IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

OP (CAT).No. 31 of 2014 (Z)

AGAINST THE ORDER IN OA 949/2010 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH DATED 01.07.2013

PETITIONERS/RESPONDENTS 1 TO 8:
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1. THE ADMINISTRATOR,
UNION TERRITORY OF LAKSHADWEEP
KAVARATTI.

2. UNION OF INDIA, REPRESENTED BY
THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL & TRAINING
NEW DELHI 110 001

3. THE CONTROLLER GENERAL OF ACCOUNTS/
CENTRAL PENSION ACCOUNTING OFFICE,
MINISTRY OF FINANCE,
DEPARTMENT OF EXPENDITURE
NEW DELHI - 110 001.

4. THE DIRECTOR (SERVICES) ADMINISTRATION OF U.T. OF LAKSHADWEEP
SECRETARIAT, KAVARATTI - 682 555.

5. THE SECRETARY (ADMINISTRATION), U.T. OF LAKSHADWEEP
SECRETARIAT, KAVARATTI - 682 555.

6. THE SUPERINTENDING ENGINEER,
LAKSHADWEEP PUBLIC WORKS DEPARTMENT,
UNION TERRITORY OF LAKSHADWEEP, KAVARATTI - 682 555.

7. THE PRINCIPAL ACCOUNTS OFFICER,
UNION TERRITORY OF LAKSHADWEEP, KAVARATTI - 682 555.

8. THE DIRECTOR, DIRECTORATE OF MEDICAL & HEALTH SERVICES,
UNION TERRITORY OF LAKSHADWEEP, KAVARATTI - 682 555.

9. THE ASSISTANT ENGINEER, LPWD,
UNION TERRITORY OF LAKSHADWEEP, KAVARATTI - 682 555.

BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMINISTRATION.

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RESPONDENTS/APPLICANTS:
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1. K.P.ATTAKOYA
S/O.MUTHU KUNJI,
WC ASSISTANT MAISON (RETIRED)
LPWD & RESIDING AT KAKOTHAPURA HOUSE,
UTL, KILTAN ISLAND - 682 558.

2. P.S. ATHER KOYA, S/O. ABDULLA,
WC BELDAR (RETIRED)
LPWD SUB DIVISION, KILTAN ISLAND,
RESIDING AT PUTHIYA SURAMBI,
UTL, KILTAN ISLAND - 682 558.

3. K. MOHAMMED, S/O.ABDULLA,
WATCHMAN (RETIRED)
COMMUNITY HEALTH CENTRE AND RESIDING AT
KUNNASHADA HOUSE, UTL,
AGATTI ISLAND - 692 558.

R1 -R 3 BY ADV. SRI.N.UNNIKRISHNAN

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 21-12-2015, ALONG WITH OPCAT. 32/2014, OPCAT. 42/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 31 of 2014

APPENDIX

PETITIONER'S EXHIBITS:

P1 : A TRUE COPY OF THE LETTER F.NO.U-14040/58/2013-ANL DATED 06.01.2014.

P2 : A TRUE COPY OF THE ORIGINAL APPLICATION NO.746 OF 2011 FILED BY THE RESPONDENT.

P3 : A TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS 1 & 4 TO 9/RESPONDENTS 3 TO 9.

P4 : A TRUE COPY OF THE REJOINDER FILED BY THE RESPONDENT WITHOUT ANNEXURE A11, THE ORDER IN O.A. NO.284/2010.

P5 : A TRUE COPY OF THE COMMON ORDER PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL IN O.A.NO.746/2011 DATED 01.07.2013.

RESPONDENTS' EXHIBITS:

R1A : A TRUE COPY OF OFFICE MEMORANDUM NO.49014/2/2014-ESTT (C) DATED 29.01.2015 ISSUED BY THE DIRECTOR (ESTT.), GOVERNMENT OF INDIA, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS, DEPARTMENT OF PERSONNEL & TRAINING.

//TRUE COPY//

P.A. TO JUDGE

smv

K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.

O.P.(CAT) Nos.31 of 2014, 32 of 2014
and
42 of 2015

Dated this the 21st day of December, 2015

JUDGMENT

Shaji P. Chaly,J.

These Original Petitions are filed by the petitioners against the common order of the Central Administrative Tribunal, Ernakulam Bench in O.A. Nos.949/2010 and 746/2011 dated 01.07.2013 and order in O.A. No.484/2013 dated 26.9.2013 respectively. By the said orders, Tribunal found that the respondents herein are entitled to pension and pensionary benefits under the CCS (Pension) Rules, 1972 ("the Rules" for short) and to reckon 50% of the service rendered by them as casual labourers with temporary status as qualifying service for pension and accordingly consequential directions are issued.

2. Since common facts are involved in these Original Petitions, we propose to dispose of the same by a common judgment.

3. Brief facts for the disposal of the Original Petitions are as

follows:

4. First respondent in O.P. No.31/2014 was given temporary appointment to Group D post under the Lakshadweep Administration vide order dated 9.3.2005. He joined duty on 14.3.2005 as Group D employee under the Lakshadweep Administration and retired on 30.11.2008. The second respondent was regularised as a Group D employee vide order dated 10.03.2005 and retired on 1.11.2009. The 3rd respondent was regularised as Group D employee vide order dated 7.4.2005 and retired from service on 30.09.2006. The respondent in Original Petition No.32/2014 was regularised as Group D employee vide order dated 24.4.2008 and retired on 30.06.2011. The respondent in Original Petition No.42 of 2015 was regularised as a Group D employee (multi-skilled employee) w.e.f. 9.5.2007 as per order dated 28.04.2007 and retired from service on 30.04.2013.

5. The respondents, aggrieved by denial of pensionary benefits to them under the Rules cited supra approached the Tribunal by filing the above referred applications. The Tribunal after assimilating the factual situation and appreciating the legal position, held that the respondents are entitled to pension in

accordance with the Rules and thereby directed to reckon 50% of the service rendered by them as casual labourers with temporary status as qualifying service for pension. It is thus aggrieved by the order passed by the Tribunal, these Original Petitions are filed.

6. The respondents contended before the Tribunal that they were entitled to pensionary benefits under the Rules and were eligible for pension proportionate to the length of their service rendered by them accordingly. Therefore, they are entitled to get the pension and other benefits immediately after their retirement.

7. On the contrary, petitioners filed a reply statement and contended that respondents were not entitled to any of the reliefs prayed for as they had entered into the regular service under the departments concerned after introduction of the new pension scheme which came into force w.e.f. 1.1.2004. The new pension scheme stipulates that the scheme is applicable to all new entrants to the Central Government Service except to Armed Forces, joining Government service on or after 01.01.2004. It is the further contention of the petitioners that, the Government of India had withdrawn the old pension scheme

w.e.f. 01.01.2004. The scheme of General Provident Fund in respect of labourers in temporary status was withdrawn vide order dated 26.04.2004. As the regularisation of the respondents were made after 01.04.2004, which is the cut off date prescribed under the new pension scheme, the respondents are not eligible for pensionary benefits as they will come under the Contributory Provident Fund Scheme. Further it was contended that, no credit of casual service specified in para 5(v) of the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, is available to the casual labourers on their regularisation against Group D posts on or after 01.01.2004 as specified in the O.M. dated 26.04.2004. It was further contended that the petitioners have acted strictly in accordance with the orders and rules issued from time to time and therefore there is no illegality or other legal consequences warranting interference of the Tribunal.

8. Rejoinder statements were filed by the respondents and contended that the applicants were given the benefit of temporary status with all attendant benefits including the increments and protection of higher basic pay when they were

appointed to the regular post of Group D. It was also contended that the 2004 pension scheme does not take away the benefit granted and enjoyed by the respondents from 1.9.1993. As the respondents have not entered service on or after 1.1.2004, they are not covered under the new pension scheme and further that they are bound to be considered for pension and pensionary benefits counting 50% temporary service under the provisions of the Rules. It is also contended that there is no enabling provision under the 2004 scheme to deprive the benefits to Group D employees who were in service prior to introduction of the 2004 scheme and were enjoying the benefits of the Pension Rules 1972. The respondents entered service way back in 1983 and were granted temporary status on 01.09.1993. Further it was contended that the respondents who entered service prior to 1.1.2004 cannot be equated with the new entrants after the said date and reiterated that their claim for pensionary benefits as per the Rules is to be granted.

9. Heard Sri. S. Radhakrishnan, learned counsel for the petitioners, Sri.N. Unnikrishnan and Sri.T.C. Govinda Swamy learned counsel for the respondents, perused the records and the pleadings put forth before the Tribunal as well as this Court.

10. Learned counsel for the petitioners contended that respondents are conferred with temporary status after the introduction of the new scheme w.e.f.1.1.2004 and therefore, they are guided by the new scheme. Learned counsel invited our attention to the scheme dated 22.12.2013 and contended that going by the stipulations under the said scheme, it is categoric and clear that all new entrants to the Central Government Service except to Armed Forces, joining Government Service on or after 1.1.2004, the new scheme applies. Learned counsel also contended that prior to grant of temporary status respondents were mere casual employees not entitled for any rights and they were confirmed in the service of the petitioners only after the introduction of the new scheme and therefore, the new entrants to the Central Government Service provided in the new scheme thus means all the employees who were confirmed to the Group D service and therefore the respondents are entitled to only the benefits of the new scheme 2004. Learned counsel also contended that, in that view of the matter the respondents are not entitled to get 50% of the service rendered by them as casual labourers with temporary status as qualifying service for pension as per the terms of the Rules and that the respondents were

liable to be parties to Contributory Pension Scheme so introduced.

11. On the other hand, learned counsel for the respondents contended that, nowhere in 2004 scheme, the rights enjoyed by the respondents were taken away. The new scheme takes care of only new entrants. It is also contended that respondents were appointed in the service as per a scheme which came into force w.e.f. 1.9.1993 and since they have joined service as casual employees during the year 1983, they are entitled to get the benefits of the 1993 scheme whereby temporary status is provided and thereby they are entitled to secure the benefits prescribed under the Pension Rules, 1972.

12. Learned counsel for respondents has invited our attention to the order passed by the Central Administrative Tribunal, Delhi Bench in O.A. No.117 of 2014 dated 15.01.2014 and contended that a similar situation was considered by the Tribunal and held that the employees entered service prior to the introduction of the 2004 scheme are entitled to the benefits of the old scheme of 1.9.1993. So also learned counsel has brought our attention to the order of the Central Administrative Tribunal, Jaipur Bench, Jaipur in **Union of India and others v.**

Ramasaran and others in O.A No.284/2002 wherein also the very same question was considered and held that the petitioners therein are entitled to enjoy the benefits provided under the scheme of 1993 and further that the scheme of 2004 applies only to new entrants after the introduction of the scheme. The said order of the Tribunal was affirmed by the High Court of Rajasthan in DBCWP dated 12.7.2007, which in turn was challenged before the Apex Court in SLP Civil No.1753/2008 and vide order dated 9.2.2011, the SLP filed by the Union of India was dismissed. Learned counsel for the party respondents has also invited our attention to the Office Memorandum issued by the Government of India, Department of Personnel and Training dated 09.07.2013 which is passed based on the order of the Apex Court in the Special Leave Petition referred supra and thereby stipulated that the Government employees appointed after 1.1.2004 are not covered by the 1972 Rules. Our attention is also invited to the Division Bench judgments of this Court in OP (CAT) Nos.3932/2011, O.P.(CAT) No.90/2015 and O.P.(CAT) No.91 of 2015 wherein two Division Benches of this Court had occasion to consider the very same notifications in question with certain variation in facts and held that the entrants prior to the introduction of the 2004 scheme are entitled to get the benefit of the old scheme and the Rules.

13. Having considered the rival submissions made at the Bar and perusal of the records, we feel that the Tribunal has considered the question raised by the petitioners after appreciating the contentions raised by the respondents in the right direction. We also feel that, the scheme 2004 applies only to the new entrants after the introduction of the scheme w.e.f. 1.1.2004. The new scheme does not take away the benefits granted under the 1993 scheme. Even after evaluating and assimilating the entire provisions of the new scheme, we are unable to arrive at a conclusion that, such scheme intended to take away the rights and benefits conferred on the existing employees governed by the provisions of the 1993 scheme. Taking stock of the entire circumstances, we are of the considered opinion that the decision taken by the Central Administrative Tribunal, Ernakulam Bench are in accordance with law and we do not find any reason to interfere with the orders passed by the Tribunal.

14. However, we find that the Administrative Tribunal, having found that the respondents are not governed by the 2004

scheme and are governed by the 1993 scheme, has held that, even though there is no direct challenge to the Office Memorandum dated 26.4.2004 in the O.A., same is an impediment in the way of respondents to dispense justice to the temporary status conferred casual employees and accordingly same is set aside. We are unable to subscribe to the said view since the sole question for consideration before the Tribunal, was whether the 2004 scheme was applicable to the employees who entered casual service prior to scheme 2004, conferred with temporary status later and appointed to Group D posts after the introduction of the new scheme, are governed by the new scheme. Over and above the same, the respondents did not have a case for setting aside the said Office Memorandum. More over, Tribunal having found that the respondents are entitled to the benefits of the 1993 scheme and thereby the benefits provided under 1972 Pension Rules, should not have disturbed the scheme of 2004. That apart having found that the respondents are entitled to secure the benefits conferred under the 1972 Rules, needless to say, it takes in all the benefits available thereunder and therefore there was no requirement to set aside a consequential order based on the 2004 scheme.

Therefore, we find force in the contention of the learned counsel for the petitioners in that regard and to that extent, order of the Tribunal setting aside the Office Memorandum dated 26.4.2004 is herewith set aside. In all other respects the order of the Tribunal is confirmed.

15. The Tribunal while disposing of the Original Applications had granted three months' time to the petitioners to quantify and pay the amounts due to the respondents. The said period is over and further this Court had stayed the order of the Tribunal. In view of the expiry of the time limit prescribed, we think it only appropriate that, a further period of six weeks time is granted to the petitioners to implement the order of the Administrative Tribunal. Accordingly we do so.

Original Petitions are dismissed subject to the aforesaid modification of the time limit prescribed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

smv P.A. To Judge
24.11.2015