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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

DA 997/89.

Dt. of Order:19-11-93.

A.Satyanarayana Murthy

...Applicant

Vs.

1. Union of India, rep. by
Under Secretary to Govt. of India,
Ministry of Labour & Rehabilitation,
New Delhi.
2. Asst. Welfare Commissioner,
Labour Welfare Organisation,
Kalichedu, Nellore District.
3. Welfare Commissioner,
Labour Welfare Organisation,
1-7-145-12, Srinivasanagar Colony,
Hyderabad-48.

....Respondents

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Counsel for the Applicant : M/s P.Krishna Reddy,
P.Sridhar Reddy.

Counsel for the Respondents : Shri N.R.Devraj, Sr.CGSC

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CORAM:

THE HON'BLE JUSTICE SHRI V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN)

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O.A.No.997/1989.

Date: 19.11.93.

J U D G M E N T

[as per Hon'ble Sri R.Rangarajan, Member(Administrative)]

The applicant is presently working as Contingent Pump Attendant purely on as and when required basis in the Engineering Unit, Kalichedu, under the Welfare Commissioner, Labour Welfare Organisation. The facts of the case are as below:-

The applicant alleges that he was appointed on daily wages from 20.3.1979 whereas the respondents maintain that he was engaged on daily wages basis ^{from} from 7.6.1979 in Engineering Unit under Labour Welfare Organisation, Kalichedu. The applicant was sponsored by the Employment Exchange on 6.1.1981 for engagement on casual basis, and he was engaged as a Contingent Watchman by order No.PF/AT/81 dt. 21.3.1981 by Deputy Welfare Commissioner, Kalichedu after due selection. Applicant was directed to attend for pumping and distribution of water to the Quarters etc. at Kalichedu. Deputy Labour Commissioner, Kalichedu by a letter dt. 10.6.1983 had recommended the name of the applicant to the Ministry of Labour for appointing him as Night Watchman at BWWF Dispensary, Kamalapuram, Cuddapah Dist. relaxing the age limits as a special case as he was overaged by more than 5 years at the time of initial engagement on 7.6.1979 under the said organisation. But, the said recommendation was turned down by the Labour Ministry in consultation with the Department of Personnel and Administrative Reforms. The applicant's regularisation in Group 'D' service in terms of the O.M.No.49014/7/83-Estt.(C) dt. 13.10.1983 also could not materialise as he was overaged even at the time of initial engagement as on 7.6.1979. By a memorandum dt. 20.1.1989 the applicant was engaged for spells of 3 months each as if he is engaged afresh and continued as such.

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2. ^A As stated ^A above, the applicant disputes the fact that he was initially engaged only on 7.6.1979. It is the contention of the applicant that he was a Skilled Labour on daily wage basis from 20.3.1979. The relevant portion of the O.M. dt. 13.10.1983 which is very relevant to the present issue of regularisation of casual employees is extracted below:-

"The undersigned is directed to say that as per the instructions issued by this Department from time to time, casual employees recruited before 21.3.1979 in various Ministries/Departments and attached and subordinate offices of the Govt. of India may be regularised in Group 'D' posts subject to the following conditions:-

- (1) A daily wage worker should have put in atleast 240 days of service as such (including broken periods of service) during each of the two preceeding years. (4 years in the case of part-time casual worker) on the date of appointment against a regular Group 'D' posts.
- (2) A daily wage worker should be eligible in respect of maximum age limit on the date of appointment to the regular post. For this purpose, the period spent by him as daily wage worker is deducted from his actual age.
- (3) A daily wage worker should possess the minimum educational qualifications prescribed for the post.

It was also stipulated in para-1(d) of O.M.No.49014/4/77-Estt.(C) dt. 10th October, 1979 that Casual Employees who were engaged till 20th March, 1979 otherwise than through the employment exchange and who are eligible in all other respects may be regularised without insisting on the condition referred to in para-1(d)(i) of DP&AR OM No. dt. 21.3.1979. It has been brought to the notice of this Department that in certain cases, casual employees though recruited through Employment Exchange, had already crossed the upper age limit prescribed for appointment to Group D posts, with the result, that the facility for regularisation cannot be made available to them. In view of the fact that the casual employees belongs to the economically weaker section of the society and with a view to avoid undue hardship to to them it has been decided that such of the casual employees as were recruited in various Ministries, Departments and their attached and subordinate offices before 21.3.1979 may be considered for regularisation in Group 'D' posts even though they may have crossed the age limit prescribed for the post provided they are otherwise eligible for regularisation."

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3. The main contention of the applicant is that he was employed as a Contingent worker from 20.3.1979 and hence he is entitled for regularisation in terms of O.M. dt. 13.10.1983. As per this O.M. Casual Employees as were recruited in various Ministries, Departments and attached and subordinate offices before 21.3.1979 may be considered for regularisation in Group 'D' posts even though they have crossed the age limit prescribed for the post provided they are otherwise eligible for regularisation.

4. The respondents maintain that the applicant was appointed only from 7.6.1979 and that he does not come within the purview of the O.M. dt. 13.10.1983 and hence he is not entitled for regularisation as he does not come under the category of those Casual Employees appointed before 21.3.1979 for whom no age relaxation is required.

5. Aggrieved by the refusal of the authorities to regularise the services of the applicant treating his casual engagement from 20.3.1979, the applicant filed this O.A. under sec.19 of the A.T.Act, 1985 for the following relief(s):

"In view of the facts mentioned in para-6 above, the applicants pray that this Hon'ble Tribunal may be pleased to direct the respondents herein to regularise the service of the applicant in Group 'D' post considering his continuance service for more than 10 years in Labour Welfare Organisation in Nellore Dist. under Ministry of Labour, Government of India, and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

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6. The applicant is overaged by 5 years 11 months as on 7.6.1979 when he was initially engaged as casual labour on daily basis. He becomes eligible for regularisation irrespective of his age at the time of initial ~~engagement only if he is~~ engaged on casual basis before 21.3.1979 in terms of the O.M. dt. 13.10.1983. Hence, he has produced a certificate dt. 10.6.1979 from one Shri Anjaneyulu, Junior Engineer, Enggg. Unit, Ministry of Labour, Welfare Organisation, Kalichedu, Nellore Dist. to the effect that he worked in that unit as Skilled Labour from 20.3.1979 to 5.6.1979. This certificate reads as below:-

"This is to certify that Sri Amuluru Satyanarayana Murthy s/o Sivaiah of Kalichedu village has worked in this Unit as Skilled Labour on daily wages from 20.3.1979 to 5.6.1979. He has experience in water supply, installations, pipe-line fittings, diesel pump set erection and maintenance.

Sd/- S.C.Anjaneyulu,
JE, Engg. Unit, M&L
Welfare Organisation,
Kalichedu, Nellore Dist."

The applicant also produced a letter dt. 13.7.1982 issued by one Shri Y.Nageswara Rao, Asst. Engineer, Engg. Unit, Kalichedu, Nellore Dist.: The said Service Certificate reads as under:-

"Shri A.Satyanarayana Murthy son of Sivaiah joined our establishment during March, 1979 in the Engg. Unit. He has been working in our establishment in the Electrical side and has been working as Assistant to Electrician till today on contingent estt.

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I am glad to certify that he is discharging his duties efficiently; he is sincere and devoted in his work. He can independently maintain the service and maintenance of the entire electrical net work of this organisation.

He is well experienced in House wiring, L.T. Line erection and other allied work of the Unit."

7. The respondents state that Sri Anjaneyulu, Junior Engineer is not a competent official to issue any service certificate and that no reliance can be placed on this certificate. It is stated that the Welfare Commissioner by his office memo dt. 9.9.1993 has asked for the explanation of Shri Anjaneyulu for issuing a false certificate unauthorisedly. The said employee in his letter dt. 11.9.1993 addressed to the Welfare Commissioner, Hyderabad, has disowned the service certificate issued by him and stated that the applicant is not at all a casual or part-time worker under him and there is no proof of any sort of his having worked in the Engineering Unit, Kalichedu during the period from 20.3.1979 to 5.6.1979. His submission in the letter dt. 11.9.1993 is extracted below:-

"I was working as a Subordinate under the technical control of the Asst. Engineer and overall control of the Welfare Commissioner of Mica Mines Labour Welfare Organisation. I am not competent to issue any kind of certificate to any of the staff attached to the then Engineering Unit, Kalichedu. A certificate issued by me as referred in the above memo is only to mean that a particular person is capable of doing certain job for which he used to be engaged intermetently for few hours whenever any technical job required

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the assistance of skilled persons, which he used to attend in his leisure hours locally after working hours in Mica Mines. He was a employee of Sree Kalyanarama Mica Mine, Kalichedu who is in the habit of attending to odd jobs to augment his income in his leisure hours. He is not at all a casual or part-time worker of the Engineering Unit and he never worked with Engg. Unit, Kalichedu in any capacity. There is no such proof of any sort of his having worked with Engg. Unit, Kalichedu, during the period from 20.3.79 to 5.6.79 i.e. Hand Receipts, Muster Rolls, Entries in the relevant M.Books duly signed by AE/JE etc. in support of the certificate issued by me. I never knew the seriousness of the certificate issued to Sri A.Satyanarayana Murthy, Cont. worker as I was inexperienced."

8. The respondents have also filed an additional counter/reply affidavit dt. 13.9.1993 stating that the certificate issued by the Junior Engineer "that the applicant had worked in the Engineering Unit as Skilled Labour on daily wages from 20.3.1979 to 5.6.1979 is distortion of actual facts, purely given by the Junior Engineer on his own volition who is not the competent authority to issue such certificates, hence should not be taken cognisance of". In this reply, it is further stated by the respondents that the applicant had actually worked in that unit with effect from 7.6.1979 only on daily wages as per the records. At the time of hearing, the learned counsel for the respondents submitted that Sri Nageswara Rao, Asst. Engineer who has issued a Service Certificate dt. 13.7.1982 to the applicant to the effect that the applicant now joined the Engineering Unit in March, 1979, cannot be sustained as the Asst. Engineer himself came on deputation to this Unit only on 22.2.1981 and was relieved on 21.12.1982. Hence, the respondents state that the said Asst. Engineer has no personal knowledge


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of having employed the applicant from 20.3.1979. Hence, the said certificate also is not acceptable.

9. The issue of the certificate dt. 10.6.1979 by the Junior Engineer has been disowned by himself. The respondents have also filed an affidavit to the effect that this certificate should not be relied upon as he is not the competent official to issue such certificate. No reliance can also be placed on the certificate of the Asst. Engineer dt. 13.7.1982 as he was not holding that post at that material time. As no satisfactory and reliable information as regards the applicant's engagement or otherwise from 20.3.1979 was shown to us respondents were asked to produce other available documents which can establish facts. At the time of hearing, the learned counsel for the respondents produced before us the relevant Muster Rolls and Contingent Registers. In these registers there is no entry of the name of the applicant for having worked during the period from 20.3.1979 to 7.6.1979. The other documents such as hand receipts and muster rolls for the said period were not produced and the respondents pleaded inability to produce them since they are more than 15 years old. The learned counsel for the applicant also perused the Muster rolls and the Contingent Registers at the time of hearing.

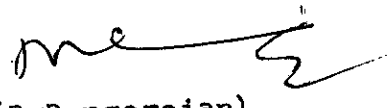
10. In the conspectus ^A of facts and circumstances, we have no other alternative except to come to the conclusion that the applicant was not engaged on casual basis from 20.3.1979 and he was engaged on casual basis only from 7.6.1979. As he is overaged at the time of initial engagement on 7.6.1979, he cannot be regularised in terms of O.M. dt.

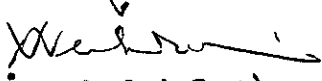


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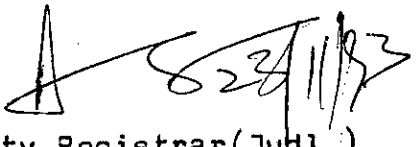
13.10.1983 as prayed for by him. In this view of the matter, the O.A. is not sustainable and hence ^{dismissed} ~~rejected~~. 1
Parties to bear their own costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated 19 Nov., 1993.

Grh.


Deputy Registrar (Judl.)

Copy to:-

1. Under Secretary to Govt. of India, Ministry of Labour & Rehabilitation, Union of India, New Delhi.
2. Asst. Welfare Commissioner, Labour Welfare Organisation, Kalichedu, Nellore District.
3. Welfare Commissioner, Labour Welfare Organisation, 1-7-145-12, Srinivasanagar colony, Hyd-48.
4. One copy to Sri. P. Krishna Reddy, advocate, CAT, Hyd.
5. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

Pr. A. Govt.
23/11/93.

O.A. 997/89

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. ^{R. Ranga Raju} ~~A. B. GORTH~~ : MEMBER(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER(A)

Dated: 19/11/-1993

ORDER/JUDGMENT: _____

~~M.A./R.A./C.A.No.~~

O.A.No.

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997/89

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with