

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 227 of 2016

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1. The Union of India through the Secretary cum D.G. Department of Posts, Dak Bhawan, New Delhi.
 2. The Chief Postmaster General, Bihar Circle, Patna.
 3. The Director Accounts (Postal) Exhibition Road, Patna.
 4. The Postmaster General, North Region, Muzaffarpur.
 5. The Superintendent of Post Offices, Siwan Division, Siwan.

.... Petitioner/s

Versus

Smt. Suman Singh, Wife of Late Upendra Kumar Singh, Resident of Village - Rivilganj, Near Post Office, P.S. - Rivilganj, District - Saran (Chapra).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Sanjay Kumar, ASG

For the Respondent/s : M/s Hemant Kr Karn & Jayant Kr Karn, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 19-01-2016

Union of India, in the Department of Posts, is aggrieved by the judgment and order of Central Administrative Tribunal (for brevity "the Tribunal") dated 09th September, 2015 passed in OA No 654 of 2011.

2 The dispute relates to the right to receive family pension and other death-cum-retiral dues. The applicant, before the Tribunal, was the wife of late Upendra Kumar Singh who died as a Jeep driver in "temporary status". The Tribunal has held that having

worked for a period of three years in temporary status, he became entitled to pensionary benefits and consequently, upon his death, soon after completion of three years of service under temporary status, his wife would be entitled to family pension. Union of India challenges this position before this court.

3 We have heard Shri Sanjay Kumar, learned Assistant Solicitor General for the Union of India and Shri Hemant Kumar Karn, Advocate for the sole contesting respondent, who was the applicant before the Tribunal, and with their consent, this writ petition is being disposed of at this stage itself.

4 Having heard learned counsels, we are first of the opinion that there appears to be some confusion amongst all, but the Department with regard to the status of the respondent's late husband. It would not be wrong to classify the status of an employee in virtually four classes. He may be a casual employee who then is granted temporary status but not to be confused with temporary employee which is totally different and the last being a regular/permanent Group "D" employee. These are four distinct categories. The review of various Circulars issued from time to time would show that a person who has been a casual employee working for certain period and meeting with certain qualifications, he is then granted temporary status. An employee, who has temporary status

upon working for certain period, is conferred with certain benefits which accrues to a temporary or permanent Group “D” employee. Temporary or permanent Group “D” employee is a cadre by itself, some of the posts wherein are reserved for being filled upon vacancy occurring from employees having temporary status. From this, two things flow, firstly all casual employees, who are granted temporary status ipso facto, do not become or enjoy all the privileges of Group “D” employee nor do they become Group “D” employee by default at any point. What the Circulars have said and what the judgment of the Apex Court in the case of *Union of India & Others –Versus- Rabia Bikaner*, AIR 1997 Supreme Court 2843 and in the case of *Indian Council of Agricultural Research & Another –Versus- Santosh*, (2006) 11 Supreme Court Cases 157 (equivalent to AIR 2007 Supreme Court 267) clearly bring out these distinctions. The Circulars, inter alia, being general instruction issued by Department of Posts, Letter No 66-9/91-SPB. I, dated the 30th November, 1992 is one of these said Circulars which is quoted hereunder:

“5. Benefits to casual labourers on completion of three years’ service in temporary status.-
In their judgment, dated 29.11.1989, the Hon’ble Supreme Court have held that after rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Group ‘D’

employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group 'D' employees on regular basis.

2. In compliance with the above-said directive of the Hon'ble Supreme Court, it has been decided that the casual labourers of this department conferred with temporary status as per the scheme circulated in the above-said circular No 45-95/87-SPB I, dated 12-4-1991, be treated at par with temporary Group 'D' employees with effect from the date they complete three years of service in the newly acquired temporary status as per the above-said scheme. From that date, they will be entitled to benefits admissible to temporary Group 'D' employees such as –

(1) All kinds of leave admissible to temporary employees;

(2) Holidays as admissible to regular employees;

(3) Counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees who are given temporary status and who complete three years of service in that status while granting them pension and retirement benefits after their regularization;

(4) Central Government Employees' Insurance Scheme;

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(5) *General Provident Fund;*

(6) *Medical Aid;*

(7) *Leave Travel Concession;*

(8) *All advances admissible to temporary Group 'D' employees;*

(9) *Bonus.*

3. Further action may be taken accordingly and proper service record of such employees may also be maintained."

5 A reference to the said Circular would show that, inter alia, upon completion of three years of continues service with temporary status, the casual employee would get certain benefits of Group "D" employees. When it comes to retiral benefits, Clause (3) of this Circular, as contained in paragraph 2 thereof, clearly stipulates that upon completion of three years of services in temporary status and after their regularization, they would be entitled to pension and retiral benefits. Therefore, there are two conditions before a temporary status employee gets or becomes entitled to pension. He should have completed three years of service as temporary status employee and must be regularized thereafter. Otherwise he is not entitled to various other benefits enjoyed by Group "D" employees as enumerated in the Circular.

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.

7 If we keep these distinctions in mind then we will not falter. We may note that even the Tribunal was apparently not clear of this distinction. At one place, while passing the final order, the Tribunal noted that the husband of the applicant died as a temporary Group “D” employee and rendered much more than three years of service after conferment of temporary status. Nothing can be more confusing statement than this. Either he is a Group “D” employee or he is an employee enjoying temporary status. He cannot be both. They are different and distinct, as pointed above.

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.

9 The Tribunal was, thus, wrong in allowing the prayer of the applicant who is the sole respondent contesting this writ petition. The order of the Tribunal has, thus, to be set aside.

10 In fairness to the learned counsel for the respondent

who has referred to several judgments and orders of this Court, all we can say is that they are all distinguishable on facts. In one case, the temporary status employee had worked for over 14 years and then he died. This materially changes the facts because upon completion of ten years in temporary status, some pension rights accrue. Similarly, each case has to be seen on its own facts for it is well settled principle that a judgment is an authority for what it decides upon the facts proved or assumed and is not an authority for what logically flows from it even though the expressions used in the judgment are of general nature.

11 Thus, we have no option but to allow the writ petition and set aside the judgment and order of the Tribunal, as noted above.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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