

Reportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 14247/2006, WP (C) No. 8491/2006
WP (C) Nos. 17528-30/2006 and WP (C) No. 4806/2007

Reserved on : May 01, 2008
Pronounced on : July 04, 2008

1. WP (C) No. 14247/2006

Union of India . . . Petitioner

through : Mr. H.K. Gangwani, Advocate

VERSUS

Ajay Kumar & Ors. . . . Respondents

through : Mr. M.K. Bhardwaj, Advocate

2. WP (C) No. 8491/2006

Union of India . . . Petitioner

through : Mr. J.P. Sharma, Advocate

VERSUS

Ashok Kumar & Ors. . . . Respondents

through : Mr. M.K. Bhardwaj, Advocate

3. WP (C) Nos. 17528-30/2006

Union of India & Ors. Petitioners

through : Mr. R.V. Sinha, Advocate

VERSUS

Sunil & Ors. . . . Respondents

through : Mr. R.K. Saini, Advocate

4. WP (C) No. 4806/2007

Union of India

. . . Petitioner

through :

Mr. H.K. Gangwani, Advocate

VERSUS

Giriraj Sharma

. . . Respondent

through :

Mr. R.N. Singh, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. In all these writ petitions Union of India is the petitioner. Though the respondents in all these cases are different and had filed separate OAs before the Central Administrative Tribunal and all those OAs are also allowed by the Tribunal by passing different orders, the question of law which was raised before the Tribunal and before us in these writ petitions is common. All these petitions were, accordingly, clubbed together for hearing. Therefore, we propose to dispose of all these petitions by this common judgment. Of course, after we deal with the common issue, one additional issue which arises out of one of the writ petitions would be dealt with thereafter. For the

sake of convenience, we make take note of the facts as they appear in WP (C) No. 14247/2006.

2. The Central Government formulated a scheme on 10.9.1993 for grant of temporary status to daily wagers. This scheme, *inter alia*, stipulated that a daily wager who worked for 240 days in two years shall be conferred temporary status, which would be without reference to the creation/availability of the regular Group D post and engagement will be on daily rates pay on need basis. It is not necessary to give the details of the said scheme as we are not concerned with that aspect. What is important for us is that the respondents, who are 124 in number, were granted temporary status under the said scheme. On the grant of the said status, which was the result of directions given by the Tribunal in OAs filed by them and which order was upheld till the Supreme Court, the respondents started getting DA, HRA, CCA, etc. In terms of the DOPT's Office Memorandum, the contribution towards GPF was also being deducted on completion of three years continuous service, as is done in the case of Group D employees. They were also given all kinds of leave and holidays as admissible to temporary employees. They were also given the benefit of counting of service for the purpose of pension, Central Government Employees' Insurance Scheme, GPF, Medical Aid, LTC and all allowances admissible to Group D employees. In this manner, the respondents herein were treated as temporary employees in Group D with regular pay scale and all the

benefits which are admissible to such employees. They were also contributing towards GPF, as mentioned above. The exact benefits under the Scheme of 1993, as contained in para 5 of Appendix attached to the said Scheme, are as under :-

- “(i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group ‘D’ official including DA, HRA and CCA, (Special Compensatory Allowance or Compensatory (City) Allowance or Composite Hill Compensatory Allowance, etc., i.e. only one of the compensatory allowance, more beneficial to them, can be taken into account for the purpose of calculating their wages – OM No. 3(2)/95-E.II(B), dated the 15th January, 1996).
- (iii) Benefits of increments at the same rate as applicable to a Group ‘D’ employee would be taken into account for calculating pro rate wages for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.
- (v) Leave entitlement will be on a pro rate basis at the rate of one day for every 10 days of work. Casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.
- (vii) Maternity leave to lady casual labourers as admissible to regular Group ‘D’ employees will be allowed.
- (ix) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularization.
- (xi) After rendering three years’ continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group ‘D’ employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance, Flood Advance on the same conditions as are applicable to temporary Group ‘D’ employees, provided they furnish two sureties from permanent Government servants of their Department.

(xiii) Until they are regularized, they would be entitled to productivity-Linked bonus/Ad hoc Bonus only at the rates applicable to casual labourers.

6. No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in industrial establishments in view of provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers.

7. Despite conferment of temporary status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work.”

3. However, The DOPT issued another OM dated 26.4.2004 which pertains to the introduction of *‘New Pension Scheme – Modification of Scheme for Grant of Temporary Status’*. The operative portion of the Scheme is as under:-

“The undersigned is directed to say that the scheme for grant of temporary status and regularization of casual works in Central Govt. Offices formulated in pursuance of the judgment dated 16.2.90 of the Central Administrative Tribunal Principal Bench in the case of Raj Kamal & Others vs. Union of India has been reviewed in the light of introduction of New Pension Scheme in respect of persons appointed to the Central Govt. service on or after 1.1.2004 and it has been decided to modify the scheme as under :-

(i) As the new pension scheme is based on defined contributions, the length of qualifying service for the purpose of retirement benefits has lost its relevance, no credit of casual service, as specified in para 5(v) shall be available to the casual labourers on their regularization against Group ‘D’ posts on or after 1.1.2004.

(ii) As there is no provision of General Provident Fund in the new pension scheme, it will not serve any useful purpose to continue deductions towards GPF from the existing casual employees, in terms of para 5 (vi) of the scheme for grant of temporary status. It is, therefore, requested that no further directions towards General Provident Fund shall be effected from the casual labourers w.e.f. 1.1.2004 onwards and the amount lying in their General Provident Fund accounts,

including deductions made after 1.1.2004, shall be paid to them.

2. The existing Guidelines contained in this Department's OM No. 49014/2/86-Estt(C) dated 7.6.88 may continue to be followed in the matter of engagement of casual workers in the Central Government Officers."

4. After the introduction of the scheme vide the said OM dated 26.4.2004, it was decided that GPF of these respondents shall not be deducted after 1.1.2004 from their salary. The respondents felt dissatisfied with this OM as according to them the same disturbed their established service conditions and that too by giving retrospective effect which, in any case, was not permissible. This contention has been accepted by the Tribunal in its impugned judgment dated 26.12.2005. The Tribunal held that the prevailing benefit which had been accorded to these employees could not be curtailed by issuing executive instructions by giving retrospective operation. The Tribunal also mentioned that this issue had been settled by the Jaipur Bench of the CAT in its order dated 25.5.2005 passed in OA No. 284/2004 and the Government had not stated as to whether the said order was challenged by filing any writ petition in the High Court. The Tribunal also relied upon the judgment of the Supreme Court as well and, therefore, while quashing orders dated 26.4.2004, directed the petitioner herein to follow the practice prevalent before issuing the said orders, by giving the following direction :-

"7. We cannot avoid to (*take – sic*) note of another striking feature appearing in the case of Union of India and Anr. vs. Mohan Pal, etc., JT 2002 (Supp.1) SC 312 wherein the Hon'ble Supreme Court has also not approved the action of the

respondents, who had taken steps not to deduct the GPF Contribution from the salary of the casual labourers.

8. Be it noted that the applicants are enjoying the benefits whatever provided to the regular Group 'D' employees. In that view of the matter, following the observations of the Division Bench orders passed by the Jaipur Bench and Chandigarh Bench in OA No. 284/2004 and OA No. 60/2002 respectively and also the mandate of the Supreme Court in **Mohan Lal's case (supra)**, we cannot agree with the action taken by the DoPT in issuing the impugned order dated 26.4.2004 by which the deduction of contribution towards the GPF amount has been withdrawn. Accordingly, the order dated 26.4.2004 is hereby quashed and the authorities are directed to follow the practice whatever prevalent before issuing of the aforesaid impugned order."

5. Thus, though it is not disputed that the Government could come out with such a Scheme, as contained in OM dated 26.4.2004, in the opinion of the Tribunal, it could not be applied retrospectively in respect of those employees, like the respondents herein, who had been conferred the temporary status and were contributing towards GPF for the last number of years. We may note that in other OAs decided by the Tribunal same view is taken. We may point out at the outset that on earlier occasion also identical judgment was rendered by the Tribunal in OA No. 1195/2006 on 30.11.2006. Against that judgment, Union of India had filed WP (C) No. 2294/2007. However, the said writ petition was dismissed by a Division Bench of this Court vide judgment dated 26.3.2007 accepting the reasoning given by the Tribunal that OM dated 26.4.2004 could not be applied retrospectively. In the short order dated 26.3.2007, while dismissing the writ petition filed by UOI *in limine*, this Court observed as under :-

"4. In our view, a right has vested in the Respondents by virtue of their regularization on 31st March, 2004 and a

modification of 26th April, 2004 cannot apply retrospectively particularly when the said modification does not say specifically that it will apply retrospectively. It only modifies the existing scheme and has to be understood to operate in future and not retrospectively.

5. Accordingly, the CAT has rightly held that modification by virtue of the OM dated 26th April, 2004 will not apply to the Respondents (Petitioner herein). We fully concur with the reasoning of the CAT.”

6. It would also be necessary to point out at this stage that against the order passed by the CAT, Jaipur Bench, which is noted in the impugned judgment of the Tribunal, WP (C) No. 7041/2005 was preferred by the Union of India. That writ petition was also dismissed on 12.7.2007, confirming the orders of the Tribunal, in the following manner :-

“2. The scheme called Casual Labours Grant of Temporary Status and Regulation Scheme, 1993 which came into effect from 1.9.1993 is applicable to casual labourers in employment of Government of India and its attached subordinated offices excluding Railways, Department of Telecommunication and Department of Posts. It provides scheme for conferment of temporary status to the casual labourers on fulfillment of the conditions mentioned therein. Clause 5 (vi) reads thus :

“5(vi) after rendering three years continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group ‘D’ employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group ‘D’ employees, provided they furnish two sureties from permanent Government servants of their Department.”

3. The Central Administrative Tribunal considered the Scheme of 1993 and also the scheme of 2004 and the clarificatory letter dated 26.4.2004 and concluded that the Scheme of 2004 and clarificatory letter dated 26.4.2004 do not govern the employees who have been conferred with temporary status by virtue of clause (vi) of Scheme of 1993.

4. On thoughtful reflection of the matter, we are of the view that the consideration of the matter by the Central

Administrative Tribunal does not suffer from any error of law justifying interference by us.

5. Writ petition is dismissed in limine.”

7. Learned counsels for the petitioner tried to contend that the view taken by this Court is not proper. Attempt was to persuade us to refer the matter to the Full Bench. It was primarily argued that there was no entitlement to regularization as decided by the Constitution Bench of the Supreme Court in *Secy., State of Karnataka & Ors. v. Umadevi*, (2006) 4 SCC 1. The respondents had not become the members of service so far. Benefit of temporary status was given vide one scheme by issuing administrative orders and such administrative orders could always be superseded by other administrative orders, more so when no right had accrued in favour of the respondents.

We are not convinced with this argument. No doubt, there is no right of regularization in favour of the respondents. However, by virtue of the Scheme of 1993 the respondents have been conferred with the temporary status. They have, therefore, acquired a particular status and certain benefits which flow from that status, namely, the regular pay-scale and other benefits like HRA, CCA, holidays, leave, etc. By virtue of the said temporary status they also started contributing towards GPF. Therefore, vested right accrued in their favour. No doubt, it was by way of administrative directions in the form of Scheme of 1993 and the Government has the right to substitute or modify or revoke those administrative directions by

coming out with another Scheme, which is done vide OM dated 26.4.2004. However, that may apply only prospectively and would not take away the vested right of those who are already enjoying the benefit under the old scheme. We, therefore, are not inclined to take a different view that what was taken by the earlier Bench as well as the Rajasthan High Court.

8. We may point out at this stage that the Jaipur Bench of the CAT in its judgment dated 25.5.2005 in OA No. 284/2004 went into this question in greater detail and found that on grant of temporary status under the Scheme of 1993, various benefits were conferred upon such persons. After reproducing those benefits, which we have taken note of in the former part of this judgment, the Tribunal opined that by giving temporary status, these employees were elevated to the status of temporary employees and even CCS (Temporary Service) Rules became applicable to such employees. The relevant portion of the judgment needs to be reproduced at this stage, which is to the following effect :-

“A perusal of the Scheme extracted above, particularly para 5(vi) thereof, will go to show that it not only entitles the temporary status employees with certain monetary benefits but it also elevates status of temporary employees. Reading of para 5(vi) would go to show that after an employee is conferred with temporary status, and continuously renders 3 years of service after conferment of temporary status his status further elevates at par with temporary Group D employees for the purpose of contribution to GPF Scheme as part of earlier pension scheme. Thus, an employee who has rendered particularly 3 years of service, he attains the status of temporary government employee. Meaning thereby that he holds a civil post under the Government of India, though as a temporary employee and from this very scheme itself, it is also clear that if the service of such temporary status employees are to be dispensed with then one month's notice is required to be

served on the casual employees with temporary status which is pari-passu with the provisions existing in the CCS (Temporary Service) Rules, applicable to the temporary government servants. Further para 5(v) of the Scheme also shows that 50% of the service rendered as temporary status is also to be counted for the purpose of retiral benefits. In a way, after a person is conferred with temporary status, he becomes entitled to certain benefits with regard to the counting of service for the purpose of retiral benefits, obviously under the old Scheme. However, if he has rendered further 3 years of service with temporary status, he is further elevated as a temporary employee and he gains in status. So, such employees like applicants would be covered under the old Scheme of the Government of India and not under the new Scheme of Pension introduced by letter dated 7.1.2004. Letter dated 26.4.2004 shows that only casual employees are not to be asked to pay contribution towards GPF but it does not apply to those employees who have attained the status of temporary employees though by virtue of Scheme of 1.9.1993. Thus, the interpretation of the Scheme of 7.1.2004 and as amplified by letter dated 26.4.2004 does not govern the employees who have been conferred with temporary status and by virtue of clause (vi), they have further attained the status of temporary Group D employees. Thus, we find that there is sufficient merit in the O.A. and the respondents cannot invoke the instructions dated 26.4.2004 against these applicants. Though the title of the letter dated 26.4.2004 shows that there is modification of the scheme of grant of temporary status but by this letter, the Government cannot modify Scheme to the detriment of the employees who have already earned the vested right under the old rules and those vested right cannot be taken away by retrospective operation of the Scheme by issuance of administrative instructions by the DOPT. It is well settled that the administrative instructions which have the effect of modifying the original scheme cannot be allowed to stand. Hence we are of the considered view that these instructions as contained in the letter dated 26.4.2004 are not applicable in the case of the applicants. The applicants are entitled to contribute towards the GPF Scheme, part of the Old Pension Scheme, as envisaged under the Original Scheme of 1.9.1993.”

9. Influenced by all these considerations, we are of the view that there is no merit in all these writ petitions. With this, we now take up for discussion the additional issue which arises in WP (C) No. 8491/2006. In this case, in addition to the direction that the applicants in the said OA (respondents in the writ petition) would be allowed contribution of GPF, further direction is given *‘to consider the cases of applicants*

for regularization, within a period of three months....'. We agree with the submission of Mr. J.P. Sharma, learned counsel for the petitioner/UOI, that this direction needs to be set aside in view of the judgment of the Supreme Court in *Umadevi* (supra). This writ petition is, therefore, allowed partly to this limited extent and the direction regarding contribution of GPF of the Tribunal is maintained. Other writ petitions are dismissed. In all these four petitions, the petitioners shall pay cost of Rs.5,000/- each to the respondents.

(A.K. SIKRI)
JUDGE

(J.R. MIDHA)
JUDGE

July 04, 2008
nsk

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For orders, see WP (C) No. 14247/2006.

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