IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

OP (CAT).No. 90 of 2015 (Z)
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AGAINST THE ORDERIN OA 48/2013 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH DATED 01-01-2015

PETITIONERS/RESPONDENTS:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY (POSTS)
MINISTRY OF COMMUNICATIONS & IT, DEPARTMENT OF POSTS
DAK BHAVAN, NEW DELHI.

2. THE CHIEF POSTMASTER GENERAL
KERALA CIRCLE, THIRUVANANTHAPURAM.

3. THE SENIOR SUPERINTENDENT OF POST OFFICES
ALUVA DIVISION, ALUVA - 683 101.

4. THE SENIOR SUPERINTENDENT OF POST OFFICES
ERNAKULAM DIVISION, KOCHI - 682 011.

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENE

RESPONDENTS/APPLICANT:

K.P.SASIDHARAN
S/O. LATE N.PARAMESWARA KAIMAL, RETIRED MTS
ALUVA HEAD POST OFFICE, RESIDING AT KATTAZHATH MADOM
KUMBALAM BO, PANANGAD, ERNAKULAM - 682 506.

BY ADV. MR. SHAFIK M. ABDULKHADER

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 90 of 2015 (Z)
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APPENDIX

PETITIONER(S)' EXHIBITS
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P1 - TRUE COPY OF OA NO.48/2013 DATED 15.1.2013 FILED BY THE RESPONDENT BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

P2 - TRUE COPY OF REPLY STATEMENT FILED BY THE PETITIONERS IN OA NO.48 OF 2013 DATED 15.04.2013

P3 - TRUE COPY OF THE REJOINDER DATED 18.06.2013 IN OA NO.48 OF 2013 FILED BY THE PETITIONERS

P4 - TRUE COPY OF ADDITIONAL REPLY STATEMENT DATED 21.08.2013 IN OA NO.48/2013 FILED BY THE PETITIONERS

P5 - TRUE COPY OF ADDITIONAL REJOINDER DATED 09.11.2013 FILED BY THE RESPONDENT

P6 - TRUE COPY OF THE 2ND ADDL. REPLY STATEMENT DATED 14.11.2014 FILED BY THE PETITIONERS.

P7 - TRUE COPY OF THE ORDER IN OA NO.48/2013 DATED 01.01.2015 OF THE CAT, ERNAKULAM BENCH.

RESPONDENT(S)' EXHIBITS
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NIL

ks.

True copy

P.S. (Hr.Gr.)To Judge

**P.R. RAMACHANDRA MENON**
**&**
**BABU MATHEW P. JOSEPH, JJ.**

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**O.P. (CAT) No. 90 of 2015**

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**Dated this the 22nd day of May, 2015**

**JUDGMENT**

**P.R. Ramachandra Menon,J.**

Whether the respondent herein, who was the applicant before the Tribunal, is entitled to have his officiating service in Group D cadre, prior to his appointment as a regular hand (MTS) on 9.12.2010, reckoned for the purpose of fixation of pension and terminal benefits as per the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'CCS (Pension) Rules') forms the subject matter of consideration of this original petition.

2. The factual matrix reveals that the respondent was serving as a casual labourer in the department since 1982 and was later conferred the temporary status with effect from 4.3.1992 and officiated as Group D servant from 1989 to 1991. Meanwhile, a scheme was introduced as Casual Labourers (Granting Temporary Status and Regularisation Scheme) in the year 1991 and pursuant to filing of O.A. No. 517 of 2011 and order passed by the Tribunal therein, the employee was conferred with temporary status with effect from 4.3.1992. It is stated that he was treated on par with the temporary Group D employees of the department with effect from 5.3.1995, in terms of Memo No. PF/XPS dated 31.3.1993 issued by the competent authority. As per the said proceedings, it was made clear that the applicant was entitled to have all benefits admissible to Group D employees on regular basis with effect from 5.3.1995 as mentioned in the Directorate's letter No. 66-9/91-SPB-1 dated 30.11.1992, which provided for counting the service

for the purpose of pension and terminal benefits.

3. The contention of the respondent herein was that, the service of a casual labourer who has attained temporary status, has to be reckoned as qualifying service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis. It is also contended that from 04.03.1993 i.e. the date on which he was conferred temporary status, he was working as a Group D servant in various post offices in Ernakulam Division, against clear vacancies of Group D staff, continuously and without break/interruption in service. Later, the respondent was appointed as Group D staff on a regular basis on 9.12.2010 and he retired on attaining the age of superannuation on 30.11.2012. The respondent approached the Tribunal thereafter with a claim that he ought to have been given pension under the CCS (Pension) Rules as the respondent was refused the benefits thereunder, referring to the implementation of the new pension scheme

from 1.1.2004 and that regularization was given to the respondent as a Group D staff only on 9.12.2010. The claim of the respondent was sought to be rebutted by the Department by filing detailed reply statement. Pleadings were completed from both the sides. After hearing both the sides, the Tribunal observed that, exactly similar matter had come up for consideration earlier, by way of O.A. 517 of 2011; wherein the Tribunal had made a positive finding that a person similarly situated was entitled to have the benefit of pension under the CCS (Pension) Rules and that the accrued right of the employees as aforesaid, based on the relevant scheme as mentioned above and the Directorate's letter dated 30.11.1992 as above stated, could not be taken away under any circumstances. The above verdict was sought to be challenged at the instance of the Department by filing O.P.(CAT) No. 3932 of 2011, wherein interference was declined and the verdict passed by the Tribunal was affirmed. After discussing the facts and figures and also extracting 'paragraphs 5 and 6' of the aforesaid judgment passed by this Court, the Tribunal observed that the respondent herein, who was initially a casual Mazdoor, was appointed at par with Group D employees with effect from 5.3.1995 on completion of 3 years of continuous service after conferment of temporary status and as such, the service of the respondent had to be counted with effect from 5.3.1995 for the purpose of considering the eligibility and extending pension in terms of the relevant Rules. It was also observed that the version put up by the Department that the applicant had already come under the ambit of the new Contributory Pension Scheme from the year 2004 and that he had voluntarily subscribed to the same and an account had been opened with consent to contribute CPF, had no relevance since it was the basic responsibility of the employers, to apply the correct pension scheme in respect of their employees, as per their legitimate entitlement. It was accordingly that the impugned order was set aside and the respondents were directed to bring the respondent herein within the ambit of CCS (Pension)Rules, and draw and disburse the pension and other terminal benefits under the aforesaid Rules within a period of three months. It is this verdict that has been challenged in this original petition.

4. Heard the learned Assistant Solicitor General as well as the learned counsel appearing for the second respondent, who took notice on behalf of the said respondent. It is asserted by the learned Assistant Solicitor General that the Tribunal has committed a serious error in not taking note of the fact that under the new pension scheme, there was no relevance for the disputed service and that the pension shall depend upon the contribution made under the scheme. Having already submitted an application for enrolling himself under the new scheme, it was never open for the respondent to have taken a 'U' turn claiming pension under the old Rules, submits the learned Assistant Solicitor

General. The learned Assistant Solicitor General also points out that the relief granted to persons like the respondent herein was sustained by this Court in O.P.(CAT)No. 3932 of 2011 is not fully correct for the reason that the temporary status scheme as aforesaid does not envisage any guaranteed regularisation or payment of pensionary benefits contrary to the relevant Rules. Reference is made to Clauses 6 & 7 of Annexure A-2 which are extracted below for convenience and reference.

> *"6. 50% of the service rendered under Temporary status would be counted for the purpose of retirement benefits after regularisation as a regular Group 'D' officia.*
>
> *7. Conferment of Temporary Status does not automatically imply that the casual labourers would be appointed as a regular Group 'D' employee within any fixed time frame. Appointment to Group 'D' vacancies will continue to be done as per the extent recruitment Rules, which stipulate preference to eligible ED employees."*

Placing reliance on the wording in Clause 6, the learned Assistant Solicitor General points out that counting of 50% of the service under temporary status would be made for the purpose of retirement benefits after the Group D official is regularised, subject to his eligibility to have pension under the relevant Pension Rules. By virtue of the categoric statement in clause 7 that the Scheme does not automatically imply that the casual labourers would be appointed on regular basis as Group D employee within a fixed time frame.

5. The above proposition is sought to be opposed by the learned counsel appearing for the respondent. The factual position as discernible from the pleadings and as extracted by the Tribunal in Ext.P7 have been adverted to. Particular reference is also made to paragraph 5 of Ext.P7, as to the continuance of CPF even after 2004, till it was stopped in March, 2005, without notice or consent. Reference is also made to the payment slip for the month of

March 2005, adding that recovery of the subscription, on the count of CPF, was made only by the Month of February 2007 and it was continued till superannuation on 30.11.2012. It is also stated that the deduction,if any, made in this regard towards CPF or the enrollment made under the new Pension Scheme cannot have any relevance with regard to the legal entitlement of the respondent/direct employee. This aspect has also been taken note by the Tribunal and it has been specifically dealt with in paragraph 9 of Ext.P7, holding that the contention that the applicant had voluntarily subscribed to the new pension scheme and had obtained an account opened for contributing to the CPF, had no relevance, as it was the basic responsibility of the respondents in the O.A. who are the employers, to have applied the correct pension scheme in respect of their employees, extending the legitimate benefits as per their entitlement. This Court finds considerable force in the said submissions, more so, when it has been upheld and affirmed by another Bench of this

Court while passing Annexure A13 verdict in O.P. (CAT) No.3932 of 2011.

6. The learned Assistant Solicitor General however sought to draw a distinction from the verdict passed by this Court in OP (CAT) No. 3932 of 2011 with reference to the factual position in the present case. It is stated that the employee in the concerned O.A. No. 517 of 2011 was never enrolled under the new pension scheme and as such, the proceedings in the present case stand on a different footing. This Court is not much impressed with the said submission, for the reason already mentioned herein before. If the respondent herein has already accrued some rights, based on the temporary status scheme ( a copy of which has been produced as Annexure A2 forming part of Ext.P1), the said accrued rights cannot be taken away, detrimental to the rights and interest of the beneficiary concerned. This aspect also has been considered by the Bench of this Court while passing Annexure A13 verdict in O.P. (CAT) No. 3932 of

2011. It is also brought to the notice of this Court that, though the Department had moved the Apex Court by filing SLP against Annexure A13 judgment passed by this Court, interference was declined and the SLP was dismissed, however, adding that the question of law was left open. This Court does not find any obscurity or ambiguity with regard to the provision of law or as to the eligibility of the respondent herein to have the benefit under the CCS (Pension)Rules. No tenable ground is brought out to persuade this Court to take a different view than the one taken already vide Annexure A13 judgment. In the above circumstances, this Court finds no merit in the appeal. Interference is declined and the Original petition is dismissed.

7. The learned Assistant Solicitor General submits that time to implement the verdict passed by the Tribunal is already over and that the respondent has moved the Tribunal by way of Contempt of Court proceedings. It is

stated that two months' time is necessary to implement the verdict. In view of the above circumstances, this Court finds it fit and proper to grant two months' time to comply with the verdict passed by the Tribunal. Further proceedings if any, alleging non-compliance of the directions in O.A. No. 48 of 2013, shall be kept in abeyance for a period of two months.

**Sd/-**

**P.R. RAMACHANDRA MENON**
**JUDGE**

**Sd/-**

**BABU MATHEW P. JOSEPH**
**JUDGE**

**ks.**

True copy

P.S. (Hr.Gr.)To Judge