

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CWP No.14195 of 2012**

**Date of decision: 02.11.2015**

**Union of India and others**

**.....Petitioner(s)**

**Versus**

**Central Administrative Tribunal & others**

**.....Respondent(s)**

**CORAM:- HON'BLE MR.JUSTICE M. JEYAPPAUL  
HON'BLE MR.JUSTICE DARSHAN SINGH**

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

**\* \* \***

**Present: Mr. P.C. Goyal, Advocate for the petitioner(s).**

**Mr. Brijeshwar Mittal, Advocate for the respondents.**

**DARSHAN SINGH, J.**

1. The present civil writ petition under Article 226/227 of the Constitution of India has been filed for issuance of writ in the nature of certiorari quashing the order dated 28.2.2012 (Annexure P-8) passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called 'the Tribunal') whereby the original application filed by respondents No.2 to 18 has been allowed with a direction to the petitioners to start deducting General Provident Fund (GPF) from the salary of the respondents from the

date it was stopped and the money which was returned to them to be taken as GPF for relevant period. They have also been granted the consequential benefits like interest on the refunded amount.

2. That respondents No.2 to 18 were employed as Casual Labourers prior to 1.9.1993. They were granted the temporary status as per the scheme issued by the petitioners dated 10.9.1993 on the basis of which they were granted the temporary status w.e.f. 1.9.1993 vide different orders. They were appointed as Peons for Group 'D' post in Central Passport Organisation w.e.f. August, 2007. They were further promoted on officiating basis in the Group (VIII) LDC in 2010 and their pay was fixed accordingly. That the petitioners have been deducting the monthly GPF contribution from their salaries since 1996 and unilaterally stopped deducting such amount on introduction of new Central Provident Scheme (CPF) which came into force w.e.f. 1.1.2004.

3. Respondents no.2 to 18 filed the original application No.73/PB/2011 taking the plea that they were already contributing to the GPF prior to coming into force the new CPF Pension Scheme. The present petitioners cannot change their contribution from GPF to CPF retrospectively.

4. The present petitioners contested the said OA on the grounds inter alia that the respondents were employed as temporary workers prior to 2.8.2007. They were appointed against regular post only in August, 2007. They are certainly governed under the New Pension Scheme which was introduced w.e.f. 1.1.2004. The said

scheme was reviewed and modified after the decision rendered by the Tribunal in case **Raj Kumar and others versus Union of India and others in TA No.35-PB of 2009 decided on 22.1.2010** and it was decided that no credit to the casual service shall be available to the casual labourers on their regularization against Group 'D' posts on or after 1.1.2004. Since there is no provision of General Provident Fund in the new Pension Scheme, it will not serve any 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. So, the action of petitioners to refund the GPF amount already contributed by the respondents and changing over to CPF was perfectly valid in terms of the new Pension Scheme.

5. The original application filed by respondents No.2 to 18 was allowed by the learned Tribunal vide impugned order dated 28.2.2012.

6. Aggrieved with the aforesaid order, the present writ petition has been preferred assailing the said order on the similar pleas as raised in the written statement filed before the learned Tribunal.

7. We have heard Mr. P.C. Goyal, learned counsel for the petitioners, Mr. Brijeshwar Mittal, learned counsel for the respondents and have carefully gone through the paper book.

8. Initiating the arguments Sh. P.C. Goyal, Advocate, learned counsel for the petitioners, contended that admittedly respondents No.2 to 18 were employed as casual workers and their

services were only regularized w.e.f. August, 2007. The New Pension Scheme came into force w.e.f. 1.1.2004. So, respondents No.2 to 18 were regularized long after the introduction of the New Pension Scheme. Their pay was also fixed in the pay scale attached to the posts after August, 2007. So, they have been rightly brought under the New Pension Scheme. Thus, he contended that the impugned order passed by the learned Tribunal is unsustainable in the eyes of law.

9. On the other hand, learned counsel for the respondents contended that the respondents were granted the temporary status under Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993 (hereinafter called 'the Scheme 1993'). He contended that as per the terms and conditions of the said Scheme the employees having temporary status after rendering 3 years' of service were entitled for contribution to the GPF and other benefits. Thus, he contended that the respondents had become entitled for contribution to the GPF in the year 1996 and they had actually started the GPF contribution in the year 1996 w.e.f. 1.9.1996 without any interruption. Thus, he contended that the respondents were to be governed under the old scheme and the New Pension Scheme which became applicable w.e.f. 1.1.2004 was not applicable to them and the unilateral decision of the petitioners to bring them under the New Pension Scheme of contribution towards CPF is illegal. To support his contentions, he relied upon cases **Harbans Lal versus The State of Punjab and**

**others 2012(3) S.C.T. 362 and Union of India versus K. Punniyakoti and others 2014(2) CTC 777.**

10. He further contended that the writ petition filed by the petitioners was based on the plea that SLP No.19673 of 2009 is pending before the Hon'ble Apex Court but even said SLP has been dismissed by the Hon'ble Apex Court on 24.2.2015. Thus, he contended that there is no illegality in the impugned order passed by the learned Tribunal.

11. We have duly considered the aforesaid contentions.

12. The sole point involved in the present writ petition is as to whether respondents No.2 to 18 shall be entitled for contribution towards GPF and the New Pension Scheme introduced vide letter dated 26.4.2004 (Annexure A1) which came into force w.e.f. 1.4.2004 for CPF contribution shall not be applicable to them.

13. This fact is not disputed that respondents No.2 to 18 were employed as casual workers prior to September, 1993. The Government of India introduced the Scheme 1993 for granting temporary status to all the casual workers who were in employment on the date of issue of the Official Memorandum and had rendered a continuous service of at least one year i.e. they must have been engaged for a period of at least 240 days (200 days in the case of offices observing 5 days week). This scheme came into force w.e.f. 1.9.1993. It is not disputed that the temporary status was granted to respondents No.2 to 18 w.e.f. 1.9.1993 as per the aforesaid Scheme 1993. The parties were bound by the terms and conditions of the

Scheme. The petitioners have issued the order granting temporary status to the respondents exactly in terms of the Scheme 1993. The benefits available to the casual labourers having temporary status has been specified in Para No.5 (vi) of the Scheme which has been reproduced in the order dated 24.5.1999 (Annexure A-3) and subsequent order dated 21.7.2008 in verbatim vide which the temporary status has been granted to the respondents and the same reads as under:

*“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 GPF, and would also further be eligible for the grant of festival advance/food advance on the same conditions as are applicable to temporary group D employees provided they furnish two securities from permanent govt. servants of their department.”*

14. It is evident from the aforesaid clause in the order granting temporary status to the respondents that after rendering 3 years' continuous service after the conferment of temporary status casual labourers were to be treated on par with Group 'D' employees for the purpose of contribution to the GPF. The temporary status was granted to respondents No.2 to 18 w.e.f. 1.9.1993. They had completed the continuous service of three years in September, 1996

and started contributing to the GPF on completion of three years' service as temporary status employee. Their contribution towards GPF was being accepted by the petitioners. The respondents have become entitled for contribution to the GPF much before the introduction of the New Pension Scheme which came into force w.e.f. 1.1.2004. The said benefit given to the respondents cannot be taken away by virtue of the New Pension Scheme. Consequently, the regularization of respondents No.2 to 18 after the introduction of the New Pension Scheme will not be detrimental to their rights to contribute towards GPF as respondents No.2 to 18 had already become entitled for GPF contribution on rendering three years' continuous service after acquiring temporary status under Scheme 1993. Thus, certainly respondents No.2 to 18 shall be governed by the old GPF Scheme which was in existence prior to 1.1.2004. In support of this view, reference can be made to the ratio of law laid down in cases **Harbans Lal versus The State of Punjab and others** and **Union of India versus K. Punniyakoti and others (supra)**.

15. In para No.10-D, the petitioners have pleaded that the question of law involved in the present case was subject matter of SLP No.19673-78 of 2009 pending before the Hon'ble Apex Court. The said SLP has arisen out of the order dated 4.7.2008 passed by the Division Bench of Hon'ble Delhi High Court in WP (C ) No.4806 of 2007 titled as **Union of India versus Ajay Kumar and others 2008 (4) SCT 507**. In that case the Division Bench of Hon'ble Delhi High

Court while dealing with the Scheme 1993 and the New Pension Scheme has upheld the order of the Central Administrative Tribunal vide which the applicants were held entitled to contribute towards GPF Scheme under the Old Pension Scheme who had attained the temporary status by virtue of Scheme 1993.

16. The contesting respondents have placed on file the copy of order dated 24.2.2015 passed by the Hon'ble Apex Court in SLP (C ) N.19763-68 of 2009 as (Annexure CMA-1) which shows that the said SLP has been dismissed by the Hon'ble Apex Court, so, the very basis pleaded by the petitioners in the present writ petition to challenge the impugned order passed by the learned Tribunal stands washed away.

17. Thus, keeping in view our aforesaid discussion, we do not find any illegality or infirmity in the impugned order passed by the learned Tribunal.

18. Resultantly, the present writ petition has no merit and the same is hereby dismissed.

**(M. JEYAPPAUL)**  
**JUDGE**

**(DARSHAN SINGH)**  
**JUDGE**

**November 02, 2015**  
**ps**