

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.389/2001

CORAM: Friday this the 15th day of February, 2002.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Mariam Chorie,
Part time Sweeper (under orders of termination)
O/o of the Food and Nutrition Extension Officer,
Community Canning and Preservation Centre,
Panampally Nagar,
Ernakulam. .. Applicant

(By Advocate Sri M.R.Rajendran Nair)

vs.

1. Union of India represented by the Secretary
to Government of India, Ministry of Human Resources
Development,
Department of Food and Nutrition Board,
New Delhi.
2. Deputy Technical Advisor,
Ministry of Human Resources Development,
Department of Woman and Children Development,
Food and Nutrition Board, Shasthri Bhavan,
Madras.
3. The Demonstration Officer, Community Food
and Nutrition Extension Unit,
Food and Nutrition Board,
27/217, Manorama Jn.,
Kochi-36. .. Respondents

(By Advocate Sri C.Rajendran, SCGSC)

The Application having been heard on 6.2.02, the Tribunal
on 15.2.2002 delivered the following:-

ORDER

HON'BLE SRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant a Part-time Sweeper in the office of
the 3rd respondent has filed this application challenging
the order dated 25.4.2001 of the 3rd respondent (Annexure

A1) by which her services were ordered to be discontinued with effect from that date alleging that "because of her overage(beyond 76 years), she is not able to discharge her duties as is expected from her". The material allegations in the application are as follows.

2. The applicant was initially appointed as a part-time Sweeper on a monthly remuneration of Rs. 30/-. When she represented for revision of wages, she was served with a notice of termination dated 23.3.1978. When she challenged the said order by filing O.P 1137/1978 before the Hon'ble High Court of Kerala, the termination notice Annexure A3 was withdrawn by order dated 17.4.1978(Annexure A4). During 1983 to 1985 the applicant discontinued her services, but she rejoined in 1985. As the applicant was not paid the due remuneration, she filed O.A.105/1991 which was disposed of by the Tribunal directing the respondents to revise the pay of the applicant with effect from 26.10.88 and to disburse to her the arrears. On account of non-disbursement of the due wages at the revised rates, the applicant again filed O.A.1705/93. When the said O.A. was pending, the third respondent issued Annexure A8 order dated 2.12.1993 terminating the services of the applicant with effect from 17.12.93 as also another notice dated 8.12.1993 to show-cause why her services would not be terminated since the date of birth of the applicant as shown in the Baptism certificate was 20th April, 1924. A detailed representation was made by the applicant in reply to Annexure A9 notice. But the explanation was rejected by order at Annexure A11

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holding that the termination of her services effective from 17.12.93 would hold good. The applicant filed O.A. 2281/1993 which was allowed by the Tribunal setting aside the termination of her services. Thereafter the applicant was served with memos Annexures A15(a) and A15(b) alleging that discharge of her duties was not upto the mark. The applicant gave a reply, but thereafter the respondents did not take any further action. The applicant thereafter filed O.A. 1090/2000 claiming revision of wages which by order dated 13.12.2000 (Annexure A19) was allowed directing the respondents to revise the wages of the applicant with effect from 1.1.1996 in accordance with the hourly rates as mentioned in A-4 and to make available to the applicant the arrears of wages within a period of two months. The respondents paid only Rs.4000/- to the applicant and the applicant has filed a separate application for claiming the remuneration. While so, the applicant was served with the impugned order(Annexure A1) dated 25.4.2001 which reads as follows.

" Mrs. Mariam Chorie, hourly rated Part-time casual labour is informed that because of her overage(beyond 76 years), she is not able to discharge her duties as is expected from her. Hence her services are not required by this office and therefore it is ordered to discontinue her services with effect from 25.4.2001.

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This has the approval of Deputy Technical Adviser, Ministry of Human Resource Development, Food and Nutrition Board, Chennai."

The applicant aggrieved by this order has filed this application challenging the same on the ground that the third respondent is not competent to terminate her services, that the impugned order has no factual basis, that the applicant is not over 70 years as claimed in the impugned order, that there being no maximum age limit prescribed by law for Part-time casual service, the services of the applicant is not liable to be terminated without giving her an opportunity of being heard and without reason and that the applicant being a workman, the termination of her services without following the mandatory provisions of the Industrial Disputes Act is invalid and that impugned order is null and void and arbitrary.

3. The respondents in the reply statement admit that there is no age of superannuation fixed for Part-time casual labourer, that her services have been terminated in view of the observation of the Tribunal in its order dated 13.12.2000 in O.A.1090/2000 to the effect that if the applicant had crossed the age limit beyond which a Part-time casual labourer cannot be engaged, it was open for the respondents to take appropriate steps for termination of her services in accordance with law and that the termination of

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the services of the applicant who is not able to discharge her duties on account of her old age cannot be faulted.

4. On a careful scrutiny of the material placed on record and on hearing the learned counsel on either side we are of the considered view that the impugned order unilaterally terminating the services of the applicant as Part-time casual labourer without issuing a show-cause notice to her and giving her an opportunity of being heard is unsustainable in law. The Tribunal had in its order in O.A. 1090/2000 inter alia stated as follows:-

"If the applicant has crossed the age limit beyond which a part-time casual labourer cannot be engaged, it is for the respondents to take appropriate steps for termination of her services in accordance with law.

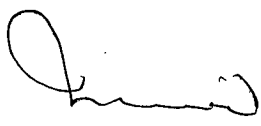
(emphasis supplied)

The above observation of the Tribunal does not entitle the respondents to terminate the services of the applicant unilaterally and not in accordance with law. The termination of the services of a Part-time casual labourer would be in accordance with law if the order terminating the services is as per the terms of employment or dismissal or removal for misconduct or retrenchment in accordance with the provisions of the Industrial Disputes Act or any other method of termination in accordance with law. We find that the impugned order of termination is not in accordance with law or in any manner as stated above. It is admitted by the

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respondents that there is no maximum age limit upto which a part-time casual labourer can be engaged. The termination of the services of the applicant in this case is not because of her attaining any particular age but on the ground that the applicant is not able to discharge her duties as was expected of her. Before reaching a conclusion that the applicant is not able to discharge her duties as was expected of her the applicant should have been given a notice and an opportunity of defending herself. This having been not done, the termination of the services of the applicant on the ground that she was not able to discharge her duties as was expected of her is vitiated for non-observance of the principles of natural justice. If the order is to be treated as a retrenchment then for not conforming to the mandatory provisions of the Industrial Disputes Act the retrenchment is illegal.

5. In the light of what is stated above, we set aside the impugned order. However, we make it clear that the setting aside of the impugned order would not preclude the respondents from proceeding to terminate the services of the applicant if the applicant has become incapable of performing her duties properly or for any other valid reason in accordance with law. There is no order as to costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. Annexure A1 True copy of Memo No.1(1)/2001 CENEU/CHN/38 dt. 25.4.2001 issued by the 3rd respondent.
2. Annexure A2 True copy of Memo No.10(9)/CCC/MRS/69-SF dated 11.6.1969 issued by the 2nd respondent.
3. Annexure A3 True copy of Memo No.2(9)/78/CCC/CHN DT. 23.3.1978 issued by 3rd respondent.
4. Annexure A4 True copy of Memo No.2(9)/78/CCC/CHN dt. 17.4.78 issued by FNE Officer.
5. Annexure A5 True copy of Memo No.10(6)/78-SF dt. 10.8.1978 of the 2nd respondent.
6. Annexure A6 True copy of the final order dated 16.10.1991 in O.A.105/91 of this Hon'ble Tribunal.
7. Annexure A7 True copy of the final order dated 4.3.1993 in CPC 132/1992 in O.A. 105/1991.
8. Annexure A8 True copy of memo No.10/19/93-FN dt. 2.12.1993 issued by the 2nd respondent.
9. Annexure A9 True copy of Memo No.10/19/1998 -FN dt. 8.12.1993 issued by the 2nd respondent.
10. Annexure A10 True copy of the representation dated 14.12.1993 submitted by the applicant to the 2nd respondent.
11. Annexure A11 True copy of Memo No.10/19/1993 FN dt. 16.12.1993 issued by the 2nd respondent.
12. Annexure A12 True copy of the Baptism Certificate dt. 30.9.1993 issued by the parish priest, St. Sebastian Church, Bolgatty.
13. Annexure A13 True copy of the final order dt. 4/3/1994 in OA 2281/1993.
14. Annexure A14 True copy of the final order dt. 4/3/1994 in O.A. 1075/1993 of this Hon'ble Tribunal.
15. Annexure A15(a) True copy of Memo No.2(9-B)/94/CFNEU/CHN dated 7.4.1994 of the Assistant Technical Advisor.

16. Annexure A15(b) True copy of Memo No.2(9-B)/94/CFNEU/CHN dated 11.4.1994 of the Assistant Technical Advisor.
17. Annexure A16 True copy of the representation dated 12.4.1994 of the applicant to the Assistant Technical Advisor.
18. Annexure A17 True copy of the Memo No.2(9-B) 94/CFNEU/CHN dated 19.4.1994 issued by the Assistant Technical Advisor.
19. Annexure A18 True copy of final order dated 1.4.1996 in O.A/501/1998 of the Hon'ble Tribunal.
20. Annexure A19 True copy of the final order dated 13/12/2000 in O.A. 1090/2000.
21. Annexure A20. True copy of the Memo No.10(60)/83-FN dated 16.2.1983 issued by 2nd respondent.
22. Annexure A21 True copy of the Memo No.2(9)/85/CCC/CHN dated 3.6.1985 issued by the 3rd respondent.
23. Annexure A22 True copy of the letter No.10/60/FN/91 dated 18.11.1991 of the 2nd respondent.
24. Annexure A23 True copy of the letter nO.2(9-1) FNEC/CHN/91 dated 22.11.1991 endorsed to the applicant by the 3rd respondent.

Respondent's Annexures:

1. Annexure R3A Photocopy of the letter No. 10(19)/2001-02/FN dated 16.4.01 of the Ministry of Human Resource and Development.
2. Annexure R3B Photocopy of the explanation submitted by the applicant dt. 14.12.1993.
3. Annexure R4(a) True photocopy of the complaint addressed by the Technical Adviser, Ministry of Human Resources Development dated 29.1.2001.
4. Annexure R4(b) True photocopy of the letter No. 14(8)/2000/ND.1/Tech.dt. 6.2.2001.
5. Annexure R5 True copy of the report submitted by Smt.Radha Sunderarajan ATA dated 28.2.22001.
6. Annexure R6(a) True copy of the receipt issued by one Mary, part time casual helper dated 25.4.2001.
7. Annexure R6(b) True copy of the receipt issued by Victoria part time casual helper dated 26.4.2001.

8. Annexure R7 True copy of the brief note on Food
 and Nutrition board updated on
 20.12.2000.