

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION

: 31.10.1989

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.40/89

M.M.Unnikrishnan

.. / Applicant

v.

1. Superintendent of Post Offices,
Alwaye Division, Alwaye.
2. Postmaster General,
Kerala Circle, Trivandrum.
3. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.

.. Respondents

M/s.OV Radhakrishnan, K.Radhamani Amma
& Raju K.Mathews

.. Counsel for the
applicant

Mr.K.Karthikeya Panicker, ACGSC

.. Counsel for the
respondents.

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 15th January, 1989 the applicant who has been working as a Driver on a casual basis in the office of the Senior Superintendent of Post Offices, Alwaye, has prayed that the impugned order dated 30.12.1988 (Ext.A4) informing him that his services cannot be continued as casual mazdoor Driver as he was not nominated by the Employment Exchange and that his services will be dispensed with with effect from 1.2.89 on finalisation of selection of a casual mazdoor Driver through selection out of the nominees sponsored by the Employment Exchange, should be set aside. He has also prayed that the respondents 1 and 2 be directed to regularise his services with effect from 1.6.85 in compliance of the judgment of the Supreme Court in AIR 1987 SC 2342 and orders issued by the respondents

themselves at Exts A1 and A3 and that the 1st respondent should not terminate his services by replacing him by a fresh hand nominated by the Employment Exchange. The brief facts of the case are as follows.

2. The applicant was appointed as a casual mazdoor Driver with effect from 1.6.85 and continuing ^{ed} as such _h without interruption. The Supreme Court in their decision reported in AIR 1987 SC 2342 directed that the casual workers should be given pay and allowances as are admissible to regular employees and that a scheme for regularisation of casual mazdoors who have put in one or more years of service should be prepared. In compliance of this direction the D.G, Department of Posts issued a communication dated 19.2.88 (Ext A-1) directing that posts should be created in different categories of casual labourers for their absorption. A further communication was issued by the Ministry of Personnel on 7.6.88(Enclosure to Ext.A3) directing regularisation of casual workers. On the basis of these directions the applicant on 24.2.88 was paid Rs.4356/- towards arrears of pay and allowances being the difference in pay and allowances paid to the regular employees and the wages paid to the applicant as a casual employee. The applicant claims that he is entitled to being regularised as a Driver with effect from 1.6.85 and the question of his being not nominated by the concerned Employment Exchange should not arise. He has also argued that termination of his service will be violative of the protection available to him in Chapter V-A of the Industrial Disputes Act.

3. The respondents have stated that in accordance with the Government of India's instructions one of the conditions laid down was that the casual employees should have been recruited through the Employment Exchange. However on 7th May 1985(Ext.R-1) a relaxation was granted to this condition stating that casual workers who were recruited

before 7.5.1985 should be considered for regular appointment even if they were recruited otherwise than through the Employment Exchange provided they are eligible for regular appointment in all other respects. Since the applicant was employed as casual mazdoor on 1.6.85 without being sponsored by the Employment Exchange, i.e., after 7th May, 1985 he cannot be regularised and has to be replaced by a casual employee sponsored through the Employment Exchange. According to the respondents the judgment of the Supreme Court does not make it incumbent on the respondents to absorb all the casual mazdoors who have put in more than one year of service in the Department. The Supreme Court directed the respondents to evolve a scheme for the absorption of "eligible" casual mazdoors only. Since the applicant does not satisfy the eligibility conditions being not sponsored by the Employment Exchange he cannot avail of the regularisation scheme. They have argued that the Industrial Disputes Act does not apply to Postal Department. In the rejoinder the applicant has stated that in accordance with Ext.A7 Drivers are also required to be regularised in compliance of the Supreme Court judgment. He has argued that sponsoring through Employment Exchange is not an inviolable rule and that requirement cannot be allowed to defeat the scheme for absorption of casual labourers who have put in more than one year of service. He has argued that having been appointed as a casual Driver without being sponsored by the Employment Exchange and continued for four years the respondents are estopped to terminate his services on that ground. According to him there is no statutory recruitment rules that all initial appointments should be made through the Employment Exchanges.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents. The

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foundation of the claim of the applicant is the directions given by the Hon'ble Supreme Court in the judgment dated 27.10.87 in Daily Rated Casual Labour employed under P&T Department v. Union of India and others , reported in AIR 1987 SC 2342. Having dealt with the question of the entitlement of casual labourers to the rates equivalent to the minimum pay in the pay scale of regularly employed workers in the corresponding cadre and directing the Posts and Telegraphs Department to give them that pay, the Supreme Court took up the question of regularisation of casual workers in following terms:-

"8. India is a socialist republic. It implies the existence of certain important obligations which the State has to discharge. The right to work, the right to free choice of employment, the right to just and favourable conditions of work, the right to protection against unemployment, the right of every one who works to just and favourable remuneration ensuring a decent living for himself and for family, the right of every one without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that managements and the Governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long

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period of time. Where is any justification to keep persons as casual labourers for years as is being done in the Postal and Telegraphs Department? Is it for paying the lower wages? Then it amounts to exploitation of labour. Is it because you do not know that there is enough work for the workers? It cannot be so because there is so much of development to be carried out in the communications department that you need more workers. The employees belonging to skilled, semi-skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Administrators should realise that if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. Our wage structure is such that a worker is always paid less than what he produces. So why allow people to remain idle? Anyway they have got to be fed and clothed. Therefore, why don't we provide them with work? There are several types of work such as road making, railway construction, house building, irrigation projects, communications etc. which have to be undertaken on a large scale. Development in these types of activities (even though they do not involve much foreign exchange) is not keeping pace with the needs of society. We are saying all this only to make the people understand the need for better management of man power (which is a decaying asset) the non-utilisation of which leads to the inevitable loss of valuable human resources. Let us remember the slogan: "Produce or Perish". It is not an empty slogan. We fail to produce more at our own peril. It is against this background that we say that non-regularisation of temporary employees or casual labour for a long period is not a wise policy. We, therefore, direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department.

9. The arrears of wages payable to the casual labourers in accordance with this order shall be paid within four months from today. The respondents shall prepare a scheme for absorbing the casual labourers, as directed above, within eight months from today."
(Emphasis added)

From the above it is clear that what weighed with the Hon'ble Judges of the Supreme Court for regularisation of casual workers is the principle that for better management and better utilisation of human resources, the workers should be given security of work so that they contribute to maximising production. They felt that workers should not remain as casual labourer for an unreasonable long period of time and that it is possible for a big department like the Posts

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and Telegraphs Department to absorb the casual workers in the regular cadre for any of the several types of works which the department was undertaking on a large scale. The emphasised part of the extract from the judgment indicate that the scheme of absorption of casual labourers is not qualified by the term "eligible casual labourers" much less only those casual labourers who are sponsored by the Employment Exchange. The directions issued by the Director General, Postal Department or the Department of Personnel also nowhere indicated that the casual workers who have not been sponsored by the Employment Exchange should be kept out of the scheme of regularisation. The office memorandum issued by the respondents at Ext.R1 on 7th May, 1985 cannot constrain the directions of the Supreme Court, not only because the directions of the Supreme Court have the force of law but also because the O.M was issued prior to the directions of the Supreme Court. Further the O.M itself indicates that the requirement of being sponsored by the Employment Exchange has been relaxed by the respondents themselves in respect of the casual workers who were engaged before 7th May, 1985. This shows that the requirement of being sponsored by the Employment Exchange has not been recognised by the respondents themselves as inviolable and binding. In *Union of India v. N. Hargopal and others*, 1988(1) SLJ 59, the Supreme Court held that under the Employment Exchanges(Compulsory Notification of Vacancies) Act, the vacancies need only to be notified compulsorily to the Employment Exchange but it was not compulsory to fill up the vacancies only through the candidates sponsored by the Employment Exchange. In *R. Ashokan v. District Manager, Telephones, Trivandrum and another*, (1989)9 ATC 693, this Bench of the Tribunal to which one of us was a party held that drawing a line on the 20th March, 1979 for regularisation of casual workers

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recruited otherwise than through the Employment Exchange will be arbitrary. In the same manner drawing a line on the 7th May 1985 for regularisation cannot otherwise be sustained. In K.Murugesan v. Secretary, Ministry of Communication(Postal Department), (1989)9 ATC 357 it was held that termination of the services of an employee who was appointed otherwise than through Employment Exchange and retained in service for a considerable period, without giving him an opportunity, on the ground that his appointment contravened administrative instructions, was illegal.

5. Apart from other considerations the fact that the applicant had been retained in service as a casual Driver for about 4 years without any warning that not having been sponsored by the Employment Exchange, his appointment as a casual Driver is irregular, the respondents are bound by the principles of promissory and equitable principles of estoppel and cannot terminate his services on that ground alone.

6. In view of what has been stated above we need not go into the question of violation of the provisions of Industrial Disputes Act in the applicant's case.

7. In the facts and circumstances we allow the application, set aside the impugned order dated 30.12.88 at Ext.A4 and direct that the applicant should be considered for regularisation even though he had not been sponsored by the Employment Exchange and till then his services should not be terminated except in accordance with law.

There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

31/7/89


(S.P. MUKERJI)
VICE CHAIRMAN

31.7.89