

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.02.2017

Delivered on: 24.02.2017

Coram

The Honourable Mr. Justice K.K.SASIDHARAN
and

The Honourable Mr. Justice V.PARTHIBAN
W.P.No.11242 of 2015

A.Sangilimuthu .. Petitioner

versus

- 1 Union of India
Rep. by the Executive Engineer
Southern Rivers Division
Central water Commission
SANGAMAM Gandhi Nagar
Peelamedu PO
Coimbatore
- 2 The Assistant Engineer
Central Water Commission
Lower Cauvery Sub Division
Anna Nagar OFT Post Trichy-21.
- 3 The Registrar
Central Administrative Tribunal
Madras Bench Chennai. .. Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the Order of the 3rd respondent made in O.A. No.1672 of 2013 dated 2.12.2013 and R.A. No.310/ 00015/2014 dated 16.4.2014, quash the same and further to direct the 1st and 2nd respondent to extend benefits with reference to Old Pension Scheme considering the fact that the petitioner was directed to be considered for regularization with reference to the petitioner seasoned Khalasi Service during the period from 1985, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 in terms of the scheme evolved in 1997.

For Petitioners : Mr. L.Chandrakumar
For Respondents : No Appearance

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal') dated 2.12.2013 in O.A.No.1672 of 2013 and also in R.A. No. 310 of 2014 dated 16.4.2014 disposing of both the original application and review application, filed by the petitioner herein.

2. The petitioner herein approached the Tribunal, seeking the following relief:

"To call for the records related to the engagement of the applicant as a seasonal Khalasi and to direct the respondents to consider the applicant who had put in 240 days of casual labour service for absorption in a regular post by Nov.1985/1997 with all the attendant benefits including the retirement benefits with reference to CCS Pension Rules."

3. According to the petitioner, he was engaged as Seasonal Khalasi from the year 1984 under the official respondents. Initially, he was engaged in the year 1983 and after a considerable gap, he was engaged from 1984 till 1.12.2002. The respondent department has introduced a scheme called 'Grant of Temporary status and regularisation of Seasonal Khalasis in the workcharged establishment of the Central Water Commission, 1977. As per the said scheme, regular appointment will be done on the basis of provisions of the scheme meaning that any casual employee must satisfy certain conditions prescribed in the recruitment guidelines and being adjudged fit by the competent selection Committee.

4. The petitioner's original request for grant of benefit under the scheme was rejected inter alia on the ground that he did not possess requisite educational qualification, i.e. VIII Standard. The petitioner was, therefore, constrained to approach the Tribunal by filing O.A.No.1095 of 2003 and the learned Tribunal directed the official respondents to grant relaxation of educational qualifications and in pursuance of the said direction, the petitioner came to be appointed on regular basis vide Office Memorandum dated 08.04.2005 and the petitioner was put on probation for two years.

5. The petitioner after having been appointed regularly with effect from 08.04.2005, retired from service on attaining the age of superannuation on 31.1.2011. Since his regular

appointment was in the year 2005, the petitioner was brought under New Pension Scheme (NPS) which came into effect from 01.01.2004. On being denied regular pension under GPF Scheme and also regularisation with effect from the date of his initial engagement i.e. 1984/85, the petitioner moved the Tribunal by filing the present Original Application, seeking regularisation of his service from the date of his initial appointment.

6. It appears that since the petitioner moved the above said Original Application after his retirement, the Registry of the Tribunal has posted the case for maintainability of the Original Application on the following ground:

"The applicant was engaged as CL/Khalasi from 1984-85 and then from 1995-2003. Subsequently, on the basis of Court orders, he was regularized in the year 2005. Now, after superannuation on 31.1.2011, the applicant is seeking regularization from 1985/1997, which appears to be belated. Therefore, the matter may be posted 'for orders on maintainability (Delay)'".

7. On behalf of the official respondents, it was contended that originally the applicant did not satisfy the educational qualification and the age limit. It was also contended that the applicant having joined on regular basis on and from 12.4.2005 in pursuance of appointment letter dated 08.04.2005, he was governed by new Pension Scheme, as per which, 10% of his pay, Grade Pay and D.A. was recovered from his salary every month and equal to that amount deducted was contributed by the Government every month and was sent to the Trust bank, i.e. Bank of India, Mumbai and the fund was being monitored by the National Securities Depository Limited (NSDL). In view of the above, the claim for regularisation of the petitioner's service from 1985/1997 was not maintainable. In fact, in support of the contention of the official respondents, a detailed reply was filed stating that the actual number of days worked by the petitioner in each season was between minimum 18 days and maximum 89 days. That being the case, the question of grant of regularisation from the date of official appointment would not arise at all as the petitioner admittedly had not completed 240 days in a year when he was engaged, for consideration of his claim for regular appointment. This fact, appears to have not been disputed by the petitioner.

8. After taking note of the submissions of the rival parties, the learned Tribunal dismissed both the original application as well as Review Application. The Tribunal has reasoned that the petitioner having got the relief of regularization as a result of earlier round of litigation, cannot be allowed to re-agitate the same relief in the

subsequent Original Application, that too, belatedly after he had retired from service. Moreover, the Tribunal also viewed that the petitioner did not fulfill the conditions prescribed in the instructions issued by the Official respondents for being considered for regular appointment as the petitioner did not put in regular continuous service as casual labourer and was not appointed through Employment Exchange. The Tribunal after recording its reasoning, dismissed the Original Application. As against the order passed by the Tribunal in the said O.A., a review has been filed by the petitioner. However, the Tribunal dismissed the same stating that there was no error apparent on the face of the record. Against the order passed both in Original Application and Review Application, the present Writ Petition has been filed.

9. Shri L.Chandrakumar, learned senior counsel appearing for the petitioner reiterated his submissions made before the Tribunal. He added that atleast the services rendered by the petitioner as casual labourer from 1985 is to be counted for the purpose of grant of pension under regular GPF Scheme which existed prior to 1.4.2004. In support of his plea, the learned counsel would draw our attention to the decision of the High Court of Punjab and Haryana dated 31.8.2010. In the said decision, the High Court of Punjab and Haryana, has directed that the service rendered from the date of initial appointment till regularization was to be counted as qualifying service for the purpose of pension. But the facts of that case being that the petitioner therein appeared to be employed on casual basis uninterruptedly for many years and subsequently his services came to be regularised from subsequent date. An appeal against the order passed by the High Court of Punjab and Haryana to the Hon'ble Supreme Court, also came to be dismissed. Following the same, few writ petitions in CWP No.1432 of 2012 etc., were allowed by the Punjab and Haryana High Court. However, as stated supra, the ratio laid down in those cases by the Punjab and Haryana High Court, cannot be applied to the factual matrix of the instant case. Admittedly in the instant case, the petitioner had worked only for 89 days as maximum and in some seasons, he had worked only for 18 days. Therefore, by no stretch of legal standards, the petitioner can claim to count his past services which were rendered on a casual basis even for the purpose of grant of pension under the old pension scheme.

10. The learned counsel for the petitioner would also draw our attention to the decision of this Court in W.P.No.2110 of 2014, dated 19.3.2014. A perusal of the same, it could be seen that the issue and the facts of the case were different since the right of the employees therein, to get their past services to count for the purpose of extending pensionary benefits under the old Pension Scheme, was recognized as they were granted temporary status and then subsequently, their services were

regularized and 50% of the temporary service was directed to be counted. In the present case, there was no such conferment of temporary status on the petitioner. Therefore, the learned counsel cannot seek similar benefit granted by the Division Bench in the above said decision.

For all the reasons cited above, we do not see any merit in the writ petition. Moreover, we are also of the view that the Original Application was filed belatedly as held by the Tribunal and the appointment dated 8.4.2005 placing the petitioner on regular basis was not also challenged by the petitioner. In the absence of any explanation or condone delay application or challenge to the order dated 8.4.2005, the Original Application was not at all maintainable. Therefore, the learned Tribunal has rightly dismissed both the O.A. and R.A. on the ground of delay and devoid of merits. We do not find any infirmity in the orders passed by the learned Tribunal, dated 2.12.2013 and 16.4.2014 in O.A.No.1672 of 2013 and R.A. No.310 of 2014 respectively.

Accordingly, the Writ Petition fails and it is dismissed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Executive Engineer
Union of India
Southern Rivers Division
Central water Commission
SANGAMAM Gandhi Nagar
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Coimbatore
 2. The Assistant Engineer
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Anna Nagar OFT Post Trichy-21.
 3. The Registrar
Central Administrative Tribunal
Madras Bench Chennai.
- +1 CC to Mr. L. Chandrakumar, Advocate sr 12034

Pre Delivery order in
W.P.No.11242 of 2015

SAI (CO)
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