

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

Reserved on: 05.10.2016

Decided on : 24.11.2016

+ **WP(C) No. 9201/2015**

MURTI DEVI

.....Petitioner

Through: Mr.V.P.S.Tyagi, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ankur Chhibber, Advocate

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CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

:SUNITA GUPTA J.

1. The impugned order dated 21st November, 2014 passed by the Principal Bench, Central Administrative Tribunal ('Tribunal' for short) in OA No. 3870/2013 and order dated 3rd February, 2015 passed in review application being RA 15/2015 rejecting the claim for grant of "arrears of paid weekly off" to the petitioner during the period she worked as casual labourer with temporary status are under challenge in this writ petition.

2. The petitioner was initially engaged as a casual labourer on daily wage basis on 1st October, 1988 by respondent No. 4. She was conferred with temporary status with effect from 15th September, 1994 in accordance with the scheme appended to the DOP&T's O.M. dated 10th September, 1993 vide order dated 15th September, 1994 issued by the respondent No. 4 before us. Thereafter she was appointed as *safai karmchari* on regular basis with effect from 13th June, 2005 vide order dated 9th June, 2005.

3. The petitioner had filed the OA No.3870/2013 claiming the following reliefs:

- (a) *To direct the respondents to grant all the envisaged benefits as per OM dated 07.06.1988 as well and para 5 of the DOPT schemes of 10.9.1993 for payment of paid weekly off and grant of increments on fixation of pay on accord of Regularization and benefit of earned leave on credit of the applicant to be brought forward on her regularization.*
- (b) *Make payment of all arrears of benefits as is granted to other similarly situated employees with refund of any amount irregularly deducted under the guise of the New Pension Scheme applicability along with interest 18% p.a. simple interest on all the arrears due to the applicant from the date fell as such till date of payment made.*
- (c) *To pass any order or directions as deemed just and proper in the facts and circumstances of the case with Award of cost of this application.”*

4. By order dated 21st November, 2014, the Tribunal allowed the claim of the petitioner regarding the arrears admissible to her on account of paid weekly off during the period when she worked as casual labourer in accordance with DOP&T's O.M. dated 7th June, 1988 and also directed the respondent to decide the question of grant of increments to the petitioner at the time of fixation of her pay and to carry forward the leave earned by her while working as casual labourer with temporary status to the leave account on her regular appointment. However, the Tribunal declined to grant her relief regarding paid weekly off during the period when she worked as a casual labourer with temporary status. Review application filed by her also met with the same fate. Feeling aggrieved by this part of the order, present writ petition has been filed by her.

5. It is the submission of learned counsel for the petitioner that the Tribunal wrongly interpreted the object and intent of two OM's. While

O.M. dated 7th June, 1988 is of permanent nature, the O.M. dated 10th September, 1993 is of one time applicability. Learned counsel laid emphasis on the clause “while the existing guidelines contained in O.M. dated 7th June, 1988 may continue to be followed” occurring in paragraph 1 of DOP&T’s O.M. dated 10th September, 1993 and submitted that in view of the said clause, sub paragraph (vi) of paragraph 1 of the O.M. dated 7th June, 1988 is applicable to casual labourer with temporary status entitling them to paid weekly off, in addition to the benefits specified in paragraph 5 of the O.M. dated 10th September, 1993 and thus the petitioner is entitled to be paid arrears on account of paid weekly off during the period when she was working as a casual labourer with temporary status.

6. The learned counsel further submits that payment is made to other similarly situated employees on account of paid weekly off and denial of such monetary benefit to the petitioner is violative of Article 14 of the Constitution of India. For raising this submission, reliance is placed upon the decision in *Vijay Pal & Ors. vs. UOI and Ors.* in OA 1046/2007; *Sh. Naresh etc. vs. UOI and Ors.* in OA No. 3639 to 3641/2009; *Smt. Jasoda and Ors. vs. Union of India and Ors.* in OA 1336/2012 and *Chetan vs. Union of India* in OA 3222/2011.

7. The core question for consideration is whether the petitioner is entitled to benefits provided to the casual labourers in O.M. dated 7.6.1988 even after she was conferred with temporary status under DOP&T’s O.M. dated 10.9.1993. Therefore, it would be necessary to refer to the DOP&T’s O.M. dated 7.6.1988 and O.M. dated 10.9.1993 which read thus:

“DoP&T’s O.M.No.49014/2/86-Estt.(C) dated 7th June, 1988:

Subject: Recruitment of casual workers and persons on daily wages -Review of policy.

1. The policy regarding engagement of casual workers in Central Government offices has been reviewed by Government keeping in view

*the judgment of the Supreme Court delivered on the 17th January, 1986 in the Writ Petition filed by **Shri Surinder Singh and others vs. Union of India** and it has been decided to lay down the following guidelines in the matter of recruitment of casual workers on daily wage basis:-*

- (i) Persons on daily wages should not be recruited for work of regular nature.*
- (ii) Recruitment of daily wagers may be made only for work which is casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.*
- (iii) The work presently being done by regular staff should be reassessed by the administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised. If considered necessary.*
- (iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.*
- (v) In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.*
- (vi) The casual workers may be given one paid weekly off after six days of continuous work.*
- (vii) The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly off as mentioned at (vi) above. They will, however, in addition, be paid for a National Holiday, if it falls on a working day for the casual workers.*
- (viii) In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.*
- (ix) Where work of more than one type is to be performed throughout the year but each type of work does not justify a separate regular*

employee, a multifunctional post may be created for handling those items of work with the concurrence of the Ministry of Finance.

(x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post.

(xi) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training. All the administrative Ministries /Depts. should undertake a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved:-

(a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.

(b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines .

(c) The remaining casual workers not covered by (a) and (b) above are discharged from service.

2. The following time limit for completing the review has been prescribed in respect of the various Ministries/Depts:-

(a) Ministry of Railways 2 Years

(b) Department of Posts, Department of Telecommunications and Department of Defence Production 1 Year

(c) All other Ministries / Depts./Offices 6 months

DoP&T's O.M No.51016/2/90-Estt.(C) dated 10.9.1993:

Subject:- Grant of temporary status and regularization of Casual workers- formulation of a scheme in pursuance of the CAT, Principal Bench, New Delhi, judgment dated 16th Feb. 1990 in the case of **Shri Raj Kamal & others vs. U.O.I.**

1. The guidelines in the matter of recruitment of persons on daily wage basis in Central Government offices were issued vide this Department's O.M. No.49014/2/86-Estt. (C) dated 7.6.198. The policy

has further been reviewed in the light of the judgment of the C.A.T., Principal Bench, New Delhi, delivered on 16.2.90 in the writ petition filed by Shri Raj Kamal and others vs. Union of India and it has been decided that while the existing guidelines contained in O.M. dated 7.6.88 may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year of continuous service in Central Government offices other than Department of Telecom, Posts and Railways may be regulated by the scheme as appended.

2. Ministry of Finance, etc. are requested to bring the scheme to the notice of appointing authorities under their administrative control and ensure that recruitment of casual employees is done in accordance with the guidelines contained in O.M. dated 7.6.88. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities for taking prompt and suitable action.

(Y.G.Parande)
Director

To
All Ministries/Departments/Offices of the Government of India as per the standard list.

Copy to: (1) All attached and subordinate offices of

(i) Ministry of Personnel, PG & Pensions

(ii) Ministry of Home Affairs

(2) All officers and sections in the MHA and Ministry of Personnel PG and Pensions.

(Y.G.Parande)
Director

Department of Personnel & Training, Casual Labourers (Grant of Temporary Status and Regularization) Scheme:

1. This scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993."

2. This Scheme will come into force w. e. f. 1.9.1993.

3. This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.

4. Temporary Status

(i) *Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).*

(ii) *Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.*

(iii) *Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.*

(iv) *Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.*

5. *Temporary status would entitle the casual labourers to the following benefits:-*

(I) *Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA.*

(II) *Benefits of increments at the same rate as applicable to a Group 'D' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 240 days, 206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.*

(III) *Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work. Casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.*

(IV) *Maternity leave to lady casual labourers as admissible to regular Group 'D' employees will be allowed.*

(V) *50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation.*

(VI) *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 General Provident Fund, and 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 their Department.

(VII) Until they are regularized, they would be entitled to Productivity Linked Bonus/ Ad hoc bonus only at the rates as applicable to casual labourers.

6. *No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers.*

7. Despite conferment of temporary status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work.

8. *Procedure for filling up of Group 'D' posts*

(I) Two out of every three vacancies in Group D cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel & Training from amongst casual workers with temporary status. However, regular Group D staff rendered surplus for any reason will have prior claim for absorption against existing vacancies. In case of illiterate casual labourers or those who fail to fulfill the minimum qualification prescribed for post regularization will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed any relaxation equivalent to the period for which they have worked continuously as casual labourer.

9. On regularization of casual worker with temporary status, no substitute in his place will be appointed, as he was not holding any post. Violation of this should be viewed very seriously and attention of the appropriate authorities should be drawn to such cases for suitable disciplinary action against the officers violating these instructions.

10. In future the guidelines as contained in this Departments O.M. dated 7.6.88 should be followed strictly in the matter of engagement of casual employees in Central Government Offices.

11. Department of Personnel & Training will have the power to make amendments or relax any of the provision in the scheme that may be considered necessary from time to time.”

8. A reading of both the DOP&T's O.M. dated 7th June, 1988 and O.M. dated 10th September, 1993 along with scheme appended to it makes it clear that DOP&T's O.M. dated 7th June, 1988 deals with the recruitment of casual labourers on daily wage basis and also provided the guidelines for payment of wages for work undertaken by them. O.M. dated 10th September, 1993 gave the guidelines for conferring temporary status to the casual employees who were already employed and rendered one year of continuous service in Central Government except the department mentioned therein. Paragraph 5 of this scheme laid down the benefits which the casual labourers conferred with temporary status were entitled to.

9. Perusal of paragraph 6 of the O.M dated 10th September, 1993 makes it clear that it was specifically stipulated that “no benefits other than those specified in paragraph 5 of the said O.M. will be admissible to casual workers with temporary status and that if any additional benefits are admissible to casual workers in industrial establishment in view of provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers.” The rationale behind the scheme is manifest from the fact that as per sub-paragraph (vi) of paragraph 1 of O.M. dated 7th June, 1988, a casual worker is to be given one paid weekly off after six days of continuous work whereas a casual labourer with temporary status is entitled to several benefits enumerated in sub paragraphs (I) to (VII) of paragraph 5 of the scheme appended to O.M. dated 10th September, 1993. It nowhere provides for giving one paid weekly off to a casual labourer with temporary status after six days of continuous work, therefore,

paragraph 6 of the scheme specifically stipulated that casual labourer with temporary status are not entitled to any other benefit than those stipulated in paragraph 5. It is not the case of the petitioner that she is entitled to any additional benefit under Industrial Disputes Act.

10. Reliance placed by the counsel for the petitioner on clause “while existing guidelines contained in O.M. dated 7th June, 1988 may continued to be followed” occurring in O.M. dated 10th September, 1993 for claiming benefit of paid weekly off in addition to benefit specified in paragraph 5 of the O.M. dated 10th September, 1993 is misplaced. The said clause cannot be construed to mean that a casual labourer who is conferred temporary status is entitled to benefits as enumerated in paragraph 5 of O.M. dated 10th September, 1993 as well as sub paragraph(vi) of paragraph 1 of O.M. dated 7th June, 1988. The said expression had only clarified that O.M dated 7th June, 1988 was not withdrawn and would continue to apply to casual employees. It was not to make OM dated 7th June, 1988 applicable to casual employees with temporary status.

11. The said scheme is applicable to persons who were/are recruited and otherwise continue as casual workers/labourers as per the guidelines contained in the O.M. dated 7th June, 1988 and said guidelines may continued to be followed only in respect of recruitment of persons on daily wage/casual basis and their entitlements and not for giving any of the benefits thereunder to the casual labourers who are granted temporary status under the said scheme.

12. The wage payable under OM dated 7th June, 1988 to casual workers and temporary status casual workers under OM dated 10th September, 1993, are entirely different.

13. Casual workers are paid on daily basis and are not recruited for work of regular nature, but for casual, seasonal or work of intermediated nature. Their wage per day when they work is computed under Clause (iv) of paragraph 1 of the OM dated 7th June, 1988 at the rate of 1/30th of pay at the minimum of the relevant pay-scale plus Dearness Allowance for work of 8 hours a day. In view of the aforesaid, OM dated 7th June, 1988 provides that casual worker will be paid for one weekly off after six days of continuous work. In other words, if a casual worker works continuously for six days, he would be entitled to one day's extra payment.

14. Wages payable under OM dated 10th September, 1993 has to be computed differently. As per paragraph 5 of the said OM, casual workers with temporary status are entitled to wages with reference to minimum of the pay-scale in the corresponding regular Group-D officer including Dearness Allowance, House Rent Allowance and City Compensatory Allowance. They are also entitled to increment under sub-para (ii) and leave entitlement on pro rata basis under sub-para (iii). 50% of the service rendered is counted for retirement benefits after regularisation. The OM dated 10th September, 1993 also stipulates how regularisation is to be done. Wages, therefore, under OM dated 10th September, 1993 had computed on a entirely different formula with reference to minimum of the pay-scale in the corresponding Group-D post and includes not only Dearness Allowance, but also House Rent Allowance and City Compensatory Allowance. In fact, in case the plea of the petitioner is to be accepted, possibly the casual workers with temporary status would be entitled to wages, even higher than the regular workers. This is impermissible and should not be allowed.

15. In this view of the matter, we see no reason to interfere with the findings of the learned Tribunal whereby the claim of the petitioner for grant of paid weekly off during the period when she worked as a casual labourer with temporary status was declined.

16. As regards the next limb of argument that several claims of the similar circumstance casual workers conferred with temporary status has been allowed by the respondent and the petitioner cannot be discriminated, this submission again is devoid of merits. Reliance was placed on *Vijay Pal* (supra) and *Smt. Jasoda* (supra), perusal of which goes to show that several reliefs were claimed by the applicants in those cases including benefits as per paragraph 5 of DOP&T's O.M. dated 10th September, 1993 and benefit of weekly off and paid gazetted holidays, the relief was granted as the respondent agreed to grant the same. In *Naresh* (supra), the O.M. filed by the applicant/petitioner was treated as representation and directions were given to the respondents to consider the submission of the applicant and take decision by passing a speaking order. In *Chetan* (supra), applicant was engaged as a daily wager and his services were regularized. He was never conferred temporary status. His claim for payment of arrears of paid weekly off was rejected by the respondent on the ground that O.M. dated 7th June, 1988 was applicable only to casual workers and applicant was not a casual labourer. The Tribunal held that there was no distinction between 'casual wager/casual worker' and 'casual worker' and, therefore, he was held entitled for paid weekly off and paid national holidays for the period when he worked as casual labourer. In none of these cases, the question of entitlement, or otherwise of casual labourers with temporary status to be given paid weekly off was specifically examined and no positive finding was given by the Tribunal.

The Tribunal, in these cases, did not give any specific finding that casual labourers with temporary status are entitled to paid weekly off in terms of DOP&Ts O.M. dated 7th June, 1988 although paragraph 6 of DOP&T's O.M. dated 10th September, 1993 stipulated that no benefits other than those specified in paragraph 5 of the said O.M. are admissible to casual labourers with temporary status. That being so, the decisions relied upon by the counsel for the petitioner does not come to the aid of the petitioner in support of her claim for payment of arrears on account of paid weekly off during the period she worked as casual labourer with temporary status.

17. Moreover, the concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals others cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard Supreme Court in **Gursharan Singh and Ors. v. NDMC and Ors.**, [1996] 1 SCR 1154 held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:

“Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others, Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has

been denied to him, while it has been extended to others and in this process there has been a discrimination.”

18. The claim of the petitioner must be founded upon enforceable right to entitle her to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make, a right" as held in *State of Bihar and Ors. vs. Kameshwar Prasad Singh and Anr.*, AIR 2000 SC 2306. Further as held in *Union of India vs. International Trading Company*, AIR 2003 SC 3983, a party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the appellant cannot strengthen its case. It has to establish strength of its case on some other basis and not by claiming negative equality.

19. In view of the foregoing, even if the respondents had erroneously granted payment of arrears on account of paid weekly off to some individuals during the period of their working as casual labourers with temporary status, the petitioner in the present case cannot claim parity and is not entitled to claim similar treatment.

20. In view of the foregoing, we do not see any reason to interfere with the order passed by the Tribunal whereby the claim of the petitioner for grant of paid weekly off during the period of her working as a casual

labourer with temporary status was declined. For the same reason, there is no reason to interfere with the order dated 3rd February, 2015 whereby RA 15/2015 was dismissed.

21. The writ petition is accordingly dismissed leaving the parties to bear their own costs.

**SUNITA GUPTA
JUDGE**

**SANJIV KHANNA
JUDGE**

NOVEMBER 24, 2016
pr/rs

