

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:578/98

DATE OF DECISION: 2.1.2001

Mrs. Bhanu Jasu Solanki Applicant.

Shri M.H. Chopra Advocate for
Applicant.

Versus

The Union of India and others Respondents.

Advocate for

Respondents

CORAM

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

Hon'ble Ms. Shanta Shastri, Member (A)

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

(3) Library. *yes*

S.L. Jain
(S.L. Jain)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:578/98

the 2nd day of January 2001

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

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

Mrs. Bhanu Jasu Solanki
Residing at
Chandiwala Chawl,
Kol-Dongri, Sahar Road,
Andheri (E), Mumbai.

...Applicant

By Advocate Shri M.M. Chopra

V/s

1. The Exchange Incharge,
Mahanagar Telephone Nigam
Limited, Andheri Telephone
Exchange, Lallubhai Park Road,
Andheri (West), Mumbai.

2. Union of India through
The Chief General Manager,
Mahanagar Telephone Nigam
Limited, Telephone House,
Prabhadevi, Mumbai.

...Respondents.

By Advocate Shri V.S. Masurkar.

O R D E R

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985, seeking the relief of reinstatement with full back wages and / or given continuity of service from 2.7.1998 alongwith job permanency regularisation with all consequential benefits.

2. The applicant claims that she was appointed on 1st April 1987 at Pinky Cinema Building Office, Andheri (East) Mumbai by the respondents. The applicant made several requests to make

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her permanent Exhibit A (Colly) and lastly served the Advocate Notice dated 27.6.1998 Exhibit - B (Colly) but she is removed from service vide letter dated 2.7.1998.

3. By way of amendment, which is allowed, the applicant alleged that she was engaged as a part time sweeper on monthly payment basis in the units of MTNL namely 1st floor basement, Ground floor from 1.4.1987, 1988, 1988 respectively. She was paid the salary on the basis of the working days i.e. rendered work by her when the office of Divisional Engineer (Ext. I & II) Andheri was shifted to Andheri Telephone Exchange Building at Lalabhai Park Road, Andheri (W), Mumbai. She thereafter continued to perform the duty there. Hence she is entitled to be treated as 'Full Time Sweeper'. The discontinuation of the services of the applicant is against the scheme for regularisation of Casual Labour. Hence this OA for the above said reliefs.

4. The respondents filed the written statement admitting the receipt of notice dated 27.6.1998, 8.7.1998 and change of the premises as alleged by the applicant and discontinuation of the services of the applicant since 1.4.1988 and alleged that the applicant was not regular employee of the respondents but she was doing the said work for only one half hour a day on working days in a particular month as per the need of the work. In addition to the applicant, the said work was also given to other persons as and when requested by rotation in which event the applicant was not given any work by the respondents during the month the

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other persons were working and paid accordingly. She was not sponsored by the Employment Exchange and was not a regular employee. It is further stated that at the New office they have a regular sweeper who is doing the said job. In the new building she performed the job of removal of debris from 23rd June 1998 to 1st July 1998 only. Her name did not appear on the Muster Roll of the respondents at any time. The applicant has filed the forged document. No appointment letter was ever issued in favour of the applicant. Applicant's service were not recorded since 2.7.1998.

5. In view of the amendment allowed, the respondents submitted the additional statement alleging that amount was not paid from Consolidated Fund of India, SDE Junction (Khar) has not engaged the applicant, the applicant was working simultaneously with Divisional Engineer (Ext. 1) Andheri with Junction & External. She was working for less than two hours a day and for which she was paid piece rate on the basis of hours of work. Hence prayed for dismissal of the OA along with costs.

6. The applicant has filed Exhibit A which states that the applicant has worked with Sub-Divisional Engineer (J) Khar from 1.4.1987 till 31.3.1996, 25 days working every month. Another certificate issued by Sub-Divisional Engineer (J) Khar is for the period from 1.4.1996 to 30.9.1997, 25 days working every month. The said authority has also issued a certificate in favour of the applicant on 15.11.1995 to the fact that the applicant has been working in Pinky Cinema Bldg. as Sweeper for the last five years

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on monthly payment basis. It is true that the certificate is for the period from 1.4.1996 till 31.2.1996. The said certificate is challenged by the respondents to be forged one by erasing the name of some other employee and incorporating the name of the applicant in place there of. Apparently in the photo copy there is some over writing. The respondents have not filed the original. Which can suggest that it was issued in favour of some another employee. The respondents have also not filed detailed statement showing the applicant's working during the said period. At the time of admission of the OA while contesting the application the respondents have filed an affidavit of Shri K.K. Gupta, Divisional Engineer. On perusal of the same we find that the fact of working of the applicant was admitted but with a clarification that the applicant has worked on rotation. In para 3 it is stated as under:

" At the outset, it is submitted that the Central Administrative Tribunal has no jurisdiction to entertain the Application of the Applicant because the Applicant was not regular employee of the Respondents but was engaged since about the year 1987 to do the job of cleaning the premises at ground floor of Pinky Cinema building, Andheri(W), Mumbai functioning and also was engaged for the purpose of cleaning the toilet of the said premises and had been doing the said work for only one half hour in a day on working days in a particular month as per the need of the work. It is submitted that in addition to the Applicant, the said work was also given to other persons as and when required by rotation in which event the Applicant was not given any work by the Respondents during the months in which other persons were working. It is submitted that the Applicant was paid her salary after taking her acknowledgement on the receipt which is known as AC G-17 and for the said work of about one half hour, she was paid an amount at the rate of ranging from Rs. 10/- to Rs.40/- in or about 1987 onwards."

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7. The respondents who are in possession of the documents must have filed the said documents. They have failed to produce the same documents which leads us to conclude that an adverse inference is to be drawn against them thereby we find that the version of the respondents in this respect is not worth belief.

8. The learned counsel for the respondents argued that Exhibit A shows that the applicant has worked 25 days a month. While in fact the office observes five days week. Hence there cannot be 25 working days in a month. This must have been clarified by the respondents by filing the records which are in their possession.

9. As per the documents submitted by the applicant it is a fact that the applicant has worked with Sub-Divisional Engineer(J) Khar, Divisional Engineer (Extn. I) Andheri and Divisional Engineer (Extn. II) Andheri. All these facts lead us to conclude that when the applicant was working with three officers at a time though situated in the same building, it is a case of piece meal working for which she was paid.

10. The applicant has not submitted any appointment letter issued by the respondents in her favour. The office of the Divisional Engineer (External) was shifted from Pinky Cinema to Lallubhai Park. The applicant was asked to do the work from 23.6.1998 till 1.7.1998 that too for a special work assigned to her of cleaning and sweeping the office.

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11. The respondents alleged that the applicant was not sponsored by the Employment Exchange, which is not rebutted by the applicant.

12. The learned counsel for the applicant has relied on the case of Smt. Bhar Pai and others V/s Union of India decided by the Principal Bench on 22.1.1993 which lays down that part time employees of Postal Department who have served for 20 years framing of scheme for regularisation taking into consideration the facts mentioned at para 9 of the order was ordered. On the same basis he argued that the scheme in respect of the applicant and similarly situated person, be framed for regularisation. It is suffice to state that the applicant is not a part time employee but an employee who was paid on piece meal work basis. Hence the applicant is not entitled to the relief on the basis of the said authority.

13. The learned counsel for the applicant relied on AIR 1987 SC 1781 {Jeet Singh and others V/s MCD and others}, AIR 1987 SC 2049 {Bhagawan Dass and others V/s State of Haryana and others.} for the proposition of equal pay for equal work. There cannot be any dispute with the said proposition of law. We have to examine whether the applicant is entitled to any relief on the basis of the said principle. The applicant has not brought out on record that for piece meal work, which she performed, more payment ought to have been made at par with other employees. Further it is not the case of the applicant which is based on infringement to the proposition of equal pay for equal work.

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14. The learned counsel for the applicant relied on AIR 1987 SC 2342 {Daily Rated Casual Labour employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch V/s Union of India and others} which lays down denial of minnum pay in pay scales of regularly employed workmen - amounts to exploitation of labour. We agree to the said proposition of law.

15. The learned counsel for the applicant relied on 1986(2) Bom.C.R. 100 {Murgendra Pirappa Dhere V/s The State of Maharashtra and another} which lays down the proposition that in the absence of reasons for termination of service, the termination is held to be un-fair. We agree to the said proposition of law but when the applicant was not in service as she failed to produce any appointment order, the said authority does not help her.

16. The learned counsel for the applicant relied on 1988 Mah. Law Journal {Laxman V/s Principal S.P.K. Mahavidyalaya, Savantwadi and others.} which laid down the proposition that temporary employee cannot be kept suspended indefinitely. We agree to the said proposition of law but it does not help the applicant, as she is not under suspension.

17. The learned counsel for the applicant relied on 1989 (3) Bom. C.R. 233 {Bal Gangadhar Shetty V/s The Employees State Insurance Corporation} which laid down the proposition that temporary employee is distinct from probationer and cannot be

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terminated by one months's notice only. He is entitled to show cause notice. We are unable to arrive to a conclusion as to how the said authority helps the applicant, which is irrelelvant one.

18. The learned counsel for the applicant relied on 1990(3) Bom. C.R. 721 Vaidya Bharati V/s State of Maharashtra alongwith others which laid down the proposition that Long spell of temporary service of part time teachers, after completion of three years continuous service becomes permanent being in Civil Service entitled to protection. On perusal of the same we find that The Bombay University Act 1974, Statute 409 item No.(XVIII) A were subject of consideration.

19. The learned counsel for the applicant relied on JT 1998 (3) SC 540 {Union of India & Others V/s Subir Mukharji and others} Members of a Co-operative society working for Eastern Railway since 1988 work of perennial nature, working continuously and uniterruptedly- directions to consider and absorb the workers as regular Group 'D' employees, if found fit are fair one.

20. We do not find that any of the authorities relied by the applicant assist the applicant in any way. On the other hand in 1998 SC (L&S) 119 Secretary Ministry of Communication and others V/s Sakubai and others, it has been held that part time casual labours in department of communication are not entitled for grant of temporary status for regularisation under the Casual Labours {Grant of Temporary status and regularisation} scheme 1993 of the DOP&T.

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21. In the result we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

Shanta
(Ms. Shanta Shastry)
Member(A)

S.L. Jain
(S.L.Jain)
Member (J)

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