

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of order : 23.2.1996

OA No. 447/94

Smt. Chandra Vanjani ... Applicant.

versus

Union of India & Ors. ... Respondents.

Mr. Rajendra Soni, Counsel for the applicant.

Mr. U.D. Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. N.K. Verma, Member (Adm.)

Hon'ble Mr. Rattan Prakash, Member (Judl.)

...

PER HON'BLE MR. N.K. VERMA:

In this O.A., the applicant Smt. Chandra Vanjani who is working as Casual Make-up Assistant in Doordarshan Kendra, Jaipur, has claimed regularisation to the post of Make-up Assistant as she has completed 120 days in a calendar year 1988 in the terms of the Scheme for regularisation issued on 9.6.1992.

2. The facts of the case are that the applicant was included in the panel list of candidates for casual booking on assignment basis as Make-up Assistant on 4.12.1987 and, thereafter, she has been working for last 7 years in the Doordarshan Kendra on assignment basis. The applicant's first assignment was on 1.1.1988 and according to her she had worked for 124 days within the calendar year 1988 itself. In spite of this, the Doordarshan Kendra had not regularised her services although other persons similarly situated have been

15

regularised. She gave an Advocate's notice for demand of justice through her counsel on 1.1.1994, but there was no response for the same and, thereafter, she filed this application on 14.9.1994.

3. In their reply, the respondents have taken ^{the stand} that she had not completed 120 days of work in a calendar year 1988. The respondents have stated categorically that her first assignment commenced on 18.1.1988 and she had done only 115 days of work in a calendar year 1988. They have also taken the preliminary objection that the application is barred by law of limitation since the ~~claim~~ ^{Scheme} for regularisation was formulated on 9.6.1992 and the applicant approached the Tribunal only in September, 1994. The respondents have also categorically stated that the Doordarshan Kendra, Jaipur has only two ^{post of} Make-up Assistants which are already filled up by regular incumbents and there is no vacancy against which the applicant's appointment can be regularised. However, they have assured that the applicant's case for regularisation will be taken under the revised Scheme formulated on 17.3.1994 as and when a vacancy arises for the post of Make-up Assistant.

4. During the course of hearing, the learned counsel for the applicant Shri Rajendra Soni strenuously dealt upon the fact of the applicant having performed 124 days of work during the calendar year 1988 and he prayed for a direction from the Tribunal for production of all the related records including the log-book for the perusal of the Tribunal for proper adjudication in the matter. As per the Scheme, regularisation has to be considered in case of Casual Artists who have been engaged for an

16

aggregate period of 120 days in a calendar year. By the calendar year, the respondents have taken the plea that it meant British Calendar year starting from January to December of the particular year and 120 days have to be completed with reference to 12 months during that period, January to December. Learned counsel for the applicant on the other hand has held that a calendar year meant a cycle of 365 days as per the definition of the calendar year in the Legal Dictionary, The Law Lexicon, at page 170. Apart from this, the learned counsel also based his argument on the Section 25-B(2) (a) of the Industrial Disputes Act, 1947 which defines a calendar year as follows :-

"25-B(2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) ninety five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case."

Therefore, Shri Soni argued that the calendar year of the applicant commenced on the initial date of engagement with effect from 18.1.1988 and was completed on 17.1.1989 during which period she had rendered services for 125 days and as such she was entitled to be regularised having completed 120 days in a calendar year. In support of his arguments, learned counsel for the applicant also cited the case of H.D. Singh Vs. Reserve Bank of India And Others at (1985) 4 Supreme Court Cases 201. In this case, the Hon'ble Supreme Court had held that as per Sections 25-B (2) (a) (ii),

(17)

appellant had rendered more than 240 days of work between July, 1975 to July, 1976 i.e. within a cycle period of 365 days. In that matter also, Hon'ble Supreme Court had held that since the respondents had failed to produce the records pertaining to the attendance of the appellant, an affidavit filed by the appellant had to be taken^{as} true and the Hon'ble Supreme Court itself computed^{ed} the total days of engagement as 271 days and thereafter, ^{had} given the relief to the applicant.

5. The short point for adjudication in this case was ~~the~~ the determination of the calendar year whether it ~~was~~ meant the British calendar year spanning the months of January to December of a particular year or a cycle of 365 days as adjudicated by the Hon'ble Supreme Court in the case of H.D. Singh Vs. Reserve Bank of India (supra) in the light of Sections 25-B (2) (a) (ii) of the I.D. Act, 1947. A reference to the Law Lexicon referred to by Shri Soni would indicate the following meaning of a calendar year.

"Calendar year. There are two principal modes of computing the calendar years. One is by the annual course of the sun (solar year). The other is by the periodical revolutions of the moon (lunar year). The solar year consists of 365 days 5 hours 48 minutes and 45 seconds. The lunar year consists of 354 days, 3 hours, 48 minutes and 39 seconds."

The British calendar is patterned after the solar year composed of 365 days and spanned over months of January to December. If the Scheme had just said engagement during the year or during 12 calendar months, there

would have been no problem in accepting the arguments of Shri Soni. A year has been defined as a cycle of 365 days having 12 months. The Law Lexicon at page 1340 also defines -

"Generally, when a statute speaks of a year, it must be considered as twelve calendar and not lunar months."

While defining a 'calendar month' at page 170 -

"A 'calendar month' means one of the twelve months or to which the year is divided according to the calendar, also the space of time from any day of any such month to the corresponding day of the next, as opposed to a lunar month of four weeks."

The Law Lexicon also quotes the case of Migotti Vs. Colville, 48 L.J.C.P. 695, wherein it has been said :-

"One calendar month's imprisonment is to be calculated from the day of imprisonment to the day numerically corresponding in the following month, less one. When there is no such corresponding day in the last month of the imprisonment, the prisoner's term will be up on the last day of such last month. Thus, a prisoner "sentenced to a calendar month's imprisonment will never be imprisoned for a greater number of days than there are in the months in which he was sentenced."

The Hon'ble Supreme Court had taken into account a year as a cycle of 365 days starting from the day of the month to the corresponding day of the next year, less one. The I.D. Act, 1947 talks of "a year" and not of one calendar year. On the other hand a year has been defined in Section 3 (66) of the General Clauses Act, 1897 as to mean a year reckoned according to the British Calendar. In view of this difference in the use of the word year with the qualification "calendar year", we have no doubt in our mind that the Scheme was for computing 120 days in one calendar year according to the British calendar, which has been in vogue for official purposes

19

in the Government of India. This interpretation is also supported by the fact that out of 365 days in a year, stipulation is only for 120 days which is $\frac{1}{3}$ rd of entire year, which should not be difficult for anybody as a minimum days of engagement for regularisation purposes. If the applicant by her own admission has stated that she had performed only 115 days during the period ending 31st December, 1988, the uncontroverted situation is that she did not perform 120 days of engagement during the calendar year 1988.

6. Learned counsel for the respondents also brought to our notice a judgement of this very Tribunal dated 22.3.1994 in O.A. No. 602/1993 decided by the Principal Bench, wherein the question of regularisation of a Casual Make-up Assistant was adjudicated. In that matter the applicant had been short of only one day i.e. he had completed 119 days, whereas the requirement was of 120 days and the relief for regularisation was not granted. The Tribunal in that case only directed that the applicant had a right to compete alongwith others as per his eligibility in response to the advertisement for the post of Make-up Assistant issued in February, 1994.

7. We have given due consideration to the averments, pleadings and arguments of both the parties. Admittedly, the applicant has been working as Casual Make-up Assistant in the Door-darshan Kendra on assignment basis for last seven

years. She had not completed 120 days of engagement during one calendar year when the Scheme of regularisation was issued in June, 1992 and she had not pressed for her regularisation at that time. The only time when she made a request for her regularisation was in Sept., 1994, when the counsel's notice was served on the respondents in the matter. But that takes the applicant nowhere as she could not controvert the ~~preliminary~~ objection of the respondents that the O.A. is barred by the law of limitation. If a cause of action had arisen, it was in June, 1992 when the Scheme was formulated and action was taken by the respondents for regularisation of the Casual Artists who fulfilled the eligibility conditions. We, therefore, hold that the O.A. is barred by limitation and thus not maintainable. Even on the grounds of merit, we find that the applicant has no case as she lacks the basic conditions of regularisation i.e. 120 days of engagement in a particular calendar year. Since she had not fulfilled this requirement, her case for regularisation cannot succeed. The learned counsel for the respondents had very fairly stated that a modified Scheme for regularisation has again been formulated in March, 1994 and she will be given adequate consideration as and when a vacancy for the post of Make-up Assistant arises. She will have to wait till then.

8. In view of the above, the O.A. fails and is dismissed. No costs.

(RATTAN PRAKASH)
MEMBER (JUDL.)

(N.K. VERMA)
MEMBER (A)