

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

D.A.No. 398/90

~~To be~~

Dt. of Decision: 6th Nov '1992

Mr. J.Babu

Petitioner

Mr. C.Suryanarayana

Advocate for
the Petitioner
(s)

Versus

EE, CPWD, Hyd. and 2 others

Respondent.

Mr. NV Ramana

Advocate for
the Respondent
(s)

CORAM:

THE HON'BLE MR. R.Balasubramanian, Member (Admn.)

THE HON'BLE MR. C.J.Roy, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?
5. Remarks of Vice-Chairman on Columns 1,2,4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

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HRBS
M(A)

HCJR
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.398 of 1990

DATE OF JUDGMENT: 6th NOVEMBER, 1992

BETWEEN:

Mr. J.Babu

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Applicant

AND

1. The Executive Engineer,
C.P.W.D.,
Hyderabad Central Division No.II,
Hyderabad-500195.
2. The Superintending Engineer,
C.P.W.D.,
Hyderabad Central Circle,
Hyderabad-500195.
3. The Director General (Works),
CPWD, (representing Union of India),
Nirman Bhavan,
New Delhi-110001.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. C.Suryanarayana

COUNSEL FOR THE RESPONDENTS: Mr. N.V.Ramana, Addl.CGSC

CORAM:

Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER(JUDL.)

This application has been filed by the applicant herein under Section 19 of the Administrative Tribunals Act, 1985 claiming a relief to reinstate him with full back wages from the date of his termination declaring that he is entitled to wages for the period of his service at the rate of 1/30th of the monthly wage of a Typist in the regular establishment and for absorption into the regular establishment as Typist/LDC under the Respondents, as per the principles laid down by the Hon'ble Supreme Court.

2. The facts that are necessary to determine the case are briefly as follows:-

The applicant belongs to the Scheduled Caste community. He was employed in the office of the 1st respondent as Casual Typist, for 210 days from 4.10.1986 to 2.5.1987; for 92 days from 14.9.1987 to 14.12.1987; and from 2.6.1988 to 30.4.1990. His services were terminated with effect from 1.5.1990 without notice and without giving reasons thereof. He was not even paid the terminal benefits. The applicant was paid daily wage only at the rate of Rs.22-25 per day. The applicant requested for payment of difference in wages

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on the principle of "equal work - equal wage". The representation of the applicant dated 26.4.1990 was not accepted by the office of the 1st respondent. The moment the 1st respondent received the said representation dated 26.4.90, he conveyed to the applicant that his services are no more required and that he stands terminated w.e.f. 1.5.1990. Hence, this application.

3. The respondents filed a counter affidavit stating that the applicant was engaged in the office for doing typing work as and when his services were required and there was no appointment order and much less termination orders issued to him. The applicant was paid his wages for the days he worked as per the rules prescribed by the Labour Commissioner at the relevant time. It is not true that there was a clear vacancy of Typist. As per the sanction, the strength was there. The applicant was actually engaged as casual labour and the circular dated 19.4.1987 is meant for NMR staff but not for casual workers. The Judgment of the Court for equal work, equal pay is for NMR staff only.

4. It is stated that the recruitment to the post of LDC/Typist can be done by the Staff Selection Commission. Hence, the O.A. is devoid of merits and it is liable to be dismissed.

5. We have heard the learned counsel for the applicant Mr. C.Suryanarayana and the learned Additional Standing Counsel for the Respondents, Mr. N.V.Ramana.

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6. The fact that the applicant had worked as Casual Typist in the respondents office for 963 days, though with breaks, is not in dispute. The learned counsel for the applicant contends that the applicant is entitled for the same wages similar to the salary that is being paid to the regular employees. In support of his contention, the learned counsel for the applicant relied on a decision of this Tribunal in O.A.No.431/87 dated 7.2.1990. We have gone through the decision cited supra.

7. In O.A.No.431/87, following the Judgment of the Hon'ble Supreme Court in "Surender Singh and another Vs. Engineer-in-Chief and others (AIR 1986 SC 584)", it was directed to pay the applicants therein the salary on par with the regular employees with arrears.

8. The applicant filed this application on 3.5.1990 claiming wages @ 1/30th of the ~~xxxx~~ monthly wage of a Typist in the regular establishment from 4.10.1986, the date on which he was initially engaged as Casual Typist. The applicant though similarly placed to the applicants in O.A.No.431/87, he is not entitled to the arrears of difference in pay ^{from 4.10.1986} since he had filed the O.A. ^{only} on 3.5.90.

9. Therefore, following the Judgment of this Tribunal in O.A.No.431/87 cited supra and also the Judgment of the Hon'ble Supreme Court in AIR 1986 SC 584 cited supra, we hold that the applicant is entitled to the salary on par

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with the regular employees for the period he worked as Casual Typist. The respondents shall calculate the arrears from 3.5.1989 i.e., one year prior to filing this O.A., upto (the date on which his services were terminated), 30.4.1990, within the limitation period stipulated under Section 21 of the Administrative Tribunals Act, 1985 and make payment to the applicant within a period of three months from the date of receipt of a copy of this Judgment.

10. In so far as the prayer of the applicant for absorption into the regular establishment as Typist/LDC under the respondents is concerned, we are fortified with the Judgment of the Hon'ble Supreme Court reported in 1992 AIR SCW 2315, "State of Haryana and others Vs. Piara Singh and others" wherein it was held that, "Court cannot direct regularisation to help employees who could not satisfy the stipulated condition". It is further held that, "efforts must be made to regularise them as early as possible subject to they being qualified and subject to availability of work. Casual Labour continuing for 2 to 3 years, the presumption as to regular need for his services arises."

11. In the present case, the applicant had worked for 963 days with breaks as and when his services were required. Hence, there is a benefit of presumption as to regular need for his services arises.

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12. It is also held by the Hon'ble Supreme Court in AIR 1990 SC 371, "Bhagawati Devi and others Vs. Delhi State Mineral Development Corporation", that-

"Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum education qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments of petitioners were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. It can be said that three years' experience, ignoring artificial break in service for short period/periods created by the management, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Therefore, the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts."

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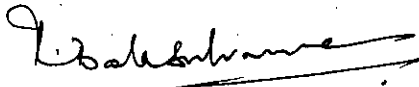
6th 20/7

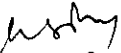
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13. Following the principles laid down by the Hon'ble Supreme Court in the cases cited supra, we direct the respondents to consider the case of the applicant for regularisation, as per the rules^{and work requirement} if he fulfils the conditions stipulated for regularisation.

14. With the above directions and the directions supra at para 9, the application is disposed of with no order as to costs.


(R. BALASUBRAMANIAN)
Member (Admn.)


(C.J. ROY)
Member (Judl.)

Dated: 6th November, 1992.


Deputy Registrar (J)

To

1. The Executive Engineer, C P W D.,
Hyderabad Central Division No.II, Hyderabad-195.
2. The Superintending Engineer, C.P.W.D.
Hyderabad Central Circle, Hyderabad-195.
3. The Director General (Works), CPWD,
Union of India, Nirman Bhavan, New Delhi-1.
4. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.
5. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
6. One spare copy.
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18/11/92
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER(JUDL)

Dated: 6-11-1992

~~ORDER~~/JUDGMENT:

R.A. /C.A. /M.A.No
in

O.A.No. 398/90

T.A.No. (wp.No)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A.Ordered/Rejected

No orders as to costs.

Central Administrative Tribunal
DESPATCH
23 NOV 1992
HYDERABAD BENCH

pvm