

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1279/95

Date of Decision: 4/4/2007

Shri Hari Jadhav and 11 others.

Applicant.

Shri H.A. Sawant.

Advocate for
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri V.S. Masurkar

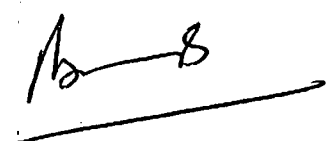
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.N. Bahadur, Member (A)

Hon'ble Shri. S.L. Jain, Member(J)

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


(B.N. Bahadur)
Member(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.1279/1995.

Wednesday this the 4th day of April, 2001.

Coram: Hon'ble Shri B.N.Bahadur, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

1. Hari Jadhav, Head Bearer,
2. Shamlal Kanoja, Dhobi,
3. T.C.Balan, Bearer,
4. N.Ravi Thumbi, Cook,
5. John Chellappan, Dish Washer,
6. Rakesh Kumar, Sweeper,
7. Vivek K.Nair, Bearer,
8. Subhash Indramuni, Bearer,
9. Ashok Somppal, Sweeper,
10. David John, Dish Washer,
11. Samarpal Singh, Gardener,
12. Suryakant Bhole, Sweeper,
All workers/labours,
working under the Principal
Tutor School of Nursing,
INHS Ashwini, Kolaba,
Bombay - 400 005.

... Applicants.

(By Advocate Shri H.A.Sawant)

Vs.

1. Union of India, represented
by the Defence Secretary,
Ministry of Defence, Govt.
of India,
New Delhi.
2. The Headquarter Office,
Commanding-in-Chief,
Western Naval Command,
Head Quarter, Shahid
Bhagatsingh Road,
Bombay - 400 001.
3. The Director,
Institute of Naval Medicine,
INHS Ashwini,
Colaba,
Bombay - 400 005.

... Respondents.

Bans

4. The Principal Tutor,
School of Nursing, INHS,
Ashwini, Colaba,
Bombay - 400 005.
(By Advocate Shri V.S.Masurkar)

...Respondents.

: O R D E R :

[Per Shri B.N.Bahadur, Member (A)]

This OA is filed by 12 applicants, who state that they are all workers/labours working under the Principal Tutor, School of Nursing, INHS Ashwini, at Mumbai. They state that although there is no specific order which is challenged, they challenge the impugned inaction and passivity of the Respondents in not regularising them as temporary workers with temporary status, in spite of the fact that they have been working as casual labour for more than 10/12 years. They aver that they are in the danger of being removed anytime despite their continuous service with Respondents. Giving the facts in the case, the Applicants state that they are working from the years as shown in para 4.3 that is ranging from 1966 to 1995 and work as Bearers, Dhobi, Maalis etc. They were appointed by the Officer-in-Charge of the Mess, and are paid on monthly basis from the Funds of the Grant received by the Mess from year to year. Grants are being received by Officer-in-Charge under the head of "Mess Servants Grants".

2. Giving further details, it is pointed out by applicants that the pay bills are in respect of Mess of the School of Nursing INHS Ashwini, Colaba, Mumbai. The pay bills have been prepaid and made under due authority as pointed out in para 4.5. Further details are given in regard to the Nursing School which is attached to the Indian Naval Hospital Ship, Ashwini (INHS) which is a Hospital of the Indian Navy providing medical cover to all Defence Personnel. It is stated that they have worked according to allotted schedule and this school is functioning for a very long time.

...3.

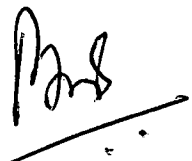
A circular issued by the Ministry of Defence (copy at A-2) is then ~~all~~uded to. This circular describes the terms and conditions of probationary Nurses and Nursing students of B.Sc. This reference is made to take the contention that staff working for this Mess are doing work of regular continuous nature and thus they are employed on duties of regular staff and this is the point that is being taken with reference to the relief sought.

3. On the basis of the above pleadings and the grounds taken in the OA, the applicants have come up to the Tribunal seeking the reliefs as follows:

- "1. To regularise the services of the applicants and absorb them, in the Cadre of the Civilian employees of the INHS Ashwini of the defence department, from the date of their employment.
- "2. To grant regular scales of pay, as per pay commission Report, applicable to the civilian employees, doing the similar job, in the other departments/Ministries of the Govt. of India.
3. To arrange for grant of Regular Scale of pay from the date of regular absorption and to arrange for payment of the arrears of the pay from that date.
4. To grant consequential benefits in terms of monetary payments as well as retiral benefits, available to other employees of the naval department.
5. To provide for the cost of this application."

Certain case-law has been cited in the OA (para 5.18).

4. The Respondents in the case have filed a reply statement where, at first, certain preliminary objections are taken to the effect that Applicants are not members of a Civil Service, and also to the effect that the



application is barred by limitation, as also on the point that applicants having joined on different dates are not similarly placed and cannot come up in a Joint Application. Further, in the reply statement, the details on the merits have been provided. It is stated that about 12 individuals were appointed by the School of Nursing for casual work on day-to-day basis. They were employed purely on casual basis depending on the strength of the students, and the monthly grant for Mess Service. The letter of Government of India at Ex. R-1 is then sought to be taken support from and the point made that the employment was made for a day-to-day requirement and no regular vacancies of Mess Servants had existed and no appointment orders were issued to the applicants.

5. Respondents have taken the stand that Applicants cannot be absorbed or regularised as there are no sanctioned posts of Mess Servants. It is further contended that the Judgment of the Ernakulam Bench of this Tribunal made in O.A. No.328/89 is not applicable in this case. Respondents rely on the Judgment of the Madras Bench of this Tribunal made in O.A.170/86. Further, in the written reply, the Respondents give para-wise replies to the pleadings in the O.A.—the main points being that wages are paid only on the number of days for which the labour is hired, there is no laid down written instructions for employment since the jobs are of casual nature, that the mess grants vary from time to time, depending on the strength of the students, that no permanent vacancies or posts exist, that the number of labours employed depends on the strength of students which varies from time to time, that there is no annual budget allocated for the said posts, that there is no contract of employment or terms and conditions between employer and an employee and that there is no procedure

Bmb

...5.

laid down for recruitment of such staff. It is further stated that the nature of work/job content of Tiffin Room Bearers is different compared to probationary Nurses Mess and the Judgments of the various Benches of the Tribunal quoted are not applicable. It is also stated that no contract of employment is signed between casual workers and the employers. With all these averments and contentions, Respondents seek the dismissal of the OA.

6. We have seen the papers in the case including Rejoinder, sur-Rejoinder etc. and have heard the Learned Counsels on both sides. Learned Counsel Shri H.A. Sawant who appeared on behalf of the Applicants, first took ~~the~~ strenuous support from the Judgment of the Ernakulam Bench of this Tribunal, and stated that this Judgment should clearly apply in *ye m.* The SLP filed by the present *B-8* Respondents was dismissed by the Hon'ble Supreme Court (A-4). A point was made by the Learned Counsel that the sources of the funds from which payments made to the applicant should be checked and this would be a strong ground in favour of the applicant. The work that is being done for years together and the nature of work as described clearly shows that the work is of regular nature and that there is no justification in not providing regularisation for work that is continuous in nature. Ministry of Defence letter dt. 9.3.1971 was what sought support from (para 4.11 of the OA). It was further stated that the Respondents office is similar to the Sanjivini at Cochin in respect of which a clear Judgment is available from the Ernakulam Bench as stated above. A further fact that was cited to seek support of the claims of the applicants were that they were staying in Government Quarters provided by the Respondents. Counsel for the applicant took support from the Judgment of the Supreme Court in the matter of G.B.Pant University Vs. State of U.P. (2000 SCC (L&S) 884).

7. Arguing the case on behalf of the Respondents, their Learned Counsel first reiterated the points taken in written statement to the effect that the applicants were not occupying any Civil Posts and that they were not paid from the consolidated fund of India, but from a Mess Grant. Shri Masurkar, continued his argument to state that there were indeed regularisation schemes which were well known and regularisation in Government Departments in respect of casual labour was made on the basis of such schemes. He argued that no such scheme was cited or is available to help the case of the Applicants. Shri Masurkar further stated that the money from which the Applicants ^{are} paid belong to the Trainee Nurses. *MB*

7. Taking the point of limitation, Shri Masurkar questioned as to why the applicants have been waiting to come up to the Tribunal for periods ranging from 10 to 30 years and argued the point of limitation, delay and laches. He also stressed the point that the point made in paras 11 and 12 of the written statement and drew attention to the Sur-Rejoinder filed on behalf of the Respondents specially in its last paragraphs. He argued that there were no perennial work and the quantum of work required/strength of workers required varied from time to time. The Learned Counsel for Respondents sought to take support from the Judgment of the Hon'ble Apex Court in the matter of Union of India Vs. Chhotelal reported at 1999 (1) SCT 179 SC. He wound up his argument by drawing attention to para 10 on page 30 of the paper book to state that the applicants, working as servants, were accommodated in chawl accommodation meant for such servants. ~~because~~ Such accommodation is provided, *due to necessity of the circumstances,*

MB

MB

and this does not make the applicants as government servants.

8. We have considered the entire matter, with reference to its facts and the arguments made on both sides by Learned Counsels. This is a case which will have to be considered in the background of the case law on the subject, specially with reference to the strenuous contention made by the Learned Counsel for the Applicants regarding the applicability of the Judgment (N.Gopal and 11 Ors. Vs. Union of India & Ors.) of the Ernakulam Bench of the Tribunal. The other case law cited on behalf of the applicant was the decision of the Hon'ble Supreme Court in the matter of G.B.Pant University of Agriculture & Technology, Pantnagar, Nainital Vs. State of U.P. and Ors. as reported in (2000 SCC (L & S) 884).

9. We first take up the case decided by the Ernakulam Bench. Learned Counsel had made the point that the Applicants in this OA were similarly placed because the circumstances were similar, in that main Respondent Institution viz. Defence Ministry was the same and more importantly the INHS Sanjivni of Cochin was a similar Institution to the INHS Ashwini at Mumbai and hence applicability of the case law was intense. In the decision made by the Ernakulam Bench it is seen that the Applicants there were engaged as Civilian employees like Mess Bearers, Cooks, Dish Washers, Sweepers etc. and had been working between periods from 1983-1988 (that OA was disposed of on 25.5.1990). Similarly, the Nursing School in which applicants were working was attached to Indian Naval Hospital Ship Sanjivni which provided medical cover to all Defence Personnel under the Southern Naval Command. The Judgment also goes on to mention that Probationary Nurses were undergoing training in that school and a Mess Servants Grant was also involved there, as in the present case. There also the stand taken was that the Applicants were not

government employees and in fact, the matter did not pertain to a service matter. Also that the applicants were only personal servants. On a further detailed perusal of that order it is seen that other facts brought out also show one thing very clearly that the applicants therein were placed in a similar situation as here in the present case before us.

10. The matter has been discussed at some length in that OA and we do not find it necessary to reproduce the arguments made in detail therein. Certain case laws have also been discussed. In para 9 of the aforesaid Judgment, the following deserves to be quoted :

"Whether or not, the relationship in a given case is that of an employer or employee is a question of fact to be assessed on the available materials. If it actually exists, when we lift the veil and examine the facts that some of the essential requirements are absent would not affect the relationship".

Further in para 10 of the Judgment it is stated that there is no room for doubt in the actual relationship of employer or employee between the applicant and the Respondents, and that it is clear that the employment of the applicants is in connection with the service of the Union of India. Further, in para 11, it is stated that "it is abundantly clear that the applicants are entitled to be considered for regularisation under the existing Rules and Regulations if they are otherwise suitable and fit for the same". The OA is decided ^{with B.S.} the following order in para 13 :

B.S. "In the result, we have no hesitation in allowing the application and granting the reliefs to the applicants. Accordingly we direct the respondents to consider them for regularisation in service if they are qualified for the same under the existing regulations. This shall be done by the respondents as expeditiously as possible, at any rate within a period of six months from the date of receipt of the copy of this judgment".

B.S.

11. We have also seen the aforesaid Judgment of the Supreme Court in the case of J.B.Pant University, where a Canteen was run and workers of such Canteen/Cagetaria were held to be employees of the University. Perhaps individual Rules etc. were different there than in the present case. However, observations on this kind of employment have been made by the Hon'ble Supreme Court specially in para 10 of the Judgment. The appeals have been dismissed in that case.

12. Learned Counsel for the Respondents posed his arguments mainly on the ground of the Rules, as in fact, had been advanced in the case before the Ernakulam Bench of the Tribunal. These need not be repeated. However, it is understandable that the requirement of work of the type of employees like the present applicants would not be the same as of a normal desk-bound worker. The peculiar facts and circumstances in Hostels and Training Institutes require working hours to be different. These can be differently regulated specially when houses are provided to the employees on the premises. It is nobodys case that once the applicants are provided a regularisation they cannot be made to work except on a 10 to 5 kind of basis. True, certain regulations will operate, but types of duties can be moulded within Government Rules.

13. In the conspectus of the above circumstances, we are bound to follow the Judgment of the Ernakulam Bench and do so un-hesitantly since we agree with the reasoning and decisions there. In the consequence, we direct the Respondents to consider all applicants for regularisation in service, keeping in view the ban imposed by the Government for appointment of casual labourers after the relevant date. The OA is allowed in terms of the above directions. There will be no orders as to costs.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

B.N. Bahadur
(B.N.BAHADUR)
MEMBER (A).

04/4/01