

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18094 of 2014

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Shobha Devi, Wife of Late Gore Lal Mallik, Resident of Mohalla - Betwan Bazar,
Argara Raaod, P.S. - Kasim Bazar, District- Munger.

.... Petitioner/s

Versus

1. The Union of India through the Secretary Cum Director General, Department of Post, Government of India, Dak Bhawan, New Delhi.
2. The Assistant Director General (Establishment), Dak Bhawan, New Delhi.
3. The Chief Post Master General, Bihar Circle, G.P.O. Patna.
4. The Director of Postal Services, C/o the Chief Post Master General, Bihar Circle, G.P.O. Patna.
5. The Superintendent of Post Offices, Munger Division, Munger.
6. The Post Master, Munger Post Office, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. M.P. Dixit, Advocate.

For the Respondent/s : Mr. Sanjay Kumar, A.S.G.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 22-08-2016

Heard learned counsel for the parties.

2. The order dated 27th of March, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) in O.A. No. 050/00249 of 2014 is subject matter of challenge in the present writ application whereby, claim of the petitioner for grant of Family Pension remained unsuccessful.

3. Gore Lal Mallik, husband of the petitioner, was initially appointed as Part Time Casual Sweeper. He was granted the status of Full Time Casual Worker for working of 8 hours with effect

from 1st of January, 1998. Later on 28th of July, 2011 he was conferred Temporary Status at par with Group 'D' employees. Unfortunately, the husband of the petitioner died on 13th of December, 2013.

4. The petitioner claims Family Pension after death of her husband. Such claim has been declined by the learned Tribunal relying upon Supreme Court order reported as General Manager, North West Railway and others Vs. Chanda Devi, (2008) 2 SCC 108.

5. Learned counsel for the petitioner relies upon a Division Bench judgment of this Court in C.W.J.C. No. 4475 of 2007 (Union of India and Ors. Vs. Shail Devi), disposed of on 7th of November, 2007 to contend that an employee who has conferred Temporary Status is entitled to pensionary benefits. Reliance was placed on the Supreme Court judgment reported as Indian Council of Agricultural Research and Another Vs. Santosh, (2006) 11 SCC 157.

6. On the other hand, learned counsel for the respondents refers to Casual Labourers (Grant of Temporary Status and Regularization) Scheme to contend that conferment of Temporary Status does not automatically imply that the casual labourers would be appointed as a regular Group 'D' employees within any fixed time frame. 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 General Provident Fund and would also be entitled to certain other benefits. The relevant clause of the Scheme reads as under:-

“7. Conferment of Temporary Status does not automatically imply that the casual labourers would be appointed as a regular Group ‘D’ employees within any fixed time frame. Appointment to Group ‘D’ vacancies will continue to be done as per the extant Recruitment Rules, which stipulate preference to eligible ED employees.

8. 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 General Provident Fund. They 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 this Department.

15. The engagement of the casual labourers will continue to be on daily rates of pay on need basis.

16. The conferment of temporary status has no relation to availability of sanctioned regular Group ‘D’ posts.

17. No recruitment from open market for Group ‘D’ posts except compassionate appointments will be done till casual labourers with the requisite qualification are available to fill up the posts in question.”

7. Learned counsel for the respondents also refers to a Division Bench judgment of this Court dated 19th of January, 2016 in C.W.J.C. No. 227 of 2016 (The Union of India & Ors. Vs. Smt. Suman Singh) whereby referring to Supreme Court judgment in

Santosh's case (supra) this Court held that Temporary Status employee however long he may have served in that status, cannot be treated to be Group 'D' employee. The relevant extract from the judgment reads as under:-

“6. In our view, this Circular does not convert a temporary status employee, however, long he may have served in that status, to regular Group “D” employees. That would be matter of selection and available vacancy, as Group “D” is a cadre with defined strength.

8. Thus, when the applicant's late husband served for more than three years in temporary status, he became entitled to GPF, deductions and contributions as Group “D” employees, but he did not become a Group “D” employee and, as such, did not get the benefits of a Group “D” employee.”

8. We have heard learned counsel for the parties and find no error in the order passed by the Tribunal.

9. The husband of the petitioner was conferred Temporary Status and by such conferment, he becomes entitled to contributions to the General Provident Fund and also for grant of Festival Advance or Flood Advance but he cannot be treated as a regular Group 'D' employee.

10. Similar question has been examined by the Supreme Court in the case reported as Uttar Haryana Bijli Vitran Nigam Ltd. and others Vs. Surji Devi, (2008) 2 SCC 310 wherein, the benefit of Family Pension was declined to the wife of the late

employee as services of her husband were never regularized. The relevant extract from the judgment reads as under:-

“16. The scheme relating to grant of family pension was made under a statute. A person would be entitled to the benefit thereof subject to the statutory interdicts. From a bare perusal of the provisions contained in the Punjab Civil Services Rules, Vol. 2 vis-à-vis the Family Pension Scheme, it would be evident that the respondent was not entitled to the grant of any family pension. Husband of the respondent was a work-charged employee. His services had never been regularized. It may be unfortunate that he had worked for 11 years. He expired before he could get the benefit of the regularization scheme but sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law. (See Maruti Udyod Ltd. v. Ram Lal (2005) 2 SCC 638, State of Bihar v. Amrendra Kumar Mishra, (2006) 12 SCC 561, SBI v. Mahatma Mishra (2006) 13 SCC 727, State of Karnataka v. Ameerbi, (2007) 11 SCC 681 and State of M.P. v. Sanjay Kumar Pathak, (2008) 1 SCC 456.)

The statutory provisions, as noticed hereinbefore, debar grant of family pension in favour of the family members as the deceased employee was a work-charged employee and not a permanent employee or temporary employee. The period during which an employee worked as a work-charged employee could be taken into consideration only when his services are regularized and he becomes permanent and not otherwise.”

11. In Santosh's case (supra) as well, the Supreme Court has found fault with the finding/directions given by the Tribunal to regularize the services of the employee and also returned a finding that the family of the deceased was not entitled to any

Family Pension. The claim of the applicant before the Tribunal was set aside. Even the judgment in Santosh's case (supra) is of no help to the petitioner.

12. In view of the Scheme and the fact that the deceased was never conferred a Regular Status, the family is not entitled to the Family Pension only because he was conferred Temporary Status.

13. Consequently, we do not find any merit in the writ application. The same is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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