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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of hearing and Order: 27.02.2015

+ W.P.(C) 1920/2015 & CM Nos.3448-49/2015

UNION OF INDIA & ORS.

..... Petitioners

Through Mr. R.V. Sinha & Mr. R.N. Singh,
Advs.

versus

BIRENDRA SINGH & ANR.

..... Respondents

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

KAILASH GAMBHIR, J (ORAL)

W.P.(C) 1920/2015 & CM Nos.3448-49/2015

1. By this petition filed under Article 226 of the Constitution of India, the petitioners seek to challenge the impugned order dated 28.05.2014 in

O.A. No.4147/2012 passed by the learned Central Administrative Tribunal, Principal Bench, whereby the learned Tribunal has allowed the O.A. preferred by the respondents.

2. Mr. R.V. Sinha, learned counsel appearing for the petitioners submits that respondents were initially appointed as daily wagers on 29.08.1992 and 22.12.1992 respectively in the office of the Custodian, the Special Court (TORTS) Act, 1992, Banking Division (Department of Financial Services), Ministry of Finance and while serving in the capacity of daily wagers they were granted temporary status in the scale of pay of Rs.750-940/- with effect from 01.07.1994 in terms of DOPT O.M. No.51016/2/90-Estt. Dated 10.09.1993. One of the benefits under the said scheme was that after rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund. Accordingly, they became members of the GPF Scheme and they contributed to the said fund regularly till 04.03.2003. However the petitioners vide their letter dated 04.03.2003 dispensed with their service with effect from 05.03.2003. This decision of the petitioners was challenged by the respondents vide O.A. No.605/2003 and while deciding the said O.A.

the Tribunal directed the petitioners to reconsider the respondents for re-engagement. The order passed by the Tribunal was challenged by the petitioners before this Court vide W.P.(C) No.1991/2004 but the same was dismissed as withdrawn vide order dated 09.03.2004. These respondents were finally engaged by the petitioner as Group 'D' employees on 01.02.2007 and 19.07.2006 respectively and after their reinstatement they made representations to the petitioners to re-fix their pay after counting their past service rendered by them and to open a GPF account through DRT-II Chandigarh and transfer the amount in their previous GPF account. Another request which was made by the respondents was to count their previous service for admitting them to the old pension scheme under CCS (Pension) Rules. This request made by the respondent was rejected by the petitioner and this is how the respondents filed the O.A. seeking the following reliefs:-

“(a) Declare the impugned letter dated 15.02.2012 issued by Office of Custodian and letter dated 27.02.2012 issued by Shri Rajiv Sharma, Under Secretary to the Govt. of India, Ministry of Finance, as arbitrary, discriminatory, unreasonable, unjust, and inequitable and quash and set aside the same.

(b) Direct the respondents to treat the applicants in continuing service with effect from 05.03.2003 for the benefits of placing them in old pension scheme as the applicants were reinstated in service on direction of Hon ble Tribunal.

(c) Direct respondents to deduct the subscription towards GPF with effect from 05.03.2003 in continuance to previous subscription as per Scheme of 10.09.1993 and to refund the amount with interest which was deducted from salary towards New Pension Scheme.

(d) Direct respondents to re-fix the basic pay keeping in view the earlier basic pay that is Rs.2,960/- as on 04.03.2003 wherein on re-engagement on 01.02.2007 and 19.07.2006 respectively the basic pay was fixed at Rs.2550/- which is arbitrary.

(e) Direct respondents to pay the salary for the broken period that is from 5.3.2003 till their reinstatement on 01.02.2007 and 19.07.2006 respectively with interest.

(f) Direct respondents to count the broken period that is 05.03.2003 till their reinstatement on 01.02.2007 and 19.07.2006 respectively as qualifying service by regularizing as duty or leave.

(g) Any other relief may deem fit by the Hon'ble Tribunal in given circumstances."

3. The order of the Tribunal was then challenged by the respondents in W.P. (C) No.5281/2013 in the High Court and the High Court vide its order dated 26.08.2013 quashed the order passed by the Tribunal dated 12.12.2012 and gave the direction to the Tribunal to decide the O.A. afresh after pleadings in the matter were completed. It is after the remand that the Tribunal decided the O.A. vide the impugned order dated 28.05.2014.

Operative para of the order dated 28.05.2014 passed by the Tribunal is reproduced hereunder:-

“ 18. In view of the above facts and circumstances of the case, this OA is allowed and the impugned letters of the Respondents Annexure A-1 dated 15.02.2012 and Annexure A-2 dated 27.02.2012 are quashed and set aside. Further, the Respondents shall treat the applicants in continuous service w.e.f. 29.08.1992 and 22.12.1992 respectively as daily wagers and holders of temporary status w.e.f. 01.07.1994. The period from 05.03.2003 to 31.01.2007 in the case of the first applicant and the period from 05.03.2003 to 19.07.2006 in the case of the second Applicant shall be treated as duty for all purposes except back wages. Accordingly, their membership in the GPF shall again be continued w.e.f. from 01.02.2007 and 19.07.2007 respectively. They shall also be admitted to the Pension Scheme reckoning their initial engagement as casual labour w.e.f. 29.08.1992 and 22.12.1992 respectively and holders of temporary status w.e.f. 01.07.1994. Consequently, the amount which has been deducted from their salary towards New Pension Scheme shall be refunded with interest at GPF rates. Respondents are further directed to refix their basic pay on their reengagement on 01.02.2007 and 19.07.2007 respectively, by granting notional increments for the period from 05.03.2003 to 31-1-2007/05.03.2003 to 19.07.2007 and keeping in view their earlier basic pay, i.e., Rs.2960/- as on 04.03.2003. The up-to-date arrears of pay and allowances arising out of such fixation/refixation of pay shall be given to the Applicants. The aforesaid directions be complied with, within a period of 2 months from the date of receipt of a copy of this order.”

4. Before arriving at the said decision, the Tribunal placed reliance upon

the order dated 04.01.2013 passed by this Court in W.P. (C) No.4300/2012 and another connected case titled “Union of India through General Manager, Northern Railway & Anr. V. Sita Ram”. The Tribunal has also referred to some of its own decisions wherein the Tribunal took a view that the period spent by such employees in continuous service even as daily wagers and holders of temporary status shall be treated on duty for all purposes except back wages. The Division Bench of this Court in another case being W.P.(C) 8146/2014 titled “Union of India & Ors. v. Uma Shankar and Anr.” has also upheld the order passed by the CAT involving an identical issue. In a batch of Special Leave Petitions involving identical issue, Union of India has challenged the decision of this Court and the Hon’ble Supreme Court has also dismissed the batch of Special Leave Petitions vide order dated 24.02.2015.

5. Considering the fact that the legal position with regard to the issue involved stands well settled, therefore, we do not find any reason to interfere in the impugned order dated 28.05.2014 in O.A. No.4147/2012 passed by the learned Central Administrative Tribunal, Principal Bench. The petitioner is directed to implement the directions given by the learned Tribunal within a period of two months from the date of this order.

6. Dismissed.

**KAILASH GAMBHIR
(JUDGE)**

**I.S.MEHTA
(JUDGE)**

FEBRUARY 27, 2015
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