

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH

Original Application No. 215 of 1992

Vishwa Mohini

Petitioner

Versus

C.S.I.R & Another

Respondents

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HON'BLE MR. JUSTICE R.K. VARMA, V.C.

HON'BLE MR. B.K. SINGH, MEMBER(A)

( By Hon. Mr. Justice R.K. Varma, V.C. )

By this petition Under Section 19 of the Administrative Tribunal's Act 1985 the petitioner has sought inter alia the following reliefs:-

- (a) That the regularisation Scheme 1990 contained in Encl. No.1 be declared ultravires and unconstitutional and its implementation be permanently stayed.
- (b) That the respondent no.3 be kindly directed to regularise the services of the petitioner on the post of Technical Typist in Library Section, N.B.R.I. belonging to the category of Technician Gr.II(Group 'C') and she may be given all consequential benefits.
- (c) That the respondent no.2 be further directed to grant equal pay of Rs.1600/- per month(at present) which is being given to the regular employees discharging similar duties w.e.f. 1.1.90.

2. The fact leading to this petition briefly stated are as under:-

The petitioner had passed B.A. in the year 1980 and had also practised Typing. In the year 1981 she applied for the post of Technical Typist in the National Botanical Research Institute(N.B.R.I.),

Lucknow. She was appointed on daily wages in the Morphology and Paelentology Discipline of N.B.R.I.. The petitioner worked there and later she was transferred to the Library Section of the

N.B.R.I. The petitioner had been doing the work of typing of Scientific and Technical literature, filing of correspondence, indexing and other routine work of the library assigned to her from time to time. To evidence this fact the petitioner has filed one certificate (Annexure A 1 to the petition) dated 31.3.87 from the then Senior Librarian under whose supervision she worked, and two certificates dated 31.5.91 (Annexure A3 to the petition) and dated 23.9.91 (Annexure A4 to the petition) from the Library Officer of the N.B.R.I. A proforma for furnishing information regarding daily wagers, dated 27.7.90 (Annexure A-6) is also filed with the petition and it shows that the petitioner was a daily wager engaged for technical typing, cataloguing of Scientific books and periodicals and routine typing such as order book and periodical reminders. Column No.6 of the said proforma states that the petitioner as daily wager was doing the same work as done by regular employee of the comparable grade of Category 'B' of the library e.g. technical nature, cataloguing of books and routine typing work such as order of books and periodical reminders. The petitioner has also filed two proforma for engagement of Casual labour pertaining to the N.B.R.I. Library as (Annexure A-7 and A-8 to the petition). Annexure A-7 is dated 5.10.87 and shows that a post of Typist and two posts of Library bearer and Library Attendant were vacant and that no full time Typist has ~~in the library~~. *Annexure A-8 shows that the proposed work to be undertaken was of semi-skilled worker for* Technical typing work of Library and the justification for engagement of daily wage worker was that the post of Typist is essential for the work of Library. It has not been stated by the respondents that any one other than the petitioner was working against the said post.

3. The grievance of the petitioner is that although she was working on daily wage basis as a semi-skilled worker for technical typing work of library, she was not being given the wage of the semi-skilled worker appertaining to category 'C' post and that instead she was being paid the wages of category 'D' post. It is the contention of the petitioner that she was entitled to receive the minimum wage payable to class III employee on the basis of principle of equal pay for equal work.

4. The Council for the Scientific and Industrial Research (C.S.I.R) formulated a scheme called Casual Workers Absorption Scheme 1990 in consequence of a decision of the Supreme Court in Case No.W.P.(Civil) No.631 of 1988, which has been filed by the petitioner as (Annexure 1 to the petition). The terms and conditions for regularisation/absorption of casual workers provide that absorption will be against the available vacancies and/or those arising in future 'D' or 'C' category of posts. It is further provided that the absorption will be as per normal procedure of Recruitment prescribed for the post including qualifying the trade test, if any. The said scheme for absorption of Casual workers formulated by the C.S.I.R shall naturally be made applicable to the Casual workers of its unit the N.B.R.I. It is the contention of the counsel for the petitioner that the said scheme for absorption of Casual Workers in fact militates against the very concept of absorption of casual workers since inspite of their long standing on their jobs as casual workers, they are required to undergo the normal procedure of recruitment for absorption as contemplated in the scheme. The scheme also contemplates removal from casual engagement in case the casual worker is unsuccessful in the test or interview in two chances in a period of six months.

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5. It has been submitted on the basis of the Authority of the Supreme Court in the case of Jacob M. Puthuparambil Vs. Kerala Water Authority (A.I.R 1990 SC 2228) that "employees who are serving in the establishment for long spells and have the requisite qualifications for the job should not be thrown out, but their services should be regularised as far as possible" and that it is "unfair and unreasonable" to remove people who have been rendering service since sometime, as such removal has serious consequences."

6. The decision of the Supreme Court in Bhagawati Prasad Vs. Delhi State Mineral Development Corporation was also relied upon for the proposition that "once the appointments of petitioners were made as daily-rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications" and also for the proposition that the petitioner is entitled to equal pay at par with the person appointed on regular basis to the similar posts or discharge similar duties and is entitled to the scale of pay and all allowances from time to time for the said post.

7. Accordingly, it has been submitted that the petitioner will be entitled to be absorbed/regularised without any formality of recruitment or possibility of rejection.

8. It has been submitted on behalf of the petitioner that the regularisation/absorption scheme 1990 for absorption of casual workers in C.S.I.R (Annexure No.1 to the petition) is not consistent with the law laid down by the Supreme Court inasmuch as the scheme contemplates procedure of recruitment involving test and/or interview

and as such possibility of rejection and removal of the casual worker of even long standing. The said absorption scheme, therefore, cannot be applied so as to result in removal of the petitioner from the casual engagement.

9. The aforesaid submission made on behalf of the petitioner has force and in our opinion, deserves to be accepted. It must be held that the petitioner is entitled to be absorbed on a post in the library where she has continued to work as casual labour. The respondents have, however, in their counter affidavit stated that the engagement of daily wage workers even if declared unsuccessful in the tests and/or interview, are not discontinued and that the daily wage workers shall be considered for regularisation/absorption against all vacant posts as and when they fall vacant and that the engagement of all daily wage workers have not been discontinued till date on account of being declared unsuccessful in the test and/or interview for absorption.

10. It is complained by the petitioner that she has been ordered orally to go on the job of Mali in the garden section of N.B.R.I and when she asked for issue of transfer order in this regard she was threatened to be retrenched from service. According to the petitioner it was a step to remove her from the job that she has been doing for a long time in the library. She was orally restrained from discharging her duties of Library of N.B.R.I from 18.5.93. At the time of hearing it was informed that the petitioner's casual employment has been terminated.

11. The petitioner has filed Annexure-4 to an affidavit dated 3.7.93 to show that the post of Technical Typist held by the deponent upto 17.5.93 is still existing as financial sanction to meet the expenditure of daily wage worker on the said post has been continued and the recent sanction is for Rs.16,476 at the rate of 1373/- per month for working under Library Officer w.e.f. 1.4.93 to 31.3.94. It has been submitted that the <sup>action</sup> ~~sanction~~ of the respondents is mala fide in discontinuing the casual employment instead of regularising or absorbing her on the job in the library which <sup>is comparable</sup> ~~pertains~~ to a post in category 'C'.

12. The educational qualification of the petitioner as stated by the Library Officer in his letter dated 3.3.93 (Annexure No. R-16) sent in reply to the notice of the Controller of Administration of N.B.R.I, shows that the petitioner possessed the degree of B.A, LL.B and a certificate of Library Science, keypunching and Introduction to Key-To-Diskette Data Entry. The certificate dated 23.9.91 issued by the Library Officer (Annexure No. A-4 to the petition) shows that the petitioner was attending the technical typing work of the Library namely, preparation of Catalogue entries for scientific books/periodical, routine typing etc and she has a good knowledge of Library operations including technical work. The nature of duties performed by the petitioner has been stated in the Proforma for furnishing additional information regarding daily wages (Annexure No. A-6 to the petition) as technical typing, cataloguing of Scientific books and periodical routine typing. The claim of the petitioner is that she was in fact doing the job of an employee belonging to 'C' category post and her grievance is that she is being paid the minimum wage of 'D' category post, although as indicated in Annexure A-7 dated 5.10.87 and Annexure A-8 dated 1.7.91, job of one semi-skilled worker for technical typing work of Library existed in the library of N.B.R.I, Lucknow.

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13. We find the various certificates mentioned hereinabove as well as the various <sup>slips</sup> ~~lists~~ (Annexure R-3 to R-7 to the Rejoinder) issued to the petitioner by her Senior Officers/Section Incharge of the Library assigning her the work of typing catalogue cards and letters <sup>and</sup> ~~and~~ that the petitioner was discharging the duties of a semi-skilled worker group 'C', <sup>and</sup> ~~who~~ was attending the technical typing work, cataloguing scientific books and reminders and other routine work of the library assigned to work from time to time. In the certificate issued by the library officer (Annexure A-3 and A-4) the petitioner's work has also been appreciated and it is stated that she has a good knowledge in the library work and she is a sincere and hard worker.

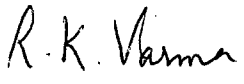
14. Having heard the learned counsel for the parties, we have come to the conclusion that this petition must be allowed. The action of the respondents in shifting the petitioner from her job, which clearly appertains to a post in category 'C', instead of taking steps to absorb/regularise her on such post and requiring her to go to the garden section on an inferior job that appertains to category 'D' is in our opinion wanting in bonafides. The discontinu-  
<sup>ance of her</sup> ~~ance of~~ casual employment is against the principle of absorption as well as the assurance given by the respondents and is unreasonable and as such is not sustainable in law and is hereby quashed.

15. The respondents are directed to take her back on her job in the Library of N.B.R.I where she was working until <sup>she was</sup> ~~asked~~ to shift to the garden section of N.B.R.I. It is held that the nature of work for which the petitioner was engaged all these years in the Library section of N.B.R.I appertains to category 'C' posts and not category 'D'. It is therefore, directed that the petitioner shall be paid minimum wage payable to an employee working in

category 'C' post instead of category 'D' henceforth and it is further directed that the respondents shall regularise/absorb the petitioner in category 'C' post as and when vacancy arises and till then shall continue the petitioner as a casual labour in category 'C'.

16. The respondents shall take back the petitioner on casual employment as directed above within one month of the date of receipt of this order. The petitioner shall be paid minimum wage payable to a casual worker in the category 'C' till her absorption/regularisation in category 'C' post. There shall however, be no order as to costs.

  
MEMBER(A)

  
R.K. Varma  
Vice Chairman

Dated: 10<sup>th</sup> August, 1993

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