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CENTRAL ADMINISTRATIVE TRIBUNAL: BOMBAY

DATED THIS THE 13TH DAY OF JULY, 1987.

PRESENT;

HON'BLE Mr. JUSTICE K.S. PUTTASWAMY .. VICE-CHAIRMAN
AND

HON'BLE Mr. L.H.A. Rego .. MEMBER(A

O.A.NO.432 OF 1987

Sri Nathu Genu Kudale,
R/at Near savata Mali Temple,
Pimprigaon, Pune-411 17.

. Applicant.

(By Sri Ashok Bhatwara, Advocate

v.

1. The Deputy Regional Director,
Employees' State Insurance Corporation,
P.M.T. Building, Swargate, Pune-2.
2. The Regional Director,
Regional Office, Maharashtra Employees
State Insurance Corporation,
E.S.I. Bhavan 18, N.M. Joshi Marg,
Lower Parel, Bombay.
3. The Director,
Employees' State Insurance Corporation,
E.S.I. Corporation Building
Kotla Road, NEW DELHI.

.. RESPONDENTS

(By Sri M.I. Sethna, Advocate)

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This application coming on for hearing this day,
Vice-Chairman made the following:

O R D E R

This is an application made by the applicant
under Section 19 of the Administrative Tribunals Act,
1985 ('the Act')

2. On 22-6-1984 the Deputy Regional Director,
Employee's State Insurance Corporation, Pune (DRD)
by his Memorandum No. 33.W.16/16(2) Acq. (Annexure-A)

of that date appointed the applicant as a Chowkidar on daily wages at 9-72 per day to look after and safeguard ESIC plot situated at Chinchwad in which capacity he continued to serve from that date till 28-10-1986. On 29-1-1986 the same officer terminated the services of the applicant from that very day (Annexure-D), the validity of which was challenged by him before the Labour Court, Pune, which inter alia granted an interim order directing his continuance in service. In pursuance of the said order, the applicant was reinstated to service. On 11-12-1986 the Labour Court dismissed the application holding that it had no jurisdiction to adjudicate the said application of the applicant. On the dismissal of the said application, the DRD had again by his order No.33-A-12-23-86/Estt. dated 14-1-1987 (Annexure-B) had terminated the ~~serv~~^{ed} services of the applicant from 2-1-1987 (AN). In this application made on 23-6-1987 the applicant has challenged the said order.

3 Sri Ashok Bhatewara, learned counsel for the applicant contends that the termination of the applicant who had become a permanent employee of ESIC Corporation was illegal and unjustified. In support of his contention Sri Bhatewara strongly relies on a Division Bench ruling of the Bombay High Court in 1984 LIC 267, the ruling of the Supreme Court in 1987 LIC 229, a ruling of Gujarat High Court in 1984 LIC 834 and the Division Bench ruling of the Allahabad High Court in 1984 LIC 514.

4. Sri M.I.Sethna, learned Central Government Senior Standing counsel appearing for the respondents contends that the termination of the applicant who

who had been appointed on daily wage basis and who was also not eligible to be appointed as a regular employee of the Corporation, as he was overaged on the date of his initial appointment on 22-6-1984 was legal and valid.

5. The appointment order issued to the applicant on which there is no dispute, setting out the terms and conditions on which he was appointed, reads thus:

SUB REGIONAL OFFICE, PUNE
EMPLOYEES' STATE INSURANCE CORPORATION
P.M.T. BUILDING, SWARGATE, PUNE-411 002.

No.33-W-16/16 (2) Acq.

Date: 22-6-1984.

MEMORANDUM

Sub: Appointment of Chowkidar.

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With reference to his application dated 28-1-1984 Sri Nathu Genu Kudale is informed that he has been appointed w.e.f. 23-6-1984 as a Chowkidar on daily wages at Rs.9-72 per day to look after and safeguard our plot at Chinchwad, situated at S.No.13, Akurdi (Plot Nos.9, 10 and 11) behind Upkar Sapari Factory.

He may report daily to our local office Manager, Chinchwad. His duty hours will be 12 p.m. to 7 p.m. Any untoward incident or encroachment if noticed may be reported to Local Office Manager, immediately. Further, he should also see that godown on the plot and the boundary stones are not disturbed by the trespassers.

His service may be terminated at any time without assigning any reason therefor which may be noted.

Sd/- R.M.Deshpande
Dy.Regional Director.

To

Sri Nathu Genu Kudale,
Pimpri Gaon, Near Savata Mali Temple,
Pune-411 017.

From this appointment order it is clear that the applicant had not been appointed either as a permanent or temporary servant of ESI Corporation in accordance with the Rules of Recruitment of the Corporation. In this order, the applicant had only been appointed on a purely ad hoc and daily wage basis to attend to particular duty that was found necessary by the

the Corporation. When the services of the applicant were no more required, it was undoubtedly open to the DRD to terminate his services. On this view, we cannot take any exception to the order of termination.


6. An examination of all the circumstances and the records also disclose that the applicant was not eligible for appointment in the Corporation as a Chowkidar either on a permanent or on temporary basis. If these then were the facts, the termination of the applicant whose services were found to be unnecessary with due regard to the nature of the duties performed by him, cannot be held to be wrong by us. In every one of the rulings relied on by Sri Bhatewara the Courts had no occasion to deal with similar situation that has arisen before us and therefore, the ratio in those rulings do not really bear on the point.

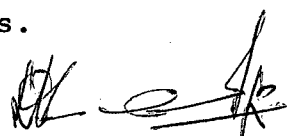
7. Sri Bhatewara next contends that the authority had cast a stigma while terminating the services of the applicant which was illegal.

8. Sri Sethna contends that the order of termination does not cast any stigma against the applicant.

9. We have carefully examined the order of termination and the records. We do not find that the authority in terminating the services of the applicant had cast any stigma on him.

10. On any view of the matter, this application is liable to be rejected. We, therefore, reject this application. But, in the circumstances of the case, we direct the parties to bear their own costs.


VICE-CHAIRMAN
13/7/87


MEMBER(A) 13.7.87.