

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

(27)

G.A.No.804/87.

Date of order 1.3.92.

Between:

G.Narasimha,

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Applicant.

Vs.

The Central Defence Accounts(R&D),
Room No.122-B, L.Block, Church Road,
New Delhi and two others. Respondents.

Sri D.Linga Rao, Counsel for the Applicant.

Sri ~~MxRx@xKx@x~~ E.Madanmohan Rao, Additional Standing Counsel
for Central Government.

CDRAM:

Hon'ble Sri J.Narasimhamurty, Member(Judicial)

Hon'ble Sri R.Balasubramanian, Member(Administrative).

Judgment of the Bench delivered by
Hon'ble Sri J.Narasimhamurty, Member(J)

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This application is filed seeking a declaration that the Office Order No.11 dated 26--5--1987 issued by the Accounts Officer, Heavy Alloy Patroter Project, Hyderabad terminating his services as illegal, arbitrary, discriminatroy and is violative of Articles 14, 16 and 39(D) of the Constitution of India, that the applicant is entitled to have his pay and allowances fixed in regular scale of pay from the date of his first appointment on par with his counter parts on the basis of the doctrine of equal pay for equal work as envisaged in Article 39(D) of the Constitution and to direct the respondents to ~~ix~~ reinstate him in service with all consequential benefits.

The averments of the petition are as follows:

The applicant was originally appointed as Peon on temporary basis on daily wages of Rs.12/- per day in the Office of the respondents. The applicant joined duty on 10-3-1986 and worked upto 26--5--1987 till his services were terminated by OO.No.11 d/26-5-1987

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without any reasonable cause or justification. His termination was not for want of vacancy but on irrational considerations. He has passed 8th class and he is fully eligible to be considered for the said post. His name was sponsored by the Employment Exchange, Chikkadapally, Hyderabad and he was the person selected from among the 15 candidates interviewed. In spite of his 15 months service, he was terminated. The post of Peon is still in existence in the Department.

3. The applicant is working for the last fifteen months at Rs.12/- per day even though there is a post of Attender carrying regular scale of pay. He was selected by observing strictly the recruitment procedure. He was virtually and practically discharging the regular work of attendant but unfortunately the respondents taking advantage of acute unemployment problem paying a petty wage of Rs.12/- and extracting the normal duties of an Attender.

4. The applicant states that even though he has been continuously working in service without break from 10-3-1986 he was paid salary only upto 14-3-1987 and his salary from 15-3-1987 to 26-5-1987 has not yet been paid to him. Hence the application.

5. The respondents have filed their counter contending as follows:

The 3rd respondent's office in which the applicant was working on casual basis itself is established purely on temporary basis. That office was sanctioned upto 31-12-1988 only. The staff manning the office was drawn from various other offices under the 1st respondent. To start with, there was no peon posted to this office. The third respondent was only authorised to engage one person on daily wages from time to time.

6. The conditions for engagement of casual personnel for short durations are given in the Govt. of India, Ministry of Home Affairs letter No.49014(4)/77-Estt.(C) dated 21-3-1979. According to this Govt. letter, to be eligible for regularisation, the casual employee should possess experience of a minimum of 2 years continuous service as casual labour in the office to which they are to be appointed. The

The applicant was engaged for short intervals by the competent Authority for odd and miscellaneous jobs and he did not have the requisite experience of 2 years and hence, he is not eligible for regular appointment.

At the time of calling the list of candidates, the Employment Exchange was informed about the nature of job, its duration and rate of daily wages etc. In turn, it appears that the Employment Exchange also informed the candidates before sending their names to the respondent for interview. The applicant was informed ~~in clear~~ clearly the terms and conditions of his appointment. He was not put in the dark or was misled about the nature of his engagement. The appointment is purely casual in nature and for the duration of the time specified in the said order. On the expiry of the said period, he was terminated. The respondents state that as and when further sanctions were accorded by the Controller of Accounts (Fys), Calcutta, for subsequent engagement for specified periods the applicant was appointed and again terminated when the sanctioned period expired. The applicant did not put in continuous service of 15 months as stated in the application but ~~his~~ services were terminated according to the orders of the sanctioning authority and not on any extraneous consideration as contended by the applicant. There is no post of peon existing in the office of the respondent 2 and this respondent has no power or authority to create a post and cannot engage anyone as casual labour without proper sanction from his superior organisation.

In the month of September 1987 for a period of 60 days a Casual Labourer had to be engaged by the 3rd respondent, when no further sanction came for the engagement of a Casual Labour in the month of November, 1987, the 2nd respondent has lent the services of a peon to this respondent's Office. Thus, the 3rd respondent does not either have a sanctioned strength of a Peon on his establishment nor can he engage a Casual Labourer on his own. The present peon working in the office is on the establishment of the 2nd respondent and draws his pay from the 2nd respondent's Office. His services

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were only lent to the 3rd respondent's office for the duration of its existence. The applicant has not made out a case and the application is liable to be dismissed.

Heard the counsel for both sides.

The petitioner's name was sponsored by the District Employment Exchange, Hyderabad for selection as a Daily Wager under the respondent along with other 14 persons. Among the list of candidates sponsored, the applicant's Sl.No. was 9. After interviewing all the candidates, the applicant was selected as a Daily wager at the rate of Rs.12/- per day under the respondent. He was selected as casual labourer in the place of a peon for a period of 60 days only at the prevailing market rate i.e., Rs.12/- per day on temporary basis and the same was intimated to the applicant. He was being continued on daily wages for short periods of 60/89 days as sanctioned by the sanctioning authority. His service was not continuous. Because he was a daily-wager and his service was purely on temporary basis he was terminated from service.

The respondents in their counter state that there was a ban in the recruitment of posts. The applicant was appointed as a daily wage earner on temporary basis to work under the respondent. The recruitment was made only for 60 days as per Govt. Orders. To regularise the casual employees at least one must have the minimum ^{service} ~~experience~~ of 2 years as Casual labourer in the office. The applicant was engaged only for short intervals as and when required by the Competent Authority for odd and miscellaneous jobs. He did not have requisite experience for two years. Hence he is not eligible for regular employment. The post is purely casual nature. On expiry of the stipulated period of 60 days, he was terminated and as and when further sanctions were accorded he was being appointed, and after expiry of the period of sanction, he was being terminated. The applicant did not put up continuous service as stated in his application.

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To:

1. The Central Defence Accounts, (R&D), Room No.122-B, L. Block, Church road, New Delhi-110 001.
2. The Joint controller of Defence Accounts (R&D), Room No.307 & 308, D.R.D.K., Stores complex, Kanchanbagh, Hyderabad-500 258.
3. The Accounts officer, Heavy alloy patroler project, Hyderguda, Hyderabad.
4. One copy to Mr.D.Linga Rao, Advocate, 1-1-258/10/Cm Chikkadpally, Hyderabad.
5. One copy to Mr.E.Madan Mohan Rao, Addl-CGSC, CAT, Hyderabad.
6. One spare copy.

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There was no post of peon existing in the office. The respondent has no power or authority to create a post. The respondent cannot even engage casual labour without proper sanction from the superior authority. So the respondent is not in a position to appoint him. The 3rd respondent has no power or authority to confirm him in the Department, because he was appointed as a ~~casual~~ labour for short intervals as per the directions of his superior authorities. The applicant's service is not continuous and whenever no sanction is given for his continuance, the Respondents 2 and 3 used to terminate his services. To absorb him as a peon, he has to possess 2 years' continuous service as casual labourer. The broken periods of service as casual labourer shall be taken into account for the purpose of regularisation provided that one stretch of service is for more than six months. No casual employee shall be eligible for regular appointment unless he possess educational qualifications prescribed for the post. In any view of the matter he is not eligible for appointment as Peon as he does not satisfy the norms.

The applicant's prayer is that he had completed 15 months of service under the respondents in different periods and therefore he has to be appointed as a peon as he is virtually discharging the duties of a peon or regularise his service as Casual labourer.

Taking into considerations of these aspects, we are of the opinion that the applicant has no right to claim regularisation as his services were utilised only for short periods as per the orders of the Superior Authorities from time to time. The applicant has put in 15 months service with breaks. ^{We hope that} the respondents may take into consideration his length of service with breaks under them and appoint him as casual labourer in any existing vacancy to eke out his livelihood. With this observation, the application is disposed of. No order as to costs.

(J. NARASIMHAMURTY)
Member (J)

(R. BALASUBRAMANIAN)
Member (A)

Date: 1-3-90.

For Deputy Registrar (W)