

(2014) 01 KL CK 0131

In the High Court Of Kerala

Case No : OP (CAT). No. 4501 of 2013 (Z)

The Superintendent of Post Offices

APPELLANT

Vs

H. Justine Stephen

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 01 KL CK 0131

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : P. Parameswaran Nair, ASG of India, Advocate for the Appellant; S. Vishnu and Sri. S.R. Ajithkumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

T.B. Radhakrishnan, J.—The respondent moved the Central Administrative Tribunal claiming eligibility to be considered for appointment to the post of Gramin Dak Sevak Branch Post Master in the Vizhinjam sub post office in preference to open market candidates. He claimed that he is entitled to be treated as a casual labourer. The establishment said that he was only intermittently engaged as an outsider. The Tribunal held that there is no denial of the fact that the applicant before it had worked for more than 240 days. The Tribunal noted Annexure A15 to the original application in which the Assistant Director General of Post Offices had clarified that all daily wagers working in post offices or in RMS offices or in administrative offices under different designations (mazdoor, casual labourer outsider) are to be treated as casual labourers. Though that clarification provides that substitutes engaged against absentees should not be designated as casual labourers and should be considered only when casual labourers are not available, the establishment did not have a case before the Tribunal that there was any other sweeper in the Vizhinjam post office at the relevant time. We cannot assume that a post office would have been left even without sweeping and cleaning. If the department did not have any material

to say as to whether anybody else was engaged in the office, the Tribunal cannot be criticized as having erred in jurisdiction or in law in deciding on the relevant issue of fact in the manner it did. The said finding is one rendered by the Tribunal on preponderance probabilities on the basis of the materials placed before it. Under such circumstances, we do not find any error of jurisdiction or legal infirmity in the decision of Tribunal to be interfered with in exercise of power under Article 227 of the Constitution of India. This original petition therefore, fails.

In the result, this original petition is dismissed.