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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.

* * *

O.A. No. 98/91

Dt. of Decision : 23.3.94

All India R.M.S. & M.M.S. Employees Union,
Mail Guards & Class IV,
Andhra Pradesh Circle Branch,
Hyderabad.

2. R. Srinivas

3. Rajender Singh

.. Applicants

Vs

Union of India represented by;

1. The Secretary to Government,
Department of Posts,
New Delhi.

2. The Chief Post Master General,
Hyderabad.

.. Respondents.

Counsel for the applicants : Mr. K.S.R. Anjaneyulu

Counsel for the Respondents : Mr. N.V. Ramana, Addl. CGSC

CORAM:

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

THE HON'BLE SHRI A.B. GORTHY : MEMBER (ADMN.)

O.A.NO.98/91.

JUDGMENT

Dt: 23.3.94.

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri KSR Anjaneyulu, learned counsel for the applicants and Shri N.V.Ramana, learned standing counsel for the respondents.

2. This OA was filed by the All India RMS & MMS Employees Union, Mail Guards & Class-IV, Andhra Pradesh Circle Branch, Hyderabad represented by its Circle Secretary (1st applicant) and two part time casual labourers in the unit of HRO, Hyderabad, praying for a declaration that the order of the Director General of Posts, New Delhi in letter No.45/93/90-SPB-I, dated 31.12.1990 (for short DGP Letter dated 31.12.1990) stating that the part time casual labourers are not entitled to be paid weekly off, is arbitrary, discriminatory and violative of Article 14 of the Constitution and for setting aside the order dated 19.1.1991 of the Chief Postmaster General, Hyderabad whereby weekly off wages paid to the part time casual labourers ~~had~~ sought to be recovered.

3. By Para-vi of the Office Memorandum F.No.49014/2/86-Estt.(C), dated 7th June, 1988 it was stated that "casual workers" may be given one paid weekly off after six days of continuous work. As per the letter dated 5.4.1990 of the Department of Posts, Dak Bhavan, New Delhi (Vide Annexure-3), it was clarified that the arrears of paid weekly off have to be paid with effect from 5.2.1986. In pursuance of the clarification sought, the Chief Postmaster General by the letter dated

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6.9.1990 (vide Annexure-4) which was communicated to the Postmaster General, Hyderabad/Kurnool/Vijayawada/Visakhapatnam, it was stated as under:-

"The Circle Secretary of the A.I.RMS & MMS Mail Guards and Cl.IV union Andhra Circle, has complained to the Chief Postmaster General, Hyderabad that the Directorate's instructions, issued on the above subject ~~XXXX~~ which were communicated in this office letters, referred to above, are not being implemented and that weekly off is not being granted to the Part-time casual labourers in RMS Divisions excepting in Hyderabad Sorting. I am directed to invite your attention to item (vi) of the guidelines issued by the Director General (Postal) vide Directorate's letter No.45-60/88-SPB, dated 7.7.1988, circulated with this office letter referred to (i) above. It has been ordered that the casual worker should be given one paid weekly off, after six days of continuous work. In para 2 of the Directorate's letter No.45-24/88-SPB_I, dated 17.5.1989, communicated in this office letter referred to (ii) above, it has been clarified that all daily wages, working in Post Office or in RMS Offices or in Administrative Offices are in PSDs or

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MMS, under different designations (Mazdoors, daily rated mazdoors, outsiders) are to be treated as Casual Labourers. Those Casual Labourers, who are engaged for a period of eight hours a day should be described as Full-time Casual labourers and those, who are engaged for a period of less than eight hours a day should be described as Part-time casual labourers.

The only difference between the Full time and Part time casual labourers is that the pay and allowances of the later category are fixed on prorata basis.

The Chief Postmaster General, AP Circle, Hyderabad directed ~~xx~~ that the instructions of the Directorate, communicated in this office letters, referred to herein, should be got ~~x~~ implemented in all the units under your Administrative jurisdiction."

The DGP by the letter dated 31.12.1990 observed that the part time casual labourers are not entitled ~~x~~ to ~~be~~ paid weekly off.' In pursuance of the same, the Chief Postmaster General by the letter dated 9.1.1991 ordered recovery of the week^{-ly wages}/~~off~~/paid to the Part time casual labourers.

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4. It is contended for the respondents that paid weekly offs have to be paid as per the provisions of the Minimum Wages Act in regard to those casual workers who worked for 48 hours in six days, and as the part time casual labourers work for less than 48 hours in a week, they are not entitled to ~~be~~ paid weekly off under the provisions of the Minimum Wages Act and hence the DGP clarified by the letter dated 31.12.1990 that the part time casual labourers are not entitled to ~~be~~ paid weekly off. In fairness to the learned counsel for the applicants, it has to be stated that he had not urged that as per the provisions of the Minimum Wages Act, the applicants who are part time casual labourers are entitled to ~~be~~ paid weekly off.

5. But it was urged for the applicants that when the part time casual labourers are paid weekly off in pursuance of the clarification given by the Chief Postmaster General by his letter dated 6.9.1990 and when there is an ambiguity in para-vi of OM dated 7.6.1988 and when the heads of the various lower units paid the weekly off along with the arrears to the part time casual labourers bonafidely and when they are low paid employees, it is not just and proper to order recovery of the amounts, even though ~~on~~ on the basis of the proper interpretation of para-vi of the OM dated 7.6.88 they are not entitled to ^{paid} weekly off.

6. The fact that para-vi of the OM dated 7.6.88 merely refers to the casual workers without specifying that ~~whether~~ casual workers referred to therein are full time or part time, some units sought clarification.

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Then the Chief Postmaster General addressed the letter dated 6.9.1990 vide Annexure-4. It is strongly urged for the respondents that it cannot be construed from the Annexure-4 ~~dx~~ letter ~~xxxx~~ that CPMG clarified that the part time casual labourers are to be given paid weekly off and if the CPMG felt that as per para-vi of OM dated 7.6.1988, the part time casual labourers are entitled to ~~the~~ paid weekly off, then he could have ~~been~~ merely stated that they are ~~not~~ entitled to the same. But we are unable to accede to the said contention. It is a case where a clarification was sought as to whether the part time casual labourers are entitled to the paid weekly off. If the CPMG felt that they are not entitled ^{to} ~~to~~, then the CPMG would not only ^{have} ~~stated~~ that the part time casual labourers are not entitled to it, ^{but} ~~and~~ he would have also directed recovery of the amounts paid towards weekly off. But the CPMG had not given such a direction. Further, on the basis of the para-2 in Annexure-4, it is stated that only ~~the~~ difference between the full ~~xxxx~~ time and part time casual labourers is that the pay and allowances of the latter category are fixed on pro-rata basis indicating thereby that they are also casual workers coming within the ambit of para-6 of the OM dated 7.6.1988. Hence, when the heads of the various units understood ~~on the basis of the Annexure-4 letter~~ that as per the said letter, it was clarified that the part time casual labourers are also entitled to the paid weekly off, the same cannot be held as illegal.

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To

1. The Secretary to Government, Union of India,
Dept.of Posts, New Delhi.
2. The Chief Postmaster General, Hyderabad.
3. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
4. One copy to Mr.N.V.Ramana, Addl.CGSC,CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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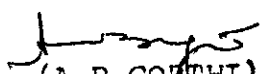
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7. Then the next question which arises for consideration is as to when ~~the~~ the amounts paid by the heads of the units and that too after the clarification from the CPMG in construing the para-vi of the OM dated 7.6.1988 ^{was given} and when no malafides are attributable and when it cannot be stated that the clarification is perverse, is it just and proper to order recovery of amounts and that too when the employees from whom the amounts which are sought to be recovered are of ~~the~~ lower social and economical status and when they are low paid employees. In view of the judgment of the Supreme Court in 1989 SCC(L&S) 339 (State of AP Vs. G. Sreenivasa Rao) we feel that it is not just and proper to order ~~recovery~~ recovery in regard to the amounts paid ^{for the period till} 31.12.1990, the date on which the DGP clarified that the part time casual labourers are not entitled to the paid weekly off.

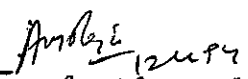
8. In the result, the respondents are restrained from recovering the amounts paid towards the paid weekly off till 31.12.1990 including that date and it is open to the respondents to recover the amounts paid towards the paid weekly off for the period from 1.1.1991.

9. The OA is ordered accordingly. No costs.


(A.B. GORTHI)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 23rd March, 1994.
Open court dictation.


Deputy Registrar C.C.

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