

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 39/90
~~T. A. No.~~

~~199~~

DATE OF DECISION 30.8.1991

Bammatharakat Pookunhi Applicant (s)

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

Versus

Administrator, Union Territory of Lakshadweep, Kavarathy 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? 74
2. To be referred to the Reporter or not? M
3. Whether their Lordships wish to see the fair copy of the Judgement? M
4. To be circulated to all Benches of the Tribunal? M

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 30.12.1989 the applicant who has been working as a casual labourer in the Agricultural Demonstration Unit under the Union Territory of Lakshadweep Islands have prayed that as casual labourer the applicant should be paid the same wages as ^{are} ~~is~~ available to regular Class IV employees working in the same department. According to the applicant he has been working as a casual labourer doing spraying and dusting operations on vegetable and fruit crops since 16.12.1978 on a daily wage of Rs.22.25 per day. According to him his work is similar to that of regular Malis and Maistries working in the same department. His grievance is that whereas Malis etc. who are also doing the same work like maintenance of departmental

nurseries, spraying and dusting operations, application of fertilisers and manures as is done by him, he is being paid Rs.22.25 per day whereas the regular Class IV employees of the department 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 decision taken in the C.P.W.D where on the basis of the decision in the *Surinder Singh's* case, the casual labourers of the C.P.W.D have been given the same wages as are admissible to regular Class IV employees. 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. The applicant's representation for similar benefit has met with no favourable response.

2. The respondents have stated that the applicant has been granted Rs.22.25 per day as a semi-skilled labourer of the Agricultural Department whereas the minimum wage is Rs.18/- per day. It has been stated that casual labourers are not entrusted with spraying and dusting operations as these involve handling of dangerous poisonous preparations of insecticides, fungicide, rodenticide etc. The applicant as a casual labourer is attending to preparation of field for cultivation, weeding, earthing

up, watering, propping and harvesting etc. and has not been entrusted with any skilled type of works attended to by ^{the} spraying and dusting operators. They have stated that the work of casual labourers on one hand and that of Malis and Maistries ^{on the other,} are not the same. The latter are doing skilled work like raising of nurseries, sowing, planting and maintenance of vegetables, fruit plants, coconut etc., application of fertilisers, trimming and pruning operations, plant propagation work such as seed collection, raising stock of seedlings etc. Similarly the agricultural Maistry is supervising the field work allotted to the casual workers, supervision of Social Forestry work, extension work on intercropping, kitchen gardening, compost making etc. They have further stated that the casual labourers in the Agricultural Department are subjected to trade test for sub-skilled, semi-skilled and skilled works and daily wages at Rs.20.75 for sub-skilled, Rs.22.25 for semi-skilled and Rs.24.75 for skilled categories have been fixed. The applicant being a semi-skilled labourer is getting Rs.22.25. They have denied that the applicant is the counterpart of Mali or other Group D staff. The casual labourer in the Agricultural Department are attending to preparation of field, digging, weeding, earth-
ing up, watering, propping, harvesting etc. In the C.P.W.D the work of ^{Class IV staff} regular and casual labourers is the same. They have further stated that the case of the casual workers of Agricultural Department was carefully examined by the Labour Department in the Administration and it was found that the work of the casual labourer is not the same as that of regular employees.

3. In the rejoinder the applicant has insisted that casual labourers are employed in the Agricultural Department inter alia for spraying and dusting operations, collection of grains, cutting of plants, application of fertilisers, transplanting etc. which is more or less the same as those of regular Malis. The applicant has argued that the Work Allotment Registers of Agricultural Department between casual labourers and Malis should be examined. He has also referred to instances in which a person who has not even passed the 1st standard has been appointed as Mali and on a number of occasions the respondents have relaxed the educational qualifications for absorbing the casual labourers to Group D posts. The casual labourers in the Agricultural Department are denied the pay of spraying and dusting operators as they did not pass the 4th standard. In the additional counter affidavit the respondents have stated that the work of casual labourers and regular employees of Agricultural Department being different the Government of India did not sanction 1/30th of the pay of regular employees plus dearness allowance to the casual labourers. When posts of regular mazdoors for doing similar work are sanctioned the casual mazdoors will be absorbed and will be given 1/30th of the minimum of the pay scale plus dearness allowance. The applicant has not produced any supporting evidence to show that he is doing the same duties as those of agricultural Malis. They have also referred to the relaxed educational qualifications for recruiting casual labourers as Malis, but have insisted that the work of casual labourers is not the same as ^{that} ~~those~~ of regular Malis and Maisteries. In the supplementary rejoinder the

applicant has reiterated that he is doing the same work as regular Class IV employees. He has insisted that casual labourers are independently doing the works detailed in the O.A. and engaged in skilled works also and that the respondents are deliberately evading production of Works Allotment Registers to be produced before the Tribunal.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. There is no dispute about the fact that in accordance with the rulings of the Supreme Court under the principle of 'equal pay for equal work' if a casual labourer is doing ^{similar} ~~the same~~ and identical work as done by the regular employees, the former will be entitled to the same pay as is admissible to regular workers. The dispute is about the fact whether the applicant is ^{really} ~~is~~ doing the same work as is being performed by the regular Malis (Gardeners) or Maistries. While the applicant avers that as a casual labourer, he is doing the same work as done by the Malis or Maistries, the respondents have stoutly denied it and have stated that the applicant has been doing the unskilled manual work, the nature and quality of which is entirely different from that performed by the Malis or Maistries. The respondents have not been able to produce any document like the Work Allotment Register ^{let us} to ~~compare~~ the work of regular Malis/Maistries and that performed by the applicant. Accordingly we are left with the task of considering the claim of the applicant on the basis of available documents alone.

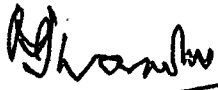
5. In the rejoinder dated 14th September 1990 filed by the applicant at least in regard to Maistries it has been conceded by him that "the casual labourers are doing all the work assigned to "maistries" except the supervisory function allotted to 'maistries' for supervising casual mazdoors". As regards the comparison with the work of Malis, in para 7 of the same rejoinder, the applicant has stated as follows:-

"7. It is respectfully submitted though the respondents had fixed 4th standard pass for recruitment to the post of malis, the respondents have waived the educational qualification and recruitment to the post of 'Malis' were made from the Agrl. casual labourers strictly on the basis of their seniority, as the casual labourers were doing the same work as 'Malis' ".

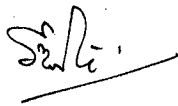
From the above it is clear that the applicant does not satisfy the educational qualification prescribed for the post of Mali. The Supreme Court in Tarsem Lal Gautam and another vs. State Bank of Patiala and others, ATR 1989(1) SC 236, observed that the principle of 'equal pay for equal work' cannot be translated into a mathematical formula and that qualitative difference in experience, responsibility also matters. The Supreme Court still in another case in Mewa Ram Kanojia vs. All India Institute of Medical Sciences and Others, (1989) 10 ATC 51, held that different educational qualifications for two posts even with the same duties would justify different pay scales and that the burden of proof is on one who claims parity of pay scale. In this light the applicant who ^{himself} is relying upon relaxation of the educational qualifications prescribed for Malis cannot claim the pay scale of Malis unless and until he discharges the burden of proof that qualitatively and quanti-

tatively he is discharging the same work as is being performed by a regular Mali . The Supreme Court in State of U.P vs. J.P.Chaurasia, AIR 1989 SC 19 held that equality of pay does not depend on nature and volume of work because the quality of work may differ. In such a situation the equation has to be left with the Executive Government.

6. In view of the conspectus of facts and circumstances of the case and the rulings of the Supreme Court, as stated above, we do not see any force in the application and dismiss the same without any order as to costs.


(N.Dharmadan)
Judicial Member

30.8.91


(S.P.Mukerji)
Vice Chairman

n.j.j