

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No. 563/97

Date of Order: 19.9.97

BETWEEN :

B.Sarojanamma

.. Applicant.

AND

1. Union of India, rep. by the Secretary, Ministry of Science and Technology, Technology Bhavan, New Delhi.
2. The Surveyor General of India, Survey of India, No.8 Nathikarkala Estate, Dehradun, Uttar Pradesh.
3. The Director, Survey of India, Survey Training Institute, Govt. of India, Uppal, Hyderabad.
4. The Superintending Surveyor, Incharge No.39 Party (STI), Uppal, Hyderabad.

.. Respondents.

Counsel for the Applicant

.. Mr.N.Ramamohana Rao

Counsel for the Respondents

CORAM:

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

~~HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUD.)~~

JUDGEMENT

Mr.Shiva for Mr.N.Rama Mohan Rao, learned counsel for the applicant and Mr.V.Rajeswara Rao, learned standing counsel for the respondents.

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2. The applicant is wife of one Sri Danam who was engaged in the respondent organisation as contingent khalasi in No.15 Party STI. While Sri Danam was attached to No.53 Party PMP and was on a survey team he met with an accident on 22.4.86 at a remote village in Maharashtra. As the applicant was faced with a tragic death of her husband ^{as} she had three minor children, ^{JK} It is stated that she was engaged as a local mazdoor (casual labourer) in the respondent department in July 1986. She was being paid on daily wage basis. She was continuously engaged till January 1989 when a termination order was reported to have been issued. Against that order she approached the High Court of Andhra Pradesh by filing Writ Petition 3895/90. In that Writ Petition an interim order was passed dated 26.3.90 directing the respondents to continue her as a casual labour. Hence she was continued as such. The said Writ Petition was disposed of on 12.3.97. In that order the request of the applicant for compassionate ground appointment as a regular Sweeper made vide her letter dated 2.2.90 was not agreed to, ^{As} there was no provision in the rules to provide employment assistance by way of compassionate ground appointment to the next of seasonal employee, as her deceased husband was only a seasonal employee. Immediately thereafter the service of the applicant was terminated by the impugned order No. 682/11.G.23/39P, dated 20.3.97 (A-5) In the year 1993 a memorandum bearing No. 51016/2/90-Estt. (C), dated 10.9.93 (page-18) was issued by the Ministry of Personnel regularisation scheme. The applicant submits that the scheme was not followed in her case though she fulfills ^{ed} conditions laid down in that scheme.

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3. This OA is filed praying for a direction to set aside the impugned order No.682/11.G.23/39P, dated 20.3.97 by holding it as arbitrary, illegal and unjust and for a consequential declaration that the applicant is entitled for grant of temporary status and consequential regularisation of her services in accordance with memo No.51016/2/90-Estt. (C), dated 10.9.93 of the Ministry of Personnel, P.G., and Pensions and thereafter for a consequential benefit of regularisation of services of the applicant with all attendant benefits.

4. A reply has been filed in this OA. It is stated that the applicant was terminated by the impugned order dated 20.3.97 for want of work. The learned counsel for the applicant submits that from 1986 to 1989 she was continued when there was work. She was also continued after passing of the interim order of the High Court in the Writ Petition till 1997. Hence he submits that it will be incorrect to state that there was no work after 20.3.97. He further states that her services should have been terminated way back after the issue of the memo No.49014/2/86-Estt (C), dated 7.6.88 (A-2 to reply) but that was not done. Hence it has to be held that there was work to continue her as Sweeper even after the issue of the impugned order dt.20.3.97. Hence she prays that the impugned order should be set aside and she should be continued as a casual labour. The applicant also submits that she fulfils the conditions laid down in the memorandum of the department of the Personnel dated 10.3.93 to grant her temporary status and regularisation on that basis. She submits that she fulfils para 4(i) of that circular dated 10.9.93 to grant her the regularisation as she fulfills ^{the} ~~the~~ conditions laid down ⁱⁿ ~~of~~ that para. The reason given by the respondents in issuing the impugned termination order dated 20.3.97 cannot be challenged as the termination order ^{was} issued for want of work. Just because she was continued from 1986 to 1989 and

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also. Hence if the respondents come to the conclusion that there is no work to continue the applicant as a casual labour Sweeper such a decision cannot be challenged unless the applicant provides sufficient material to show that there is work or the material to show that the order was issued under mala fide consideration. On both counts no material has been produced. Hence this contention that there was work beyond 20.3.97 and hence she should be considered on that basis cannot be upheld. Hence the challenge to the termination order dated 20.3.97 has to be rejected.

5. The next question that arises is whether she should be brought on temporary status in accordance with the OM dated 10.9.93 and considered for regularisation thereafter in her turn. The above said memorandum gives the clear conditions for considering the casual labour under the scheme dated 10.9.93. Para-4(i) of that memorandum is very relevant, that para reads as below:-

"Temporary status would be conferred on all casual labourers who are in employment on the date of continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week)".

6. As per the above para a casual labour should be in service a continuous service of atleast one year which means that the casual labour must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week). The applicant submits that she had put in ^{more than} 240 days ^{as} and she had continued right from 1986 onwards without break till 20.3.97

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when the government order terminating her services, and she also states that she was in service on 1.9.93 and hence she fulfills the conditions laid down as above. The checking of the above details is a matter of checking the factual position. It is not necessary for this Tribunal to check whether she fulfills that condition or not. Records are available and the respondents are to check that position and decide her claim in regard to fulfilment of her claim under para-4(i) extracted above. If she fulfills that condition she should be brought under that scheme. It may be possible she ^{would} ~~should~~ be brought under that scheme but that does not give the right to the applicant to be continued beyond 20.3.97 if there is no work. But because of bringing her under that scheme her name should be entered in the list of temporary status casual labour under the respondents organisation and should be considered for future engagement as temporary status casual labour and thereafter for regularisation.

7. The learned counsel for the respondents submitted that came into force, ~~as~~ she was continued in the service of the casual labour because of the interim order of the High Court in the Writ Petition. Hence she may not fulfil the condition laid down under para-4(i) of the said scheme. If the respondents felt that the interim order of the High Court cannot be adhered to due to want of work etc they should have filed ~~an~~ ^{application to necessary} ~~vacate stay~~ ^{order} petition in the High Court for vacating the interim order. But the respondents have never sought the relief of vacating the interim order by approaching this ^{Tribunal of A.P. High Court} Court. Hence even if she was continued on the basis of the interim order it has to be held that came into force. Hence her case cannot be rejected on the plea

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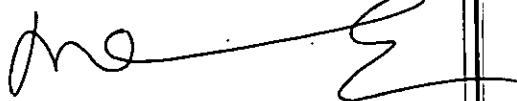
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that she was in service as on 1.1.93 because of the interim order of the High Court. The learned counsel for the respondents submits that her services were not terminated in 1989 but her case for compassionate ground appointment was rejected in 1989. Hence she approached the High Court of Andhra Pradesh.

8. In the result the following direction is given:-

R-2 should immediately check ~~up~~ the records to see whether she fulfills the conditions as laid down in para - 4(i) of the casual labourers (grant of temporary status and regularisation) scheme issued by the DOP&T by O.M. dated 10.9.93. If she fulfills ~~those~~ conditions her name should be entered in the list of temporary status casual labourers of the department. On that basis her case should be considered ^{for} engaging her as temporary status casual labourers in future vacancies ^{depending upon needs of department} and thereafter for regularisation in accordance with the law.

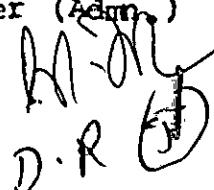
9. With the above directions the OA is disposed of.

No costs.


K. RANGARAJAN
Member (Adm.)

Dated : 19th September, 1997

(Dictated in Open Court)


D.R.

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Copy to :-

1. The Secretary, Ministry of Science and Technology, Technology Bhavan, new Delhi.
2. The Surveyor General of India, Survey of India, No.8 Nathikarkala Estate, Dehradun, Uttar Pradesh.
3. The Director, Survey of India, Survey Training Institute, GOVT. of India UPPAL, Hyderabad.
4. The Superintending Surveyor, Inchage No.39 Party (STI) UPPAL, HYD.
5. One Copy to Mr. N. Ramamohana Rao, Advocate CAT. HYD.
6. One Copy to Mr. V. Rajeswara Rao, Addl CGSC. CAT. HYD.
7. One Copy to The D.R(A).

One Duplicate Copy.

Upr.

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S/6/10/147

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. BAI PARAMESHWAR :

M(J)

Dated: 19-9-97

ORDER/JUDGEMENT

M.A/R.A/C.A.NO.

C.A.NO.

563/97

Admitted and Interim Directions
Issued.

Allowed

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered Rejected

No order as to costs.

YLKR

II Court

