

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 181/00105/2014

Friday, this the 22nd day of February, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Mullakoya V.M., aged 46, S/o. Mohammed Koya P.,
 Valiyamathil House, Kalpeni, Watch & Ward, Children's Park,
 (terminated), Village (Dweep) Panchayath, Kalpeni,
 UT of Lakshadweep. **Applicant**

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

V e r s u s

1. The Administrator, U T of
Lakshadweep, Kavaratti – 682 555.
2. Director of Panchayat, Department of Panchayat,
Administration of UT of Lakshadweep, Kavaratti – 682 555.
3. The Executive Officer, Village (Dweep) Panchayat,
Kalpeni – 682 557. **Respondents**

(By Advocate : Mr. S. Manu)

These applications having been heard on 15.02.2019 the Tribunal on
 22.02.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant in this OA are to quash Annexure
 A8 order dated 24.1.2014 in so far as it discharges/dispenses with the
 service of the applicant and to declare that the applicant is entitled to
 continue as Watch and Ward Children's park, Kalpeni with all consequential
 benefits.

2. The question raised in the present Original Application is whether the applicant is entitled to continue as Watch and Ward at Children's Park, Kalpeni or not ?

3. The admitted factual position of the case are that the applicant was appointed as casual labour for Watch and Ward Work on daily wage basis vide Annexure A2 order dated 31.7.2003 with the respondents with breaks and thereafter had been re-engaged. The applicant was disengaged vide the impugned order at Annexure A8 treating him as included in category (E) in the interim order dated 3.7.2013 in OA No. 26 of 2013 and connected cases.

4. The respondents have filed their reply statement wherein it is submitted that large number of causal labourers have approached this Tribunal for continuing in service and granting them permanency. As per the interim order passed by this Tribunal it was directed for categorization of labourers in five groups. But all these interim orders stand automatically vacated on disposal of casual labourer cases on 6th March, 2014. Thereafter the Division Bench of the Hon'ble High Court in OP (CAT) No. 133 of 2012 and 606 of 2012 considered the case of casual labourers in Union Territory of Lakshadweep and on 6.6.2012 dismissed the claim of casual labourers for regularization observing as under:

“.....As already stated casual basis appointments could only be a period of 89 days and after a break, they can be reappointed depending upon the exigency, number of vacancies and the number of people who applied for such casual labour status. It is left to the department to appoint them in

batches so as to see everyone would get a minimum of 89 days of employment in an year.

4. We are at loss to understand how the present petitioners can claim any preferential right over the applicants before Tribunal or claim better right than any other casual labourer. Irrespective of the nomenclature ultimately it waters down to the position that all were casual labourers. In the absence of any legal protection for them to get absorbed in the department where they are employed for a long period as casual labourers, we are afraid that they will not be entitled to any benefit of permanency. Therefore, in the light of circular or guidelines issued by the Lakshadweep Administration, guarantee of 89 days of employment must be extended to all the persons subject to the conditions referred to in the circular, irrespective of length of time since they were discharging their work as casual labourers.”

5. It is further submitted that the method adopted by administration to ensure minimum employment to maximum number of persons by streamlining the engagement of casual labourers is already upheld by the Hon’ble High Court in OP (CAT) No. 133 of 2012 which were again challenged before the Hon’ble apex court in SLP No. 26011 of 2013 and on 13.9.2013 the apex court dismissed the SLP. Thus the method adopted by the administration to streamline the engagement of casual labourers was upheld. Respondents have relied upon the judgment of the apex court in ***Mallikarjuna Rao v. State of A.P.*** – (1992) 2 SCC 707 wherein it was held as under:

“It is nether legal nor proper for the High Courts or Administrative Tribunals to issue directions or advisory sermons to the Executives in respect of the sphere which is exclusively within the domain of the executive under the constitution.”

Further in ***Asif Hamed v. Jammu & Kashmir*** – AIR 1989 SC 1899 the apex court held:

“The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislative or executive,

provided these authorities do not transgress, their constitutional powers or statutory powers.”

6. It is further submitted that the Department will extend the benefit of relaxation in age, educational qualification once any policy decision is taken by the competent authority and these applicants would not be treated in isolation as casual labourers have been engaged in other Departments of UT of Lakshadweep administration. The Director of Panchayats is the nodal Department through which all the other Departments of UT of Lakshadweep Administration including Department of Science & Technology engage casual labourers whenever any need arises. They have further relied upon the judgment of the apex court in *Harinder Kaur v. Union of India* – (2009) 13 SCC 90 wherein it was held that long service by itself may not be a ground for directing regularisation. Regularisation is not a mode of appointment. When appointments in public office are required to be made, the provisions of Articles 14 & 16 of the Constitution of India are required to be scrupulously followed. In *Nand Kumar v. State of Bihar* – (2014) 5 SCC 300 the Hon’ble apex court held that daily wagers are not appointees in strict sense of the term appointment. Consequences of their appointments being temporary, was within their knowledge and therefore they cannot invoke theory of legitimate expectation for being conformed in the post. Lastly in *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.* - Civil Appeal Nos. 3595/1999 and connected cases dated 10.4.2006 the Hon'ble apex court has drawn a distinction between the temporary employee and daily wager and those who are appointed irregularly in the sense that there

was no completion of some statutory procedure in the selection process which did not go to the root of the selection process. Further in the judgment of the apex court in ***Satya Prakash & Ors. v. State of Bihar & Ors.*** - Civil Appeal No. 2440/2010 decided on 16.3.2010 it is quite evident that the person engaged on daily wage basis not against a regular vacancy without selection process in accordance with the Recruitment Rules are not entitled to get the benefit of paragraph 53 of the judgment of the apex court in ***Umadevi's*** case (*supra*).

7. In the nut shell the respondents have emphasized that because of the special reasons and circumstances the limited number of need of casual labourers were rationally distributed amongst the residents of Lakshadweep Islands. The Hon'ble High Court in WP(C) No. 26748 of 2018 – ***Abdul Jaffer Khan & Ors. v. The Admn., UTL & Ors.***, dated 20th August, 2018 considered the question of jurisdiction whether this Tribunal can entertain the labourers engaged by Village Panchayat. The Hon'ble High Court observed that there is nothing wrong in the direction given by the Tribunal for formulation of transparent scheme for engagement of casual labourers and rational distribution of employment by the administration as well as Panchayat. The administration had formed a welfare policy for engagement of casual labourers by the administration as well as by the village panchayat i.e. initially one should be engaged for 89 days from the names already registered with different districts which means a particular person of a particular district has got more chance of re-employment as and when vacancies are there. Department has already taken into consideration the

relaxation in age as well as relaxation in educational qualification.

8. In view of the above we dispose of this Original Application directing the respondents to follow the judgment passed by the Hon'ble High Court in WP(C) No. 26748 of 2018 – *Abdul Jaffer Khan & Ors. v. The Admn., UTL & Ors.* No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 181/00105/2014**APPLICANT'S ANNEXURES**

- Annexure A1** - True copy of the technical examination higher grade certificate dated 12.3.1999.
- Annexure A2** - True copy of the proceeding F. No. 5/03/2003-VDP dated 31.7.2003.
- Annexure A3** - True copy of the experience certificate F. No. 1/1/2011 VDP(KLP)(3) dated 17.4.2013 issued to first applicant.
- Annexure A4** - True copy of the order in OA Nos. 601/2013 & connected cases dated 3.7.2013.
- Annexure A5** - True copy of the office memorandum F. No. 5/14/2012-DOP (Part)(2) dated 8.7.2013.
- Annexure A6** - True copy of the Layoff Notice F. No. 14/1/2013-VDP (KLP)(2) dated 16.11.2013.
- Annexure A7** - True copy of the explanation dated 19.11.2013.
- Annexure A8** - True copy of the proceeding F. No. 14/01/2013-VDP (KLP) dated 24.1.2014.

RESPONDENTS' ANNEXURES

Nil

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