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

+ **WRIT PETITION(CIVIL) No. 11934/2015**

Date of decision: 1st March, 2016

KUNTESH & ANR. Petitioners
Through Mr. S.K. Gupta and Mr. Vikram
Singh, Advocate.

Versus

UNION OF INDIA & ANR Respondent
Through Mr. Kishan Nautiyal, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.

We have heard the learned counsel for the petitioner and respondents and with their consent have taken up the writ petition for final disposal.

2. Kuntesh and Mohit Kumar are widow and son of late Ram Kishan. They had filed OA No.144 of 2013 for quashing and setting aside the communication dated 16th October, 2012 and for direction that Mohit Kumar may be considered for compassionate appointment.

3. The impugned order passed by the Central Administrative

Tribunal, Principal Bench dated 28th March, 2014, dismisses the aforesaid OA and has declined the prayers observing that the deceased Ram Kishan was a casual employee, who was conferred temporary status with effect from 1st December, 1993 in accordance with Casual Labourers (Grant of Temporary Status and Regularization) Scheme of the Government of India, 1993. He was not regularized till he expired on 28th March, 2012 and not being a regular employee, Mohit Kumar, petitioner No.2 is not eligible for being considered for appointment on compassionate basis. The respondents have relied upon their office order dated 4th May, 2000, which stipulates that only a dependent family member of a Government servant, who has died while in service, retired on medical grounds, etc. is eligible for appointment on compassionate basis. Note II of the said office order dated 4th May, 2000 defines the term "Government servant" as under:-

“Note II "Government servant" for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad-hoc or contract or re-employment basis.”

It may also be relevant to take into consideration Note III of the said office order, which is as under:-

“Note III "Confirmed work-charged staff" will also be covered by the term 'Government servant' mentioned in Note III above.”

4. A reading of Note II would show that it draws a distinction

between Government servant appointed on regular basis and Government servant, who is working on daily wages, casual, apprentice, ad-hoc, contract or on re-employment basis. Note III states that “confirmed work-charged staff” would be covered by the term “Government servant”. We perceive and believe that for the purpose of Note II, Government servant appointed on regular basis would be one who does not fall in the excluded category i.e. is not a daily wager, casual worker, apprentice, ad-hoc or a contractual employee or an employee employed on re-employment basis. It is obvious that the term “Government servant” would include the “confirmed work-charged staff”.

5. Casual Labourers (Grant of Temporary Status and Regularization) Scheme of the Government of India, 1993 has been quoted in the impugned judgment and states that it would be applicable to casual workers, who were working when the Scheme came into force with effect from 1st September, 1993 in the Ministries/Departments of Government of India and their attached and subordinate offices, but shall not be applicable to the casual workers in Railways, etc. It specifically stipulates that casual labourers, who were in employment on the date of issue of the said OM and had rendered continuous service of at least one year, which means that they had been engaged for a period of at least 240 days or 206 days in the case of offices observing five day week, would be entitled to the said benefit. Conferment of temporary status

would be without reference to creation/availability of regular Group 'D' posts. However, such casual labourers, who acquire temporary status, would not be brought on record the permanent establishment unless they were selected through regular selection process for Group 'D' posts.

6. The Scheme specifically envisaged that the temporary status would entitle the said workers to get minimum pay scale of corresponding regular Group 'D' post including DA, HRA and CCA etc. as held by the OM dated 15th January, 1996. They shall be entitled to increments as applicable to Group 'D' employees taking into account pro rata wages for every one year of service. Such employees were also entitled to leave on pro rata basis, maternity leave and 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularization. However, after rendering three years' of continuous service post grant of temporary status, such employees would be treated at par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund and eligible for grant of Festival Advance, Flood Advance, etc. Until they are regularised, they would be entitled to productivity linked bonus/Ad-hoc bonus only at the rates applicable to casual labourers. Despite conferment of temporary status, their services could be dispensed with by giving a notice of one month in writing. Paragraph 8 of the aforesaid Scheme stipulated the procedure of filling up of Group 'D' posts and for

induction of casual labourers with temporary status as “regular employees”.

7. A reading of the aforesaid stipulations would clearly show that the status of deceased Ram Kishan as a temporary worker could not be equated and treated at par with a daily wager or a casual employee. He was also not an ad-hoc or a contractual employee. Though not conferred status of “regular employee”, deceased Ram Kishan was certainly in a much better and favourable position as compared to a daily wager, casual, ad-hoc or contractual employee. What is more pertinent is the fact that the deceased Ram Kishan had started working with the respondents in the year 1988. Thereafter, as noticed above, he was conferred temporary status on 17th December, 1993 and with effect from 4th February, 1997, was treated as a Group ‘D’ employee for the purpose of General Provident Fund etc. It is a case of the petitioners that deceased Ram Kishan should have been regularised in normal course much before his death on 28th March, 2012, but this unfortunately did not happen. The deceased had made representations dated 16th September, 2009 and 4th March, 2011, requesting that he should be regularised.

8. The respondents in the counter affidavit filed before us have accepted that one Prem Lata Devi, legal heir of a temporary status employee was granted compassionate appointment, but it is claimed that

this was an erroneous appointment and, therefore, would not confer any right to the petitioners herein. However, we notice that there is a decision of this Court dated 4th November, 2015 in W.P.(C) No. 10382/2015, titled *Union of India & Ors. Vs. Babita*, wherein a temporary employee, who had worked for 20 years, had died in service and request for compassionate appointment was declined. The Tribunal in the said case had allowed the OA and had directed the Union of India to consider the legal heir's case for compassionate appointment. The High Court in the said order has referred to the nature and character of temporary status under the aforesaid Scheme and has observed that once the temporary worker had rendered three years of continuous service, he was entitled to certain benefits and was virtually treated in similar manner as regular employees. The High Court has also referred to the aim and objective of compassionate appointment, which is to provide succour and help to the family of the deceased employee, who has died in harness, to get over penury and financial hardship as a result of the untimely death. It is stated that age of Kuntesh is 39 years and Mohit Kumar is slightly more than 19 years.

9. In view of the aforesaid discussion, we would allow the present writ petition with a direction to the respondents to consider the petitioner No.2, Mohit Kumar, for compassionate appointment in accordance with the scheme and as per law, which means that the application would be

examined under the relevant scheme and consideration would not be rejected on the ground that the deceased Ram Kishan was not a regular employee. Other aspects, whether the petitioner No.2 deserves and is entitled to compassionate appointment etc. are not matters, which we have examined and considered.

10. The writ petition is partially allowed to the extent indicated above. In the facts of the present case, there will be no order as to costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 01, 2016
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