

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 188/2000

DATE OF DECISION: 3/10/2001

S.R.Gohire & 3 Others

Applicant

Shri A.Shivade

Advocate for
Applicant.

Versus

Union of India and Anr.

Respondents.
Advocate for
Respondents.

Shri M.D.Mahashabde

Coram:

Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library. ✓

Shanta
(Smt. Shanta Shastry)
Member(A)

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.188/2000
DATED THE 3rd DAY OF OCT, 2001**

Coram: Hon'ble Smt. Shanta Shastry, Member(A)

1. Sudhir Ramlal Gohire,
Residing at NDA Khadakvasla,
Uttamnagar,
Pune - 411 023.
2. Prakash Anant Jadhav,
Residing at Survey No.242,
Genbhau Moze Nagar,
Pune - 411 006.
3. Hemant Rustum Solanki,
Residing at 744, Bhavani Peth,
Pune - 411 042.
4. Arjun Onappa Sable,
Residing at Health Camp,
Pooragrasta Chawl No.2,
Vadarwadi,
Pune - 411 016.

... Applicant

By Advocate Shri A Shivade

V/s.

1. The Film and Television Institute of India,
A Society registered under the provisions
of the Societies Registration Act having its
office at Law College Road, Pune - 411 004.
2. Union of India,
Through the Secretary,
Ministry of Information
And Broadcasting, New Delhi-110 001. ... Respondents

By Advocate Shri M.D. Mahashabde

(ORAL)(ORDER)

Per Smt. Shanta Shastry, Member(A)

The applicants, four in number have sought a direction to the respondents to appoint the applicants in service of the Film and Television Institute of India with effect from their initial date of appointment and to accord to them all the benefits such as regular salary on par with similarly situated employees, provident fund, leave, gratuity, etc.

2. The applicants had also prayed for interim relief to the effect that the respondents be directed to pay the applicants salary and other monies on par with other similarly situated employees and the respondents be restrained from terminating the services of the applicants either by themselves or through their agents.

3. The applicants claim that they were appointed at different times in the Film and Television Institute of India (FTII) initially through Contractor and later on directly. The applicant no.1 claims that he had been working since 1994 under the contractor M/s.M.P.Enterprises as safaiwala. Thereafter from 2/8/97, the applicant was engaged by FTII to work as Mali or Gardener. He also submits that he was given duties continuously with effect from 2/8/97 with artificial breaks of one or two days in between appointments. The second applicant was also initially appointed through contractor as a Chowkidar and has been working with the FTII since 16/7/99. The third applicant was appointed in 1994 through a contractor, M.P.Enterprises. Since March 1998, the applicant has been directly working for FTII. The Fourth applicant has been working with FTII on daily wages through a contractor and thereafter directly with FTII since March 1998.

3. It is the contention of the applicants that they have been working for the FTII either through contractor or directly and the real employer is the FTII and as such their appointments need to be regularised. It is also submitted that the FTII was contemplating to entrust the work to the private Contractors from September,99. The learned counsel for the applicant submits that the work of the FTII is of a permanent

nature and being part of the Government of India, they must follow the Government instructions in the matter. The Supreme Court has time and again stated that Government should act as a model employer and should not resort to hire and fire policy. The learned counsel has also relied on the judgements of the Supreme Court in the matter of State of Haryana V/s. Piara Singh 1994 SCC (L&S) 825 wherein there is a proposition laid down that if a person continues in a post for a long period, say more than 2 to 3 years, then it can be presumed that a regular post exists. Also one adhoc employee cannot be replaced by another adhoc employee. According to the learned counsel for the applicants, these applicants have been working there for more than two to three years which leads to the presumption that this is not a seasonal type of work but the work is of a regular nature namely that of Mali, Chowkidar and Safaiwala etc. Similarly this is all done by the respondents to avoid giving regular appointment. The learned counsel has also relied on AIR 1999 SCC-1160 wherein it is stated that if there is some arrangement by the Government, the Court can lift the veil and see who the real employer is.

4. The learned counsel for the applicant has also submitted that these applicants have been issued certificates regarding their employment by the officials of the FTII. These certificates are produced as Annexures A-1 to A-4. The certificate in respect of applicant no.1 has been issued by the Estate Manager/Security Officer. The certificate in respect of applicant No.2 is issued by the Security Officer on the proper letter head of the Institute and the certificate in respect of applicant nos.3 & 4 are issued by the Accounts Officer and Estate Manager respectively. From these certificates it

...4.

M

would be evident that these applicants have been working regularly for the FTII and therefore their services need to be regularised according to them.

5. It is further submitted that inspite of the Tribunals direction not to make any fresh appointment in the post of Safaiwala, Chowkidar and Mali till the next date of hearing, the applicants have been removed from service. It is further contended that the respondents are intending to fill up the post on adhoc basis again through a Contractor.

6. According to the learned counsel for the applicants, this is in total violation of the judgement in the case of Piara Singh (supra). The learned counsel for the applicants is unable to produce any other material as proof of engagement of the applicants either as casual labour or as on daily wage basis. The learned counsel submits that it is for the respondents to produce the records as the applicants do not have any record. For this he relies on the judgement of Supreme Court AIR SC 1413 in which it has been held that the party in possession of the best evidence must produce the same.

7. The respondents have denied categorically that the applicants are employees of the FTII. The respondents submit that at no stage they have employed these applicants. The Institute is an autonomous body though grant is given by the Government of India. The Institute has its own byelaws and method of appointment. According to the service byelaws at No.8, methods of recruitment, for the post in the Institute, has been laid down is either by direct recruitment, by promotion, by appointment of a borrowed employee or by any other method as may be determined by the Governing Council. Even for direct

recruitment, it has been further prescribed that the direct recruitment can be from amongst candidates recommended by the Employment Exchange on requisition or from amongst candidates applying in response to any advertisement or by inviting suitable persons. The applicants in the present OA have not been engaged by any of these methods. However, the learned counsel for the respondents conceded that applicants might have been engaged for short duration for some odd jobs but they certainly have not been engaged otherwise. The learned counsel for the respondents also submits that certificates issued by the Officers of the Institute cannot be held as certificates of employment. There are merely character certificate issued in their personal capacity and without any authority from the FTII. The respondents have also stated in the written statement that they would be taking action against these Officers for issuing these certificates without the authority from the FTII. The learned counsel for the respondents does admit that there is a register maintained for recording the work done by daily wage employees. However, same has not been produced. It has also been stated in the written statement that the institute is refraining from filling up vacant posts as a measure of economy for past five to six years. There is therefore no question of giving regular appointments to the applicant.

8. I have heard the learned counsel for both the parties and I have given careful consideration to the rival contentions. I find that the FTII is an autnomous body and has its own independent service byelaws. There is a particular procedure prescribed for recruitment of staff and it is clear that the FTII has not given any appointment to the applicants. However, by

h

their own admission, it is not denied that the applicants might have been engaged on daily wage basis. Therefore, it is to be concluded that the applicants were engaged atleast on daily wage basis occasionally either through Contractor or directly. There is a judgement of the Delhi High Court in the case of Delhi Vidyut Board in 2000(2)SLJ DC/HC 412 wherein it has been held that even contractual appointments cannot be regularised and therefore strictly speaking unless the applicants are employed as per the recruitment rules, they cannot have any claim for regularisation. Further, I find that the applicants have not even been engaged through^h Employment Exchange. On making a query, the learned counsel for^{the} applicants submits that no representation has been made to the respondents to regularise their services. They have approached the Tribunal directly. The applicants have made a further grievance that the applicants services have been discontinued during the pendency of this OA. We find that the Tribunal had only directed not to make any fresh appointments. The grievance of the applicants that while the OA was pending, the services of the applicants have been dis^ccontinued, is not proper.

9. All said and done while the applicants cannot be said to have any claim to regular appointments on the basis of meagre material produced by them, after they have been working on daily wages, the respondents can consider the same as per the rules. I therefore direct that the applicants shall make a proper representation to the respondents giving details of the work put

...7.

in by them in the FTII in whatever manner either through Contractor or directly within a period of three weeks and the respondents shall consider the representation and pass speaking order on the same as per rules within a period of one month thereafter. The OA is disposed of accordingly. In the circumstances no costs.

Shanta

(SMT. SHANTA SHASTRY)
MEMBER(A)

abp