(32)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD.

O.A.NOS.1273, 1274, 1275, 1276, 1277 and
1278 of 97.

Date of Order: 30-9-97.

Between:

S. Nagabhushanam. .. Applicant in OA 1273/97.
R. Varada Reddy. .. -do- O.A.1274/97.
V.Jayaramudu. .. -do- OA 1275/97.
D.Guru Murthy. .. -do- OA 1276/97.
R. Jayaraju. .. -do- O.A 1277/97.
D. Krishna .. -do- OA 1278/97.

.. Applicants.

and

1. Union of India rep. by
Secretary of Ministry of Communications
and Director General,/
Dept.of Telecommunications, New Delhi-1.

2. Chief General Manager, Telecommunications,
A.P.Circle, Nampally Station Road,
Hyderabad-1.

3. Telecom District Manager, (TDM)
Telecom Dist.Kurnool-1.

4. Divisional Engineer (Administration)
O/o TDM, Kurnool-1.

5. The Junior Telecom Officer(JTO)
Phones, Adoni-301.

.. Respondents in all cases.

For the Applicants: Mr. B.S.A.Stayanrayana, Advocate in all cases.

For the Respondents: Mr. K.Bhaskar Rao, Addl.CGSC. (OA 1273/97& O.A.1274/97

Mr. J.R. Gopal Rao, Addl.CGSC. (OA.1275&1277/97.)

Mr. V.Vinod Kumar, Addl.CGSC. (OA.1276 &1278/97.)

CORAM:

THE HON'BLE MR.H.RAJENDRA PRASAD : MEMBER(ADMN)

(..contd..)

OA.1273/97, 1274/97, 1275/97,1276/97, 1277/97 and 1278/97

dt.30-9-97

Order

(per Hon. Mr. H. Rajendra Prasad, Member(Admn.)

This OA has its genesis in an earlier case (OA.777/96) disposed of on 18-6-1996 wherein the provisions of the scheme concerning the conferment of temporary status and regularisation of services of casual labourers in the Telecom Department were examined at some length and certain directions were issued. Pursuant to the said directions, the applicant submitted a representation to the 1st Respondent setting out his grievances. The representation was turned down by Respondent-2, presumably on the directions of Respondent-1, although it is not very clear if the issues raised in the representation at Annexure-3 were duly examined at the level of Respondent-1.

2. The impugned order raises two points :

i) Observations of this Tribunal in para-3 of judgement in OA.777/96 refer to the extension of the scheme (for the purpose of conferment of temporary status, etc., on casual labourers) to only those workers who were recruited up to 10-9-1993. This extension to the scheme referred to was given by the Department of Posts and is not, therefore, applicable to the Telecom Department.

ii) The applicant was not engaged as a casual labourer at all, but was merely awarded a contract for a specific piece of work to be completed, either by him or by his agent, for a specified amount. The contract was to be renewed every month. Inasmuch as the applicant is not a casual labourer, but only a contract-labourer, the benefits of original scheme shall not be available to him.

..2.

(Regulation and Abolition) Act, 1970, published in Gazette of India Extraordinary, Part II, Section I dated Sept.7,1970 at pages, 301, 302, 303 and 306. There can be no justification to convert a casual labourer overnight and give a new nomenclature to a whole class of workers who were officially called Casual Labourers until recently. Sri K. Bhaskar Rao, Learned Counsel for the Respondents submits that the Applicant was neither a casual labourer nor a contract-labourer but a job-contractor. The distinction sought to be made is not clear or understandable. This particular submission in any case is at variance with para-2 of the impugned order and, therefore, the same needs to be elaborated.

3.4. Regular work of a perennial nature, the need for which continues to be felt, ought not be entrusted on 'contract' to even casual labourers. Section 10 of the said Act is relevant. Support can be drawn from the judgement of the Hon'ble Supreme Court in Gujarat Electricity Thermal Power Station, UKAI, Gujarat Vs. Hind Mazdoor Sabha and others [1995 SCC(L&S) 1166] wherein their Lordships have referred to the provisions of Sections 8 and 10 of the Act in para 15 of the judgement.

3.5. The observations of Ernakulam Bench of this Tribunal in K.M. Badruddeen & Others vs. Union of India and others in OA.907/96 - 1997(35)ATC 227) need to be taken note of where it was held that fixing a date arbitrarily in the context of the existing scheme (for conferment of temporary status etc.) is not valid, since no particular sanctity could attach to any specific date in the stated context. The same ratio decidendi would apply to the facts of the present case as well and fixing a cut-off date of any kind would not be valid in law.

..4.

3.6. According to the Act several steps are necessary to be taken prior to any decision which may be made to employ contract labourer or award contract to any agency and many considerations may come into play and determine the validity of such a decision. For example, it shall be necessary to consider and determine whether the process of operation, or other work, is incidental or necessary, whether the work is of perennial nature, whether it is of sufficient duration having regard to the nature of the work, whether it is done ordinarily through regular workmen of establishment or any establishment similar thereto, and finally whether it is sufficient to employ considerable number of regular workmen. Indeed the whole intention of the Act is to restrict the employment of contract labour or atleast regulate it where justified, besides mitigating the rigours of the contract system, if so perceived in a particular work/employment situation. This Act constitutes the ultimate law of the land in this regard, and cannot ordinarily be violated without adequate extenuation or justification.

3.7. Giving a different nomenclature to the existing or erstwhile casual labour force and calling them by a new name of contract labouers many not be permissible at all, especially for the following reasons:

a) A contract is never entered into with an individual labourer;

b) The services of a recognised agency have to be availed of for the employment of contract labour;

c) The so-called contract in this particular case also contains certain unusual features in that the work is required to be done in three spells of two hours each not more, nor less, and also that the work can be performed on behalf of the so-called contract labourer by any member of his family.

None of the above features would stand scrutiny in terms of the relevant Act.

3.8. Under the circumstances, it may not be possible to accept or uphold the contentions of the respondents that the applicant was either a contract labourer or a job-contractor. It is indeed possible to assert that the applicant, who is termed as a job-contractor or contract-labourer by the respondents, is none other or different from the casual labourer of yesterday, which he indeed was, by record. The nature of his work has not changed in any manner nor has the continuing necessity - notwithstanding many instructions issued by the respondents 1 & 2 to their subordinate units - or the type of work performed by the applicant ceased or altered in any way. The applicants have been engaged and their services utilised on the work of delivery of telegrams to urban and semi-urban areas. It would be futile to suggest that the need or justification of this basic item of public service has or can even come to an end. Actually, with the rapid increase in population and spectacular expansion of telecom network in recent years, the need to maintain an efficient delivery machinery has, if anything, increased over the same period. If the applicants have indeed been employed in this item of work and gained valuable experience, then the action of the respondents in engaging 'contract' labourer for this purpose on a monthly renewable basis would not seem to be adequate or satisfactory.

4. In view of what has been stated above, it becomes necessary to examine the issues raised herein in depth. The respondents, shall, therefore, file a counter affidavit covering, interalia, the points raised by the applicants. This may be done within four weeks. List the case soon thereafter.

5. Meanwhile, it is directed that the respondents shall not operate or initiate any follow-up action pursuant to annexure-4

to the OA(No.DA/STP/20-8/KNL-96, dated 13-4-97). It is further directed that the applicant shall continue to be engaged on the stated basis of their existing engagement until further orders.

6. Accordingly the OA is admisted.

CERTIFIED TO BE TRUE COPY

COURT OFFICER

Administrative Tribunal

BENCH