.269-10/89-STN dated 11/89 issued by Assistant Director General, Government of India, Department of Telecommunications, STN Section, New Delhi.
2. Annexure A5: True copy of the representation dated 25.5.96 submitted by the applicant to the 2nd respondent.
3. Annexure A6: True copy of the representation dated 20.9.96 submitted by the applicant to the 2nd respondent.

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