

P. Sathi Devi, Vs. Union of India Rep. by Secretary, Ministry of Information and Broadcasting, New Delhi and Others

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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Mar-29-2010

Judge : Honourable Mr. George Paracken, Judicial Member & Honourable Mr K. George Joseph, Administrative Member

Appeal No. : O.A No. 560 of 2005 and O.A. No. 661 of 2005

Appellant : P. Sathi Devi,

Respondent : Union of India Rep. by Secretary, Ministry of Information and Broadcasting, New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Mr P Vijayakumar, Advocate. For the Respondents: Mrs Aysha Youseff, ACGSC, NN Sugunapalan Senior Advocate, G Sasidharan Chempazhanthiyil, Advocate.

Judgement :

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

These two cases are remitted to this Tribunal by the Hon'ble High Court of Kerala vide its common judgment dated 14.1.2009 in W.P.(C) No. 34419 /2005. The Hon'ble High Court has desired that both these applications may be disposed of by a common order but O.A. No. 661/2005 should be considered first as the fate of that application will depend on the fate of O.A.560/2005 as both the applicants are

claiming regularisation as Make-up Assistants at Doordarshan Kendra, Thiruvananthapuram against the single vacancy available at present.

2. O.A.560/2005 was filed by Mrs. P Sathi Devi wherein Shri P.G. Baiju has been made as respondent No. 5. Similarly, O.A.661/2005 was filed by Shri P.G. Baiju making Mrs. P Sathi Devi as respondent No. 4.

3. Facts which are common in both O.A.661/2005 and O.A.560/2005 3.1 Smt P Sathi Devi and Shri P.G.Baiju were engaged as Make-up Assistants on 18.3.1986 and 24.3.1987 respectively. In terms of an order of the Principal Bench of this Tribunal in O.A.No. 563/1986 dated 14.2.1992 - Anil Kumar Mathur v. Union of India and others, the Director General of Doordarshan has formulated a scheme for regularisation of Casual Artists and issued the same Office Memorandum No. 2(3)/86-SI dated 9.6.1992. According to the said scheme, the upper age limit was relaxable to the extent of service rendered by the Casual Artists at the time of regularisation. A minimum of 120 days of service in the aggregate in one year has been treated as one year's service rendered for the purpose. The scheme was modified vide Office Memorandum dated 17.3.1994 according to which the number of days for the purpose of regularization was to be computed on the basis of actual wages given to the casual staff Artist in a month, divided by the minimum wage prevalent in the State during the relevant time of booking. For example, if a Casual Staff Artist has been paid an aggregate a sum of Rs. 1550/- in a month whether for working for 10 days or for 2-3 assignments in a month and the minimum wage prevalent in the State at the relevant time was Rs. 50/- the staff artist would be deemed to have worked for 30 days in a month (i.e. Rs. 1500/- divided by 50) subject to the condition that the days so computed would not exceed 25 days in a month. In the case of staff artists who were engaged initially when they were over aged according to the recruitment rules, the number of days they worked on casual basis according to the revised formula were to be worked out and referred to the Directorate for taking a decision on merit. Vide letter 14.8.1997, the respondents have informed Shri Baiju that in accordance with the aforesaid scheme, they have considered his case for regularisation and found him eligible for regularisation in the category of Make-up Assistant but since there was no vacant post of Make-up Assistant was immediately available. When the next

vacancy has arisen in the month of February 1999, he staked his claim for the same and filed O.A.461/1999 before this Tribunal but the same was dismissed on the ground that no actual vacancy has arisen since it was only a case of mutual transfer. Again, he filed O.A.984/2000 claiming regularisation on the basis of the provisions of the Persons with Disabilities (Equal Opportunity Act) 1995 and it was also dismissed. Thereafter, he filed O.A.573/2001 praying for regularisation/ad hoc appointment against a leave vacancy and the same was also disposed of vide order dated 23.8.2001 directing the respondents to consider him for ad hoc appointment as Make Up Assistant as and when vacancy or work would arise and consider him for appointment on regular vacancy as and when a regular vacancy would become available. The official respondents filed Review Application No. 6/2002 in the said O.A stating that Smt Sathidevi was placed above the applicant in the eligibility list of casual Make Up Assistant for regularisation, and therefore the earlier order of this Tribunal directing the respondents to consider Shri Baiju for ad hoc appointment against the leave vacancy was liable to be reviewed. This Tribunal disposed of the said R.A. also vide Annexure A-7 order dated 12.7.2002 making it clear that the respondents have never been prevented from considering Smt Sathi Devi or any other person who may have equal or superior claim for regularization/adhoc appointment. Thereafter, Smt Sathi Devi filed O.A.242/2002 before this Tribunal claiming that she has a preferential claim over Shri Baiju for regularisation as Make Up Assistant as her initial engagement was in the year 1986 and it was prior to his engagement. This Tribunal dismissed the said O.A on the ground that there was no evidence to show that the official respondents have entertained any representation of Shri Baiju favourably to neglect her preferential claim.

3.2 Thereafter, the Director, Door Darshan Kendra, Trivandrum has referred the question of eligibility of both Smt Sathi Devi and Shri Baiju to the D.G, Doordarshan, New Delhi vide their letter No. 2(6) 2003-AI/DKT dated 16.3.2004 and they after analysing the cases of both of them, held that Smt Sathi Devi was ineligible and Shri Baiju was eligible for regularisation as Make up Assistant vide their letter dated 22.9.2004. Following was the analysis of the data of both of them made by the D.G., Door Darshan in the said letter for determining their eligibility for regularisation:

1. Name P Sathi Devi PG.Baiju

2. Date of Birth 28.1.1958 30.5.1960

3. Date of initial engagement 18.3.1986 24.3.1987

4. Category OBC OBC

Year wise break up of 1986-50 1987-250 number of days worked for 1987-25
1988-275 upto 9.6.992 1988-300 1989-275 1989-250 1990-275 1990-250 1991-
300 1991 -300 upto 1992-150

5. Upto 1992-50 Number of years worked Four Six for 120 days or more in a

6. Calendar year Age on the date of initial 27Y 10M 20D 26Y 9M 24D

7. Booking

8. Age on 9.6.1992 34Y 1M 11D 32Y 0M 9D Age on 9.6.1992 after 30Y 1M 11D
26Y 0M 9D

9. Permissible relaxation Age limit as prescribed in 21-30 21 -30 R/Rs for the post
in force at

10. The time of initial booking Eligible/Ineligible for Ineligible Eligible

11. Regularization

3.3 Later, the respondents issued the offer of appointment vide letter-dated 4.2.2005 to Shri Baiju for the post of Make-up Assistant at Doordarshan Kendra, Thiruvananthapuram on purely ad hoc basis. He took charges of the post and he is still continuing in that post. Meanwhile, the High Court of Kerala passed a judgment in O.P.No.35955/2000(S) on 16.5.2005 arising out of O.A.984/2000 (supra) directing the respondents to permit Shri Baiju to continue in service on the basis of Memorandum of D.G, Doordarshan dated 22.9.2004 and his claim of regularisation should be considered and he should be advised of the decision within 3 months. Thereafter, the D.G., Door Darshan issued letter dated 7.6.2005 (impugned in O.A.661/2005) stating that it has re-examined the case of the Smt P

Sathi Devi in consultation with the Ministry of I and B and held that the age relaxation envisaged in the scheme is over and above the age prescribed for direct recruitment under the Recruitment Rules which implies that if for a post, upper age limit is 25 years, the casual artist would be entitled to further relaxation equivalent to the years for which he/she might have put in casual working for 120 days in a year or more. So the basic upper age limit for direct recruitment has to be worked out as prescribed in the Recruitment Rules. This basic age will also include the age relaxation admissible to SC/ST/OBC categories as per the provisions of Recruitment Rules. Accordingly, they held that Smt Sathi Devi is entitled for 3 years age relaxation admissible to OBC candidates and she is senior to Shri Baiju for the purpose of regularisation as Make up Assistant against the only available vacancy thereby bringing an end to the ad hoc appointment of Shri Baiju.

4. Shri Baiju has challenged the aforesaid direction of D.G.; Door Darshan in O.A.661/2005 on the ground that relaxation of age can be considered only in accordance with the provisions contained in the Scheme for regularisation and no other relaxation dehors the said provisions can be granted. According to the scheme as notified as O.M. dated 9.6.1992 and modified by O.M. dated 17.3.1994, there is no provision for age relaxation over and above the provisions of the scheme. He has also submitted that the aforesaid direction of the D.G, Door Darshan is opposed to the judgment of Hon'ble High Court in O.P.35955/2000 wherein the respondents were directed to consider his claim in terms of his entitlement as stated in the O.M dated 22.9.2004. Further, he has challenged the findings in the impugned letter dated 7.6.2005 that Shri Sathi Devi is senior to him. According to him, he has completed 250 days in 1987 and thus gained eligibility for regularization over Smt Sathi Devi who completed 300 days only in 1988. Upto 9.6.1992, while he had worked for 120 days or more during 6 calendar years, Smt Sathi Devi has completed 120 days only in 4 calendar years. He has also submitted that he is entitled to claim the benefit of Section 33 of Persons with Disabilities Act, 1995 as he is a handicapped person and Make-up Assistant is an identified post for recruitment from persons suffering from loco motor disability. He has also challenged the age relaxation granted to Smt Sathi Devi over and above what is provided in the scheme as the Hon'ble Supreme Court has interfered with some relaxations granted over and above the provisions of the scheme. In this

regard, he relied upon the judgment of the Apex Court in Director, Doordarshan Kendra, Trivandrum and others v. S. Kuttan Pillai and others [(1998) 8 SCC 746] wherein it has been held as under: "6. By order dated 8.2.1991 passed in O.A. No. 894 of 1990 the Tribunal had directed the Union of India to formulate and implement a scheme of regularization of Casual Artistes who had done 120 days of casual service. In accordance with the said direction given by the Tribunal, the Central Government framed a scheme for regularization, which was approved by the Tribunal by its order-dated 14.2.1992 passed in O.A. No. 563 of 1986. The said scheme has been notified vide office memorandum dated 9.6.1992. Under para 6 of the scheme, the upper age limit would be relaxed to the extent of service rendered by the Casual Artists at the time of regularization and a minimum of 120 days' service rendered for the purpose. By office memorandum dated 10.6.1992, general guidelines have been issued to facilitate the implementation of the scheme. In clause (ii) of the said guidelines, it is stated that for determining the number of years for which age concession is to be given, engagement for a total period of 120 days in one calendar year will be taken as one year. The said scheme has been revised by OM dated 17.3.1994 and OM dated 5.7.1994. 7. In the impugned judgment, the Tribunal has referred to Note I below clause 12 of the recruitment rules wherein provision has been made for relaxation in age upto 35 years for government servants. The Tribunal has directed that the respondents are entitled to the benefit of relaxation of age in view of the said provision so as to enable them to be considered for regularization. In our opinion, the said direction given by the Tribunal cannot be upheld. The matter of regularization of the respondents including the question whether they should be given relaxation in the matter of age has to be considered only in accordance with the provisions contained in the scheme as notified vide OM dated 9.6.1992 as modified by Oms dated 17.3.1994 and 5.7.1994 and they cannot be granted relaxation in age de hors the said provisions. The appeal is accordingly allowed and the impugned judgment of the Tribunal is set aside and it is directed that the matter of regularization of the respondents will be considered by the appellants in accordance with the scheme as notified vide OM dated 9.6.1992 as modified by OM dated 17.3.1994 and OM dated 5.7.1994. Such consideration shall be done within a period of two months. No order as to costs."

5. According to him, the crucial date for considering relaxation of age was 9.6.1992, but on that date, there was no provision for relaxation of age for OBC. The Scheme being a one-time scheme and not an ongoing one no age relaxation could be given subsequently. When the benefit of age relaxation itself was not available to OBC, it is nothing but illegal and arbitrary exercise of power by the authorities to grant such relaxation to Smt Sathi Devi. He has also produced a copy of Government of India, Dept. of Personnel and Training O.M. No. 36012/22/93-Estt.(SCT) dated 22.10.1993, O. Ms of even number dated 15.11.1993 and 29.12.1993 by which upper age limit prescribed for direct recruitment was relaxed by three years in respect of candidates belonging to OBCs, in support of his aforesaid submission.

6. Smt Sathi Devi in O.A.560/2005 has submitted that she was initially engaged as a Make up Assistant from 18.3.1986. According to her, as per the scheme for regularisation of casual artists promulgated on 9.6.1992, the maximum age limit was 30 years. Her date of birth being 28.4.1958, by the Scheme itself, she is entitled to be considered upto 28.4.1988. The provision for reservation and age relaxation of 3 years to OBCs came into effect from 8.9.1993. Being a person belonging to Ezhava Community, which has included in the list of OBC, she is entitled to be considered for 3 more years, i.e. upto 28.4.1991. She has also submitted that since she had rendered more than 120 days service per annum in the years 1987, 1988, 1989, 1990 and 1991, she is entitled for age relaxation for that many years also. But Shri Baiju was engaged only with effect from 24.3.1987. The regular vacancy of Make up Assistant has arisen with the Doordarshan Kendra, Trivandrum only with effect from December 2003 i.e. the date from which one post of Make up Assistant was shifted from Panaji to Trivandrum and on that date the orders regarding reservation of posts and relaxation in age for OBCs was available.

7. We have heard the learned counsel for the parties. The Director General has made an analysis of the claims of both Smt Sathi Devi and Shri Baiju who belong to OBC category for regularisation as Make up Assistants with reference to the scheme dated 9.6.1992. Considering the dates of their initial engagement of 18.3.1986 and 24.3.1987, no doubt that Smt Sathi Devi is senior to Shri Baiju.

According to the scheme dated 9.6.1992, one of the the criteria for regularization was that the Casual Artists should have been engaged for an aggregate period of 120 days in a calendar year. Both Smt Sathi Devi and Shri Baiju have fulfilled this condition as they have put in more than 120 days in 4 and 6 years respectively. The upper age prescribed in the Recruitment Rule for the post is 30 years i.e. as on 9.6.1992. On 9.6.1992, both of them are over aged as their ages as on that date are 34 years 10 months 20 days and 32 years months and 9 days respectively. Since they had 4 years and 6 years respectively with minimum 120 days service per annum, they were entitled for relaxation of age to the extent of those years and after granting that relaxation, their age were 30 years 1 month 11 days and 26 years 0 months 9 days respectively. Thus Smt Sathi Devi was found to be over aged by 1 month and 11 days as on 9.6.1992. The Director General, Door Darshan has, therefore, declared that Smt Sathi Devi was ineligible and Shri Baiju was eligible for regularization. Shri Baiju was also granted appointment as Make up Assistant on ad hoc basis vide respondents offer of appointment-dated 4.2.2005 against the regular vacancy, which has arisen in December 2003. However, the respondents re-examined their cases probably on the representation of Smt Sathi Devi and held that she is entitled for 3 years age relaxation admissible to OBC candidates. Thus, by applying both relaxations, her age on 9.6.1992 was found to be 27 years 1 month 11 days, which is well within the maximum age limit of 30 years.

8. Now the only question is whether respondents were justified in granting 3 years age relaxation to Smt Sathi Devi as admissible to OBC candidates, over and above the relaxation of age in terms of number of years of casual service rendered by the candidates specified in the scheme. In our considered view, the respondents were quite justified in doing so because the age relaxation prescribed in the scheme is not a substitute for the statutory age relaxation as admissible to SC/ST/OBC candidates. In fact, Shri Baiju also being a person belong to the OBC category, he is also entitled for such relaxation. Accordingly O.A.661/2005 is dismissed and O.A.560/2005 is allowed. There shall be no order as to costs.