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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.103 of 1991

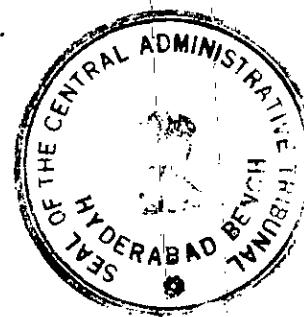
DATE OF JUDGMENT: 13.8.1991

BETWEEN:

S/Shri/Smt.

1. S.Krishna Reddy
2. K.Narasamma
3. S.Nagamani
4. M.Lakshmi
5. I.Pochamma
6. L.Iylamma
7. T.Venkatamma
8. K.Papamma
9. M.Poshamma
10. M.Narasimha

.. Applicants



AND

1. The Secretary,
Dept. of Atomic Energy,
New Delhi.

2. The Chief Executive,
Nuclear Fuel Complex,
Dept. of Atomic Energy,
Hyderabad.

3. The Deputy Chief Executive,
N.F.C.,
Hyderabad.

DCE(A)
19/4
HYDERABAD - 400 002
LAW NO. 19/91

(10)

.. 2 ..

4. The Manager,
Personnel & Administration,
N.F.C.,
Hyderabad.

5. B.Ameer Jani ,
6. E.Pandu
7. B.Reddappa
8. P.Narasimha
9. J.Balanarasimha
10. R.Jagannadham
11. P.Eswaraiah
12. M.Malleh
13. S.Ganapathi
14. B.Narasimha
15. N.Anjaiah
16. R.Narasimha
17. B.Malleh
18. M.Srinivas
19. P.Krishna
20. N.Shakunthala
21. B.Kistamma
22. S.Ramulamma
23. K.Anjamma
24. M.Susheela
25. B.Chandrakala
26. G.Kamala
27. G.Bhoolakshmi
28. P.Venkamma
29. Y.Lakshmanamma
30. M.Manemma
31. G.Pandu ..

Respondents

[Respondents 5 to 31 were impleaded as per IT order of the Tribunal in MA 687/91 dttd 17-4-1991].

COUNSEL FOR THE APPLICANTS: Mrs. N.Shoba

COUNSEL FOR THE RESPONDENTS: Mr. N.Bhaskar Rao,
Addl. CGSC for R1 to R4

Mr. P.B.Vijaya Kumar,
for R 5 to 31.

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CORAM:

Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

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

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

This is a petition filed by the petitioners for a relief to declare the action of the respondents in Memo No.NFC/PAR/09/003/90/186, dated 16.1.1991 as illegal, arbitrary, unconstitutional and consequently direct the respondents to consider the case of the applicants for the posts created for contract labourers employed as Sweepers in Civil Engineering Division for cleaning and sweeping work of Nuclear Fuel Complex and D.A.E. Housing Colony as per the seniority list. The brief facts of the case are as follows:-

All the applicants are working as contract labourers since more than 6 years without any break in service. They made representations to regularise

their services for abolition of contract labour system and the same were not considered. Hence, they approached the High Court of Andhra Pradesh by way of Writ Petition No.13281/1987 and the High Court passed orders on, 6.6.1990 directing the respondents to consider the representation of the applicants by taking into account Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and the rights that have been accrued to them and pass appropriate orders with regard to the abolition of the contract labour system within three months from the date of the orders. The applicants were also directed to submit a copy of the orders of the High Court before the concerned authorities.

2. Considering the said orders of the High Court, it has been decided by the respondents to regularise all the contract labourers doing the work of Sweepers in Civil Engineering Division for cleaning and sweeping work at NFC and DAE Housing Colony and certain posts were created. The applicants were called for interviews and they appeared for the interviews and waiting for appointment orders. However, the applicants reliably learnt that under the influence by the third parties a list is prepared and steps were taken ~~in~~ to take juniors to

the applicants who joined subsequent to 1987 onwards. The applicants immediately made a representation to the 4th respondent on 8.12.1990 stating that seniority should be followed before any appointments would be made and juniors cannot be appointed. Since there was no reply from the respondents, they gave a further representation on 12.12.1990. As there also, was no reply to this representation, the applicants filed O.A.No.1009/1990 before this Tribunal and the Tribunal made the following order:-

"Shri Bhaskara Rao on instructions from the respondents says that the respondents have not maintained any list of the persons engaged by the ~~them~~ contractors and it cannot be said that the contractors are maintaining any seniority lists. He also states that the applicants had submitted a representation jointly that they should be considered for appointment on the basis of seniority and that this representation is under consideration of the management. Shri Bhaskara Rao, therefore, submits that the application is premature as the representation of the applicants is still under consideration. Smt. Shoba stated that

the Civil Engineering Division has information about the personnel employed by the contractors. In the circumstances stated by Shri Bhaskara Rao, we are of the view that the application is premature as the representations are under consideration of the respondents. We direct the respondents to dispose of the representations dated 8.12.1990 and 12.12.1990 and till such time the representations are disposed of, no regular appointments may be made in the newly sanctioned posts. Smt. Shoba states that the applicants may be permitted to submit a further representation giving more particulars. She is permitted to do so within one week. The said representation will also be considered by the respondents when they consider the representations dated 8.12.1990 and 12.12.1990."

3. Pursuant to the above orders, the applicants gave a further representation on 29.12.1990. The

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respondents passed an order on 16.1.1991 stating that it is not possible for NFC to consider the question of regularisation on the basis of seniority. The Standing Selection Committee is entrusted with the task of assessing suitability of personnel based on eligibility criteria meant for that post before they are considered for regular appointment. It is stated in the order dated 16.1.1991 that since the selection has been made, there is no reason or justification for modifying the selection panel and hence the request of the applicants cannot be acceded to. These orders were passed even prior to the receipt of the order in O.A.No.1009/90, dated 18.1.1991.

4. The applicants stated that the list prepared by the selection committee is at the influence of the Ex-union leader. The daughter of the 2nd applicant who joined with the contractor in the year 1985 has been found in the list whereas ^{the} name of mother of the 2nd applicant who is working since 1979-80 is not found. There are no guidelines nor the recruitment rules prescribed for selection. In the absence of any guidelines nor the recruitment rules, the alternative followed must be absorbing those with the longest service. The absorption of contract labourers itself is on compassionate grounds. They could not be discriminated without following the seniority. The

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question of merit also does not arise ⁱⁿ as / the interviews conducted, the applicants were only asked the questions with regard to their name, age, address and since when ^{were} they / working etc. Hence, the selection is not on the basis of merit.

5. Under Section 21(2) of the Contract Labour (Regulation and Abolition) Act, 1970, every principal employer or his authorised representative has to certify that the amount paid as wages in proper manner and they have to maintain a Register of contract labourers. The seniority list is existing with the Executive Engineer, C.E.D., NFC, Hyderabad. If the records are called for, the same can be verified. The applicants requested the respondents to follow the order of seniority before issuing any appointment orders but the same is negatived and the respondents are issuing orders of appointment to the juniors to the applicants by which action the applicants would be losing their livelihood and they suffer irreparable loss and hardship. Hence, the applicants filed this application for the above said relief.

6. The respondents filed a counter with the following contentions:-

The dates of appointment shown in this application varies with the dates given by the applicants

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to the Respondents Complex in bio-data form for considering their regularisation. The contract labourers do not have any right to be considered for regularisation as they were not engaged by the Respondent Complex directly. Regarding abolition of contract labour, it is stated that there is no total ban on engaging contract labourers.

7. No posts have been sanctioned for appointment of contract labourers engaged in sweeping contract. However, in the light of the directions given by the High Court for considering the contract labourers engaged on sweeping contract, bio-data forms were called for from all those engaged on such contracts and interviews conducted. The allegation that Respondents have been influenced by third parties for taking steps to appoint juniors is denied. In fact, a properly constituted Selection Committee interviewed the applicants against vacancies in the Plants and not for replacing the persons presently engaged on sweeping jobs. The Selection Committee after assessment gives the recommendations based on merit alone and do not go by seniority maintained by the applicants with the contractors. In this process, juniors may find a place in the panel. The guidelines evolved by BARC, a constituent unit of the Department of Atomic Energy, are ~~maximally~~ followed in the matter of

recruitment in the Respondent Complex along with other constituent units of DAE. Hence, the applicants cannot claim that NFC does not have any guidelines and that they should be considered on seniority.

8. NFC does not have a detailed record of the employment of the contract labourers on sweeping jobs. It is only having the information furnished by the applicants themselves in the bio-data form. All the applicants cannot be considered on the basis of length of service rendered as many possess academic qualifications also. In view of the above, it is stated that the application is liable to be dismissed.

9. Mrs. N. Shoba, learned counsel for the applicants, Mr. Naram Bhaskar Rao, learned Additional Standing Counsel for the Central Government/Respondents and Mr. P.B. Vijaya Kumar, learned counsel for the Respondents 5 to 31, argued the matter.

10. The main contention of the applicants is that they have been working as contract labourers

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doing the work of sweepers in civil engineering division, for cleaning and sweeping DAE Housing Colony in the respondents concern since more than 6 years without any break in manual work. Some of the labourers were working since 1977. The applicants made representations to regularise their services and for the abolition of contract labour system. When their representation were not considered by the Department, they approached the High Court of Andhra Pradesh by filing W.P.13281/87 and the High Court of A.P. passed orders on 6.6.90 directing the respondents to consider the representations of the applicants by taking into account Section 10 of Contract Labour (Regulation and Abolition) Act, 1980 and the rights that have been accrued to them and pass appropriate orders with regard to the abolition of the contract labour within three months from the date of orders, and the applicants were directed to submit a copy of the order before the concerned authorities. After considering the orders of the High Court, some posts were created and the applicants along with other labourers called for interviews and they appeared for the interviews. Meanwhile, the Management has taken steps to take juniors to the applicants who joined service subsequent to 1987

onwards. The applicants made a representation to the Respondents on 8.12.1990 stating that seniority should be followed before any appointments would be made and juniors cannot be appointed. They made another representation on 12.12.1990 but the respondents did not give any reply. Then the petitioners approached this Tribunal by way of filing O.A.No.1009 of 1990 and their lordships gave a direction to the respondents to dispose of the representations and pending disposal of the representations no regular appointments should be made in the newly sanctioned posts. The respondents gave a reply to the applicants stating that the request of the applicants cannot be acceded to.

8. It is an admitted fact that all the applicants have been working as contract labourers in the respondents concern but the salaries were being paid by the employer/respondents through the Contractor. The Contractor is a labour procuring agent to the employer to get the work done and for ~~many~~ purposes the applicants are employees under the principal employer and the Contractor is ~~not~~ an agent of the employer to get things done by the labourers/applicants. While making payment of wages, the employer deputed a representative of his Complex to see that wages are

distributed. The applicants made representations to regularise their services as they have been working since a long time. ~~xxxxxxxxxxxxxx~~ As per the directions given by the High Court, the respondents interviewed the applicants for absorbing them as regular employees. But meanwhile the respondents twisted the issue contending that they have interviewed for a few selected posts required for Plant work but not for sweeping etc., and they have no obligation to absorb the applicants according to their seniority. The applicants were not directly engaged by the respondents and they were working under a Contractor. When the writ petition was filed before the High Court, the respondents did not file any statement representing ~~that~~ their opinion on this account. Having kept quiet during the pendency of the writ petition and having considered the directions of the High Court and having interviewed the applicants, now they changed their version stating that those interviews were conducted to absorb persons suitable to work in the plants but not for sweeping purpose. The respondents did not deny that the applicants were working under them through a Contractor. It is not their case before the High Court that the applicants never worked under them. Moreover, the respondents carried out the directions of the High Court and interviewed

all the applicants. The contract labour system was abolished and all the applicants have been working under the respondents. Since the applicants were working under the respondents since more than 6 years, the respondents have to regularise the services of the applicants. The respondents cannot disown their responsibility by stating that the applicants were not working under them and that they have worked under a Contractor. This version is a belated version and the respondents did not raise this point before the High Court and only now they have raised this point.

9. The respondents cannot deny that the applicants were working under them since a long time. The respondents also cannot deny that they have paid wages to the applicants. Having extracted work for a pretty long time, the duty now is on the respondents to absorb them into service according to their seniority. Even if the applicants were working under a Contractor, their wages were not paid by the Contractor but the wages were paid by the principal employer. So, here the Contractor is an agent of the principal employer. For all purposes, the principal employer is the pay master to the applicants. So, the High Court directed to interview the applicants and absorb them in service.

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Having interviewed the applicants, the respondents took a different stand which is ~~contrary~~ to the rules and also contrary to the principles of natural justice. The applicants have put up nearly 10 years of service and if they were asked to go away, they have to face a lot of trouble.

10. There are no guidelines prescribed for the selection. The norms of NFC also does not speak of any rule regarding recruitment. In the absence of any guidelines and the recruitment rules, the alternative followed must be absorbing the applicants ~~who~~ who got longest service according to their seniority. The applicants should not be discriminated without following seniority. The Government for giving credit to the service rendered by the employees, created the posts. The respondents have not mentioned in their reply, the methodology followed in making appointments. The question of merit also will not arise because in the interview the respondents/committee only asked the applicants, their name, age and address etc. The only remedy open to the respondents is to absorb the applicants according to their seniority in the posts created for the purpose. The respondents are bound to take the applicants into service and regularise their service according to their seniority and provide

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them work. So, we quash the impugned order in Memo No. NFC/PAR/09/003/90/186, dated 16.1.1991 and we direct the respondents to consider the case of the applicants for the posts created for contract labourers employed as Sweepers in Civil Engineering Division for cleaning and sweeping work of Nuclear Fuel Complex and DAE Housing Colony as per their seniority. We direct the respondents to implement this order within a period of three months from the date of receipt of this order.

11. The application is accordingly allowed. There is no order as to costs.

CERTIFIED TO BE TRUE COPY

S. Sunder Reddy
Date 16/8/91.

Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad



Case Number	C.A. 103/91
Date of Judgement	13.8.91
Copy made ready on	28.8.91
Section Officer	(J)

Copy to:-

1. The Secretary, Deptt. of Atomic Energy, New Delhi.
2. The Chief Executive, Nuclear Fuel Complex, Dept. of Atomic Energy, Hyderabad.
3. The Deputy Chief Executive, N.F.C., Hyderabad.
4. The Manager, Personnel & Administration, N.F.C., Hyd
5. One copy to Smt. N. Sobha, Advocate C.A.T. Hyderabad.
6. One copy to Mr. N. Bhaskar Rao, Adl CGSC for R1 to R4.
7. One copy to Mr. P. B. Vijaya Kumar, for R5 to 31.
8. One copy to Hon. Mr. J. K. Narshima Murthy, C.A.T. Hyd
9. One spare copy.