

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 181/00771/2019

Friday, this the 22nd day of November, 2019.

CORAM:

HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

1. Abookilab. M, 37 years,
S/o. Syed Koya T.P.,
Thattampokkada House, Andrott Island,
Union Territory of Lakshadweep – 682 551.
2. Akbar Ali K.C, 36 years,
S/o. Sayed Ismail,
Achedapurakkadu House,
Andrott Island, Union Territory of Lakshadweep.
3. Mohammaed Farook. K., 39 years,
S/o. Attakoya K., Kunnel House,
Andrott Island,
Union Territory of Lakshadweep. - Applicants

[By Advocate : Mr. R. Rohith]

Versus

1. The Director,
Department of Sports and Youth Affairs,
Kavaratti, Union Territory of Lakshadweep – 682 555.
2. The Chairman,
Regional Sports Counsel,
Department of Sports and Youth Affairs,
Kavaratti, Union Territory of Lakshadweep,
Andrott Island, Lakshadweep – 682 551.
3. The Administrator,
Union Territory of Lakshadweep,
Kavaratti Island, Lakshadweep – 682 555.
4. The Principal,
Government Senior Secondary School of Andrott,
Union Territory of Lakshadweep – 682 551.

5. The Executive Officer,
Village Dweep Panchayath,
Andrott Island, Lakshadweep – 682 551.
6. The Director,
Directorate of Panchayath,
Union Territory of Lakshadweep,
Kavaratti – 625 555. - Respondents

[By Advocate : Mr. S. Manu]

The application having been heard on 19.11.2019, the Tribunal on 22.11.2019 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member

The applicants are casual employees working at Fitness Center, Andrott on rotation basis for a period of 89 days. Now, the respondent No. 2 has issued notification for engagement of casual employees for their department on contract basis. The grievance of the applicants are, notice for the employment has not clarified the post, it has only mentioned casual laborers (Daily wages) on contract basis for a period of one year for Fitness Centre/Indoor Sports Hall at Andrott through conduct walk in interview. It is further stated that this notice for employment is directly affecting the employment of applicants as they are working with the respondents as casual employees. Ultimately, their service is terminated in order to engage the fresh employees on contract basis. In support of their contention, they have relied on legal principles laid down in **State of Haryana & Others v. Piara Singh & Others 1992 (4) SCC 118**, the Hon'ble Supreme Court held that temporary employee should not be replaced by another set of temporary employee and he must be replaced only by a regular selected employee. It is

further pointed out that this is necessary to avoid arbitrary action on the part of appointing authority. In the present case, the applicants were engaged as casual employees by the respondents are going to be removed, which is particularly, illegal action.

2. Notices were issued and the respondents put appearance through Mr. S. Manu, who filed a detailed reply statement.

3. The learned counsel for the respondents submitted that the Lakshadweep Island State Sports Council found that the casual labourers engaged for 89 days are not maintaining the Fitness Centers properly and they are not attending their duty regularly. The Council is not able to control the casual labourers effectively as they are sponsored by the VDPs, that too for a short period of 89 days. The maintaining of Fitness Centers is a responsible duty and they have to maintain properly the machines worth lakhs of rupees.

4. For want of accountability on the part of casual labourers, the Council is suffering heavy loss and damage. Being so, the Council is decided to discontinue the factors of engaging casual labourers from the labour register maintained by the Dweep Panchayaths at the Fitness Center, Kavaratti and the Chairman of Lakshadweep Island State Sports Council approved the proposal for engaging contract employees for a period of one year. In the light of the above, the casual labourers at the Fitness Center, Kavaratti were replaced with contract employees as per order dated 23.09.2019. It is further submitted by the respondents that as

per the notice, 20% weightage in interview has to be given for experience. The applicants are having experience and they may enjoy the benefit of 20% weightage marks allotted for experience. The same will safeguard their interests.

5. The applicants are casual labourers whose names figure in the labourers register maintained by the VDP. They can also participate in the interview. There is no upper age limit has been prescribed for participating in the selection process. It is further submitted that 2nd applicant alone is engaged as casual labourer at Fitness Center, Andrott. The 1st and 3rd applicants are not presently engaged. The service of 1st applicant was disengaged on 24.10.2019 and the service of the 3rd applicant was disengaged on 26.07.2019 respectively. They have no right to claim continuous engagement.

6. Heard the learned counsel for the parties at length. The judgment in **State of Haryana & Others v. Piara Singh & Others** 1992 (4) SCC 118, it is held that:

“46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.”

Though the Apex Court has clearly laid down that temporary employee should not be replaced by another set of temporary employee and he must be replaced only by a regular selected employee, learned counsel for the respondents submitted that there is earlier decision taken by the Administrator in consultation with the authorities that due to want

of accountability on the part of casual labourers, the council is suffering heavy loss and damage. Therefore, the Council has decided to discontinue the practice of engaging casual labourers from the labour register maintained by the Dweep Panchayaths at the Fitness Center.

7. Be that as it may, this Tribunal is of the view that, according to Apex Court decision, the applicants are having right to be considered as Casual Labourers. After considering the facts of the case, this Tribunal is of the view that while engaging the casual labourers on daily wages on contract basis applicants have right to be considered in a positive way as stated by the respondents that 20% weightage would be given to the applicants.

8. In the facts and circumstances of the case and legal position discussed, we hereby direct the respondents to consider applicants along with others but preference should be given to them for appointment as Casual Labourers on contract basis for an year because they are experienced holder. The appointment letter must stipulate that their services would be terminated, if they are found to be deficient for maintaining the Fitness Center equipments.

9. The O.A is disposed of with the above observation with no order as to costs.

(Dated, 22nd November, 2019.)

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

Applicant's Annexures

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| Annexure A-1 | - | A true copy of the experience certificate dated 22.10.2019 issued by the 2 nd respondent to 1 st applicant. |
| Annexure A-2 | - | A true copy of the experience certificate dated 22.10.2019 issued by the 2 nd respondent in favour of the 2 nd applicant. |
| Annexure A-3 | - | A true copy of the experience certificate dated 22.10.2019 issued by the 2 nd respondent in favour of the 3 rd applicant. |
| Annexure A-4 | - | A true copy of the letter dated 04.10.2019 in F. No. 1/51/2011-SYA issued by the first respondent. |
| Annexure A-5 | - | A true copy of the notice dated 17.10.2019 in F. No. 01/24/2019 -MGSSSA(DP) issued by 2 nd respondent. |
| Annexure A-6 | - | A true copy of the application for the registration of casual employees. |
| Annexure A-7 | - | A true copy of the order dated 26.02.2018 in F. No. 5/14/2012-DOP issued by the 6 th respondent. |

Annexures of Respondents

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| Annexure R1(a) | - | The copy of the order F.No. 1/2/LISSC/2012/167 dated 23.09.2019. |
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