

*On 13/02/97
899/96*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS. : 899/96 AND 900/96.

DATED this 23rd the day of October, 1997.

JURAM : HON'BLE SIRI M. R. KOLHATKAR, MEMBER (A).

Anant Sitaram Chawan,
Canteen Wash boy on
daily wages,
Departmental Canteen,
Mumbai G.P.O.-400 001.

R/at : C/o. M.B. Nikam,
New Soniya Colony No. 12,
Room No. 1, Khade Golwali,
Vithal Wadi (East),
Tal. Kalyan,
Dist. Thane.

Writ Petition
Applicant in
O.A. No. 899/96.

Yashwant Pandurang Patari,
Canteen Wash boy on daily wages,
Departmental Canteen,
Mumbai G.P.O. - 400 001.

For Petitioner
Applicant in O.A.
No. 900/96.

R/at :- C/o. Dattaram Mahadeo Angre,
138 ('L' Room No. 6, C.P. Tank,
Chanden Wadi, Opp: Madhav Bau
Mandir, Girgaon, Mumbai - 400 004.

(By Advocate Shri S.P. Kulkarni).

VERSUS

Union Of India through the

1. Director,
Mumbai General Post Office,
Near C.S.T., C. Rly (V.T),
Fort, Mumbai - 400 001.
2. Chief Postmaster General,
Maharashtra Circle,
Old G.P.O. Building,
2nd Floor, G.P.O. Campus,
Fort, Mumbai - 400 001.

3. Honorary Secretary,
Departmental Canteen Mumbai
General Post Office,
Mumbai G.P.O. Building,
Near C.S.T. (V.T.),
Central Railway, Fort,
Mumbai - 400 001.

4. Honorary Secretary,
Bombay Postal Co. Op Canteen
Society Limited (then),
G.P.O. Building,
Mumbai - 400 001.

(By Advocate Shri S.S. Karkera for
Shri P. M. Pradhan).

... Respondents in
O.A. No. 899/96
and 900/96.

: ORDER :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

As in these O.A.s the facts are identical (with a change that the applicant in O.A. No. 899/96 was engaged from 19.11.1991 and the applicant in O.A. No. 900/96 was engaged from 01.04.1992) and the reliefs claimed are also identical, the same are being disposed of by a common judgement. The facts in O.A. No. 899/96 are taken as illustrative.

2. The applicants were engaged as wash-boys by the management of Bombay Postal Co.operative Canteen Society, G.P.O. Building. In terms of Ministry of Public Grievances and Pension O.M. No. 3/1/92-DTR(GR)(C) dated 30.01.1992, the orders relating to departmentalisation of the Canteen were issued but the Co.operative Canteen in question was departmentalised only from 01.03.1994. The services of the applicants were then

dispensed with. On receipt of representation from the applicants in June, 1994, they were engaged as "Commission boys", who are remunerated at the rate of Rs. 40/- per day as is required ^{and} on ~~on~~ off basis. The respondents contend that the applicants gave an undertaking that they are prepared to work on commission basis. The Counsel for the applicant contends that the said undertaking was obtained under duress and since the applicants had no other alternative, they gave the undertaking at the pain of being thrown on the street. It is, however, not disputed that the applicants prior to their re-engagement on commission basis were being paid in the pay scale - Rs. 750/- per month. The prayer of the applicant is that, they should be treated as casual labourers and on this basis they should be given the benefit of casual labourers (grant of temporary status and regularisation scheme) and that they should be regularised in due course, ⁱⁿ case they fulfill the requirements. In this connection, at Annexure 'D' of the O.A. No. 899/96, the particulars of dates for which the applicants have worked, have been given. in respect of years 1991, 1992, 1993, 1994, and 1995. At exhibit 'E' is produced the identity card issued by the department and at exhibit 'C' is produced the registration certificate of the Employment Exchange.

3. It is the contention of the applicant that although they are shown as Commission Boys, they are infact casual labourers, who have been working on full time basis and that they have completed more than 240 days of service (208 days in case of offices observing 5 days week).

4. The applicants, in this connection, refer to the Ministry of Communication, Department of Posts, circular dated 01.11.1995, which deals with the scheme of casual labourers (grant of temporary status and regularisation). It refers to the fact that earlier, full time casual labourers/ were engaged before 29.11.1989. who were eligible to be considered for grant of temporary status. The circular states that it has been decided that full time casual labourers recruited after 29.11.1989 and upto 01.09.1993 may also be considered for the grant of benefits under the scheme. According to the counsel for the applicant, both the applicants have been recruited during this period, namely 19.11.1991 and 01.04.1992 in the other case, and they are within the permissible range of dates and that the Tribunal direct the respondents to consider their case in terms of this circular.

5. The respondents have opposed the O.A. According to them, the applicants were engaged by the erstwhile

Co-operative Canteen which has been converted into Departmental Canteen w.e.f. 01.03.1994. The Departmental Canteen is governed by the Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980. These rules require that for filling the posts, there ~~.. should~~ be vacancies ^{and} for filling the vacancies, the mode of direct recruitment is to be resorted to, for which purpose, the vacancies are required to be circulated simultaneously to the local employment exchange and other offices and establishments of the Central Government where Departmental Canteens are functioning. According to the respondents, there are no vacancies. Further, the applicants are really substitute workers i.e. they are engaged to deal with absenteeism among the regular staff, ~~that~~ the services of the applicants were terminated consequent on departmentalisation of the ~~basis of~~ Co-operative Canteen and it was only on the ~~undertaking~~ given by the applicants that they were prepared to work on Commission basis that they were engaged and therefore, the applicants are estopped from setting up a claim of being treated as Casual Labourers. Secondly, it is contended that the scheme of Casual Labourers (grant of temporary status and regularisation) does not apply to ~~the~~ departmental canteen. The Learned Counsel for the respondents, therefore, prays that the O.A. should be dismissed.

6. The Counsel for the applicant relies on the judgement of the Tribunal in Shri Vishwas V/s. Union Of India & Others [O.A. No. 797/94 decided by the Principal Bench on 18.11.1996]. As the applicants heavily rely on this judgement for their case, the same may be reproduced in full.

"Applicant seeks a direction to respondents to confer temporary status on him and to regularise his services in terms of the scheme governing the matter. The claim is contested by respondents on the ground that applicant :

"has not been working as a casual labour but only as a Sweeper for half an hour on contract basis."

We find a tendency to discover new nuances and new nomenclatures as and when the existing ones become inconvenient to the departments. We are not stating whether that has happened or has not happened in this case. These ameliorative measures must be implemented in the spirit in which they have been convinced. The Full Bench decision of this Tribunal in Smt. Sakkubai & Anr. V/s. Secretary, Ministry Of Communication & Ors. [1993 (2) ATJ 197] lays down that no distinction exists between a part time casual labour and a full time casual labour. To our mind, the attempt to classify casual labourers into sub-divisions, itself is a meaningless semantic exercise because the expression 'casual labour' is the antithesis of everything that is regular. We direct the respondents to consider the claim of the applicant uninfluenced by the stand in the reply statement, pass speaking orders in the matter and communicate the same to applicant within three months from today. We make it clear that this direction by itself will not confer a cause of action on applicant.

2. Application is disposed of as aforesaid.
No costs."

7. The applicant also relies on the judgement of the Tribunal ⁱⁿ Shri Suresh Keshavrao Garad V/s. Union Of India & Others | 1995 (1) ATJ 40 | and another judgement of the Tribunal in Anil Anant Kamble & Others V/s. Union Of India & Anr. | O.A. No. 1/97 decided on 18.09.1997 | That was a case in which the services of the applicant in Departmental Canteen was terminated and the applicant wanted his case to be considered for appointment against available Group 'D' post in any of the Institution under the Ministry Of Labour in Bombay and the prayer was granted. The applicant also relies on the Supreme Court judgement in State of Haryana & Others V/s. Piara Singh & Others reported at 1992 (SC SLJ) 456. That was a judgement relating to adhoc or temporary employment and the Hon'ble Supreme Court had observed that/for any reason, ^{if} an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. According to the Counsel for the applicant, the ratio in this judgement as to the employment exchange, is clarified further in the subsequent judgement of the Supreme Court in the Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh V/s. K.B.N. Visweshwara Rao & Others | 1997 (1) SC SLJ 3 |. The Supreme Court held that both the procedure of notification to the

Employment Exchange and Publication in the News paper, should be followed. The direction of the Tribunal for appointment of selected candidates ~~who had applied for~~ to be consideration ~~independently~~ was not/disturbed.

8. The Counsel for the applicant also relied on Surinder Singh V/s. Engineer-in-Chief, C.P.W.D. & Others [1996 SCC (L&S) 189] in which it is held that the plea that daily wage workers having ~~had~~ acquiesced in a lower rate of wages could not seek to enforce the doctrine of 'equal pay for equal work' ~~can~~ not accepted. He further relied on Jagrit Mazdoor Union V/s. Mahanagar Telephone Nigam Limited [1990 SCC (L&S) 606] in which observations are made relating to substitutes. It has been stated that the claim on behalf of substitutes ordinarily is not entertainable but there are substitutes who work for long periods continuously. In such cases, their claims should have been appropriately considered by the department.

9. On the other hand, the Counsel for the respondents contend that so far as the judgement in Vishwas V/s. Union Of India & Others is concerned, it relied heavily on Full Bench judgement in Smt. Sakubai V/s. Another V/s. Secretary, Ministry Of Communication

reported at Vol.III of Full Bench Judgements of Bahri Brothers, page 209. The said judgement has been over-ruled by the Hon'ble Supreme Court by its recent decision in Civil Appeal No. 301 of 1994 rendered on 02.04.1997 wherein the Hon'ble Supreme Court observed that the Tribunal, in our view was not right in coming to the conclusion that the scheme for conferring temporary status to full time casual labourers is also applicable to part-time casual labourers. He further relied on the judgement of the Supreme Court in State of Himachal Pradesh V/s. Suresh Kumar Verma & Anr. [1996 (1) ATJ 618] in which the Hon'ble Supreme Court observed that when the project on which the employees were engaged on daily basis had come to an end, termination from service ordered on account of non-availability of work cannot be said to be improper.

10. I have considered the matter. So far as the Hon'ble Supreme Court, having over-ruled the Full Bench decision in Smt. Sakkubai's case is concerned, Smt. Sakkubai's judgement related to giving the benefit to the part-time casual labourers of the scheme of **conformity** of temporary status and regularisation, irrespective of order of priorities specified by the department. The Hon'ble Supreme Court held that there was no reason to interfere with the order of priorities of the department. In the present case, it is nobody's case that

the applicants are part time workers and are seeking the benefit of the scheme as part-time workers, therefore, the Hon'ble Supreme Court judgement over-ruling the ratio in Smt. Sakkubhai's case, does not affect the case of the applicants. It appears to me that what the counsel for the applicant relies on ⁱⁿ Shri Vishwas case were the observations that - "We find a tendency to discover new nuances and new nomenclatures as and when the existing ones become inconvenient to the departments." To me it appears that this has reference to the nomenclature of "Commission boys" instead of casual labourers. According to me, the Government cannot invoke the doctrine of estoppel because evidently, the nomenclature of Commission boys is really a ~~ruse~~ for avoiding payment of regular wages to the applicants. I, therefore, hold that keeping in view the judgement of the Supreme Court in Surinder Singh V/s. Engineer-in-Chief, C.P.W.D., and judgement of the Division Bench in Shri Vishwas, the applicant are required to be treated as having been casual labourers ^{viz.} from the date of initial engagement ^{on} 19.11.1991 and ^{that} 01.04.1992. I also note ~~the~~ the applicants have been stated as having been engaged to deal with the situation arising out of absenteeism. The applicants, infact are not substitutes or badli workers but they are infact full time casual labourers working since November 1991 / April 1992. In this connection, the observation of the

Hon'ble Supreme Court in State of Haryana V/s.
Piara Singh are relevant.

11. The contention of the respondents that the scheme of casual labourers (grant of temporary status/ regularisation) does not apply to the applicants in question, cannot also be accepted. Once it is held that the applicants are required to be treated as casual labourers of the departmental canteen and once it is accepted that the departmental canteen is a part and parcel of the department, it is required to be held that the applicants are also entitled to be considered for benefits of the scheme of casual labours (grant of temporary status and regularisation). Since it is also clear that the scheme which was earlier available only for casual labourers engaged prior to 29.11.1989 now covers casual labourers engaged between 29.11.1989 upto 01.09.1993 and since it is not disputed that the applicants were initially engaged by the Co.Operative Canteen during this period, the applicants should be held entitled to have their case considered in accordance with the extension of the date for application of the Scheme. Ofcourse, whether the applicants have fulfilled the terms and conditions of the Scheme is a matter for the respondents to decide in terms of the record of attendance.

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12. In the light of the above discussion the O.A. is allowed and the respondents are directed to treat the applicants as being casual labourers in the Departmental Canteen and give them remuneration at the rate of Rs.1/30th of the monthly wages. The respondents may also consider the claim of the applicants for grant of temporary status and regularisation in terms relevant of the/scheme on the footing that the applicants were engaged from 19.11.1991 and 01.04.1992 respectively. No order as to costs.

(M. R. KOLHATKAR)
MEMBER (A).

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