

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 180/00539/2015

Original Application No. 180/00540/2015

Tuesday, this the 15th day of January, 2019

CORAM:

**HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER**

1. Original Application No. 180/00539/2015 :

Ummer A.C., aged 44 years,
S/o. Younis, Arakachetta House,
Forklift Operator, Andaman Lakshadweep
Harbour Works, Kilthan, UT of Lakshadweep.

..... **Applicant**

(By Advocate - Mr. P.V. Mohanan)

v e r s u s

1. Union of India represented by the Secretary
Ministry of Shipping, Road Transport and Highways
(Department of Shipping), New Delhi – 110 001.

2. Deputy Chief Engineer,
Office of the Deputy Chief Engineer,
Andaman Lakshadweep Harbour Works,
Kavaratti – 682 555.

3. Assistant Engineer,
Andaman Lakshadweep Harbour Works,
Kilthan.

..... **Respondents**

(By Advocate - Mr. K.S. Dilip, ACGSC)

2. Original Application No. 180/00540/2015 :

K.K. Abdul Wahab, aged 51 years
S/o. U.P. Yousaf, Kunduvakada House,
Forklift Operator, Andaman Lakshadweep

Harbour Works, Kalpeni, UT of Lakshadweep. **Applicant**

(By Advocate - Mr. P.V. Mohanan)

v e r s u s

1. Union of India represented by the Secretary
Ministry of Shipping, Road Transport and Highways
(Department of Shipping), New Delhi – 110 001.
2. Deputy Chief Engineer,
Office of the Deputy Chief Engineer,
Andaman Lakshadweep Harbour Works,
Kavaratti – 682 555.
3. Assistant Engineer,
Andaman Lakshadweep Harbour Works,
Kilthan.

..... **Respondents**

(By Advocate - Mr. Thomas Mathew Nellimoottil, Sr. PCGC)

These applications having been heard on 08.01.2019, this Tribunal on 15.01.2019 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member -

OAs Nos. 180-539-2015 and 180-540-2015 have common points of fact and law involved and hence are being disposed of through this common order. The pleadings, documents and records in OA No. 180-539-2015 are referred to in this common order for the sake of convenience.

2. The applicant was selected and appointed on contract basis as Fork Lift Operator in Andaman Lakshadweep Harbour Works. However, the 2nd respondent issued fresh tender forms with a view to disengage the applicant

who had been working for over 12 years as Fork Lift Operator. The 2nd respondent has cancelled the work order without notice to the applicant. Aggrieved the applicant has approached this Tribunal claiming the following reliefs:

- “1. To call for the records leading to Annexure A10 proceeding dated 18.6.2015 and set aside the same in so far as it cancels the work order issued to the applicant as Fork Lift Operator at Kiltan from 1.4.2015 to 31.5.2016.
 2. To call for the records leading to Annexure A9 proceeding dated 28.5.2015 inviting quotation for engaging personnel to discharge the work of Fork Lift Operators in Andaman Lakshadweep Harbor Works and set aside the same.
 3. To direct the respondents to regularize the service of the applicant to the post of Fork Lift Operator in Andaman Lakshadweep Harbour Works forthwith with all consequential benefits.
 4. To direct the respondents to engage the applicant as Fork Lift Operator in Andaman Lakshadweep Harbor Works pursuant to work order executed as a contractor by order dated 29.4.2015 with all consequential benefits.
 5. Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.”
3. The applicant submitted that the Fork Lift Operators were proposed to be placed in the same pay scale of Rs. 950-1400/- attached to the post of Driver Grade II under Work Charged Establishment. By notice dated 4.2.2003, applications were called from eligible candidates to carry out the operation and maintenance of Fork Lift Crane and Power Tiller available at Kiltan as per existing terms and conditions. The applicant had applied for on 10.2.2003. By proceeding dated 31.3.2003, the applicant was directed to attend trade test on 9.4.2003. The applicant was selected as a contract

agency for operating Fork Lift and Power Tiller at Kiltan. Despite the existence of various substantive posts in the work charged establishment and Drivers in the Andaman Lakshadweep Harbor Works Department, the respondents had not taken steps to appoint the applicant substantively to the post in regular cadre. The applicant submitted representations seeking regularization of service but the same is unattended by the respondents. The applicant submitted that he had continuously worked more than 240 days in a calendar year with valid work order. Now the tender system is introduced by which quotations are invited from outsiders to discharge the duties of Fork Lift Operators. The intention of the respondents is to dispense with the service of the applicant in an arbitrary manner violating Article 14 of the Constitution of India. In support of his contentions applicant has relied upon paragraphs 15, 16 and 53 of the judgment of the apex court in ***Secretary, State of Karnataka & Ors. v. Umadevi & Ors. – 2006 (4) SCC 1***, paragraph 19 of the judgment of the apex court in ***U.P.S.E.B. v. Chandrapanday – (2007) 11 SCC 92*** and also the judgment of the apex court in ***H.S. Rajasekhara v. State Bank of Mysore – 2012 (1) SCC 285***.

4. Notices were issued to the respondents and they entered appearance through Shri K.S. Dilip, ACGSC in OA No. 180/539/2015 and Shri Thomas Mathew Nellimoottil, Sr. PCGC in OA No. 180/540/2015. Similar reply statements have been filed in both the cases. The respondents contend that

the Department had taken up the procurement, operation and maintenance of cargo handling equipments like cranes, forklifts etc. at ports and based on the requirement of Port Department of Lakshadweep Administration, the Chief Engineer & Administrator, Andaman Lakshadweep Harbour Works, Port Blair had accorded technical sanction to the estimate for procurement of 12 numbers of Forklift Trucks for easy handling of heavy cargo from jetty to the sites in various islands of Lakshadweep and 10 forklifts were procured as per requirement of Port Department. Accordingly action was initiated to select suitable candidates qualified for operation of these machines through department/employment exchange, Kavaratti in anticipation of approval of the proposals submitted to the Chief Engineer & Administrator for creation of posts. A formal interview was conducted for preparing merit list among the applied candidates. However, the proposal for creation of posts was not considered by the higher authorities. Therefore, the candidates who were already interviewed for the said posts could not be considered for appointment as Forklift Operators. The applicant is one among the candidates who appeared for test/interview. In view of the inability expressed by the Administrator to take over these Forklift Trucks and since the proposal for creation of required posts for operation of Forklift by the higher authorities could not be materialized, the department had decided to carry out the work of operation of these machineries on contract basis to avoid keeping these equipments idle for a

longer period. The applicant was entrusted with the work of operation and maintenance of the departmental Forklift at Kadamath including minor repair for a period of 12 months at the rate of Rs. 8,525/- per month which itself substantiates that the applicant is not a departmental candidate for considering appointment in Lakshadweep Harbour Works. Separate work orders were issued in different spells with proper break. The respondents submitted that there is a ban for filling vacant posts which are lying for more than one year and above. Moreover this Tribunal had dismissed OA No. 163 of 2007 filed by the applicant along with 4 others finding that the applicants cannot claim the appointment as a matter of right. Respondents pray for dismissing the OAs.

5. Heard Shri P.V. Mohanan, learned counsel for the applicants appearing in both the cases and Shri K.S. Dileep, ACGSC for respondents in OA No. 180/539/2015 and Shri Thomas Mathew Nellimoottil, Sr. PCGC for respondents in OA No. 180/540/2015. Perused the records.

6. In the present cases it is quite clear that the work which is being performed by the applicants are permanent in nature because the Forklift installed by the Chief Engineer is needed permanently and therefore, consequently the Forklift operators are also required. But for want of sanction of posts by the respondents the applicants were not given

appointment on regular basis. They are working on contract basis for past more than 12-20 years. As per the judgment of the apex court in *State of Mysore v. S.V. Narayanappa* – 1967 AIR 1071, it is a misconception to consider that regularization meant permanence. Further in *R.N. Nanjundappa v. Thimmiah* – 1972 AIR 1767 the apex court held that Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment, regularization cannot be said to be a mode of recruitment. However, in the cases in hand the mode/process of recruitment had underwent but the sanctioning of the post was not acceded too by the appropriate authorities and because of which the applicants were made to work as contract employee, though they were not engaged through any contractual agency who were supplying the manpower in lieu of payment. The case of the applicants does not fall in such category of contractual appointment by a contractor. They were given contract employment directly by the respondents after conducting suitable test and interview and they had been continuing since then to the utmost satisfaction of the respondents. In short their cases do not fall in the category of backdoor entry of unqualified persons at the time recruitment. The applicants were shortlisted after test and interview and the department was awaiting sanctioning of posts of Forklift operators to operate the Forklifts which were installed at

Lakshadweep on permanent basis.

7. Relying on the judgment of the Hon'ble apex court in ***State of Punjab & Ors. v. Jagjit Singh & Ors.*** - (2017) 1 SCC 148 the applicants submitted that temporary employees are entitled to draw wages at the minimum of the pay scale i.e. at the lowest grade in the regular pay scale extended to the regular employees holding the same post. The relevant portion of the apex court's judgment is extracted below:

"60. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post."

The applicants now apprehends that they may be replaced by tender process for engagement of new Forklift operators which seems to be unfair on the part of the respondents.

8. Keeping in view the principles laid down by the apex court we are of the view that the applicants should be allowed to be continued and shall not be replaced even in the event of new tender process is opted by the respondents for the availing the service of Forklift operators. With regard to the payment of wages is concerned the applicants shall make a representation within one month which shall be considered by the respondents in terms of the principles laid down by the apex court in ***Jagjit Singh's*** case (supra). Further as regards claim of the applicants for regularization of their service we feel that it is for the respondents to decide the said matter. Accordingly, the applicants shall also make a representation in this regard within one month from the date of receipt of a copy of this order which shall be considered by the respondents as per the relevant rules on the subject. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of the representations from the applicants.

9. The Original Applications are disposed of as above. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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Original Application No. 180/00539/2015

Applicant's Annexures

- Annexure A1** - True copy of the proceeding No. LHW/ WC/ 3/ 2653 dated 13.10.92 along with letter No. D.O. No. PD/ 25021/1/94-ALHW dated 18.1.94.
- Annexure A2** - True copy of the Notice No. LHW/EE/AMN/T-43/305/ 2003 dated 4.2.2003.
- Annexure A3** - True copy of the proceeding LHW/ AMN/ F. 345(D)/33/2003 dated 31.3.03.
- Annexure A4** - True copy of the proceeding No. LHW/ EE/ AMN/T.42/840/2003 dated 21.4.2003.
- Annexure A5** - True copy of the Work Order No. LHW/ EE/ AMN/T-42/883/2003 dated 24.4.2003.
- Annexure A6** - True copy of the certificate No. LHW/ EE/ AMN/T-15/908 dated 13.06.2013.
- Annexure A7** - True copy of the letter No. EE/AMN/T-14/ 695/2015 dated 30.4.2015 along with Work Order No. EE/AMN/VO-04-2015 dated 29.04.2015.
- Annexure A8** - True copy of the letter D.O. No. SM/VIP/PS/ 2012 26.10.2012.
- Annexure A9** - True copy of the Notice No. EE/AND/DB-115/ Vol.38/868/2015 dated 28.05.2015.
- Annexure A10** - True copy of the proceeding No. DCB/KVT/ DB/463/1611 dated 18.06.2015.

Annexures of Respondents

- Annexure R2(a)** - True copy of the letter F.No. 6/9/88- Port dated 09.02.90 of the Port Department of Lakshadweep Administration.

- Annexure R2(b)** - True copy of the proposal letter No. LHW/WC/ 3/2653 dated 13.10.1992.
- Annexure R2(c)** - True copy of the D.O. No. 25021/1/94-ALHW dated 18.01.1994.
- Annexure R2(d)** - True copy of the letter dated 13th April, 1994 of UT of Lakshadweep.
- Annexure R2(e)** - True copy of the letter from the Under Secretary to the Government of India, Ministry of Shipping, bearing No. A-18018 dated 19.03.2010.

Original Application No. 180/00540/2015

Applicant's Annexures

- Annexure A1** - True copy of the proceeding No. LHW/ WC/ 3/ 2653 dated 13.10.92 along with letter No. D.O. No. PD/ 25021/1/94-ALHW dated 18.1.94.
- Annexure A2** - True copy of the Circular No. LHW/ WC/ 59/ 5180 dated 30.03.1994.
- Annexure A3** - True copy of the Memorandum No. LHW/ WC/ 59/94/1245 dated 25.07.1994.
- Annexure A4** - True copy of the Work Order No. LHW/ EE/ AND/ Group KLP – 3 dated 17.03.95.
- Annexure A5** - True copy of the Work Order No. EE/ AND/ DB-115/VOL-37/W.O-39/146/2015 dated 28.01.2015.
- Annexure A6** - True copy of the certificate No. LHW/ AE/ KLP/F409/210 dated 3.5.2006 certifying that the applicant had been working as Fork Lift Operator from 18.03.1995.
- Annexure A7** - True copy of the proceeding No. ALHW/ TECH/6(26)/2007/325 dated 01.2.2013.

- Annexure A8** - True copy of the Circular No. LHW/ WC/ 59/ 3039 dated 10.08.2006.
- Annexure A9** - True copy of the Circular No. LHW/ WC/ 59/ 1340 dated 06.10.2006.
- Annexure A10** - True copy of the order in OA No. 632/2006 dated 10.10.2006.
- Annexure A11** - True copy of the letter DO No. MOP/2093/2004 dated 20.08.2004.
- Annexure A12** - True copy of the letter DO No. 1946/ SM/ VIP/ PS/2012 dated 26.10.2012.
- Annexure A13** - True copy of the Notice No. EE/AND/DB- 115/Vol.38/868/2015 dated 28.5.2015.
- Annexure A14** - True copy of the representation dated 17.06.2015.
- Annexure A15** - True copy of the proceeding No. DCE/ KVT/ DB/463/1611 dated 18.06.2015.
- Annexure A16** - True copy of the Letter No. AE(C)/KLP/F- 109/165/2015 dated 22.06.2015.
- Annexure A17** - True copy of the work order No. EE/AND/DB- 110(KLP)/VOL-02/W.O-4/662/2016 dated 21.05.2016.
- Annexure A18** - True copy of the extension order No. EE/AND/ DB 110(KLP)/Vol.II/1402/2016 dated 16.12.2016.
- Annexure A19** - True copy of the letter No. AE(C)/KLP/F- 404/64/2018 dated 27.02.2018.
- Annexure A20** - True copy of the letter No. AE(C)/KLP/F- 404/101/2018 dated 22.03.2018.
- Annexure A21** - True copy of the letter No. ALHW/AE(C)/F- 404/118/2018 dated 2.04.2018.

Annexure A22 - True copy of the order in O.A. No. 556/2008 dated 18.10.2010.

Annexure A23 - True copy of the order in OA No. 732/2016 dated 25.08.2017.

Annexures of Respondents

Annexure R(a) - True copy of letter F.No. 6/9/88- Port dated 09.02.1990.

Annexure R(b) - True copy of letter No. LHW/ WC/3/2653 dated 13.10.1992.

Annexure R(c) - True copy of D.O. No. 25021/1/94-ALHW dated 18.01.1994.

Annexure R(d) - True copy of letter dated 13.04.1994.

Annexure R(e) - True copy of letter No. A-18018 dated 19.03.2010.

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