

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22.08.2017

JUDGMENT PRONOUNCED ON: 18.12.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.22336 of 2017

- 1.S.Swaminathan
- 2.D.Elumalai
- 3.K.Krishnan
- 4.M.Balu
- 5.J.Anthony Raj
- 6.M.Kumar
- 7.A.Nandakumar
- 8.A.Thangaraj
- 9.R.Aruldass
- 10.G.Gurumurthy
- 11.Karthik
- 12.M.C.Rajesh

....Petitioners

... Vs ...

- 1.Union of India rep by
The Secretary,
Ministry of Defence,
New Delhi.

- 2.The Commandant,
Officer's Training Academy,
St Thomas Mount,
Chennai - 600 016.

- 3.The Registrar,
The Central Administrative Tribunal,
Chennai Bench, High Court Complex,
Chennai - 600 104.

4. L.Devasagayam
-Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of nature of CERTIORARIFIED MANDAMUS, calling for the records relating to the order dated 31.03.2017 passed in O.A.No.310/01266 of 2015 by the Central Administrative Tribunal, Chennai Bench, quash the same and consequently direct the 2nd respondent to extend the benefit

of pension under old Government Pension Scheme to the petitioner.

For Appellants : Mr.S.T.Varadarajulu

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JUDGMENT

RMT.TEEKAA RAMAN, J.

The unsuccessful applicant before the Central Administrative Tribunal are the petitioners herein.

2. These petitioners filed an application before the Central Administrative Tribunal for the prayer seeking the relief of calling for the records relating to the order dated 31.03.2017 passed in O.A.No.310/01266 of 2015 by the Central Administrative Tribunal, Chennai Bench, quash the same and consequently direct the 2nd respondent to extend the benefit of pension under old Government Pension Scheme to the petitioner.

3. On consideration of the material placed before the Central Administrative Tribunal, a same was rejected and hence, this Writ Petition.

4. The grievance of the petitioners is that while some of the employees who are Junior to them were regularized prior to 01.01.2004 were brought under the old pension scheme however the old pension scheme was denied to these petitioners, since their services were regularized after 01.01.2004.

5. The brief facts, according to the petitioner is that they were recruited between May 1998 and August 1998 as General Cadet Orderlies through Employment Exchange after following due selection process. The respondents engaged them as temporary staff when the training period starts for the Officers posted and terminate them after completion of training of the Officers. Intermittently, there will be a break of 20 to 30 days and when new officers posted for training at the 2nd respondent unit, the applicants were given fresh appointment order again. As such, they continued to work from May 1998 to 2005, and in terms of Army HQ letter No.15251/MT/MP4(Civil)(b) Phase-II dated 20.07.2005, they were regularized in service as General Cadet Orderlies in the scale of pay of Rs.2550-55-2660-3200 w.e.f 9.12.2005.

6. The Government of India introduced a New Pension Scheme from 1.1.2004 and as per the Scheme, those who were appointed on or after 1.1.2004 will be governed by the New Pension Scheme and

since the applicants were regularized w.e.f 9.12.2005, the respondents brought them under the New Pension Scheme. The grievance of the applicants is that some of the employees who were Junior to them were regularized prior to 1.1.2004 were brought under Old Pension Scheme whereas the Old Pension Scheme was denied to them since they got their regularization after 1.1.2004.

7. The learned counsel for appearing for the petitioner could submit that though they are regularized after the cut off date 1.1.2004. However, by virtue of the order of regularization, some of his Juniors before the cut off date, they are now enjoying the Old Pension Scheme and hence, the petitioner may also be declared to fit benefit of the Old Pension Scheme rendered the New Pension Scheme introduced in the year 2001.

8. Per contra, the State of 2nd respondent before CAT appears to be that the Government had imposed a strict ban on employment since January, 1984 in any vacancies, appointment could not be made on regular basis unless and until release orders were received from the Government. In view of that, the Academy had to resort to ad hoc employment of Cadet Orderlies for short duration and the selection was done as per laid down rules.

9. It is further case of the 2nd respondent, all the applicants were appointed on ad-hoc basis to ensure the smooth functioning of the Academy and hence they were not even on probation, not earn pension or seniority for the service rendered on ad-hoc basis. All the employees of the 2nd respondent are not covered by the existing pension scheme and only those who were appointed prior to 1.1.2004 are entitled to get pension after their retirement as per Pension Rules.

10. After Government of India released some vacancies during July 2005, the applicants were given fresh appointment on 30.11.2005 and subsequently regularized w.e.f 9.12.2005. As their appointments were after 1.1.2004, they are not entitled to Old Pension Scheme. Accepting the case of the respondent, OA was dismissed and hence, this Writ Petition.

11. The short points that needs to be addressed by us in this petition is:

Whether these petitioners are entitled to benefits of the Old Pension Scheme or not?

12. After hearing the submissions of the counsel and taking note of the fact that admittedly, the petitioners herein are

engaged on ad-hoc basis which ranges from 1998 to 2005 with intermittent break for about 20 to 30 days. Even according to the petitioner as per their ad-hoc employment, they do not have any right to claim regular appointment, they will not put on probation and they cannot claim seniority for the service rendered on the said ad-hoc period.

13. It is undisputed fact that the petitioner herein are not given any temporary status before their absorption viz., 9.12.2005. At this juncture, it is relevant to refer to the scheme formulated by the Union of India namely "Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 will not be applicable to the petitioner herein. As per the scheme only such of those employees who were on employment on the date of commencement of the scheme and rendered a continuous service at least one year will be conferred with Temporary Status.

14. Applying the said scheme to the service particulars of the petitioners herein, it is not in dispute that these petitioners were engaged in 1998 on an Ad-hoc basis with frequent intermittent break and subsequently they were absorbed on 9.12.2005. In the meantime, the Government of India introduced the New Pension Scheme w.e.f 1.1.2004. As per the said scheme, the employees who were appointed on or after 1.1.2004 will be brought under the New Pension Scheme. As the applicants were given fresh appointment on regular basis w.e.f 9.12.2005, pensionary benefits under Old Pension Scheme are not admissible to them. The action taken by the respondents in bringing them under the New Pension Scheme on the basis of their appointment on regular basis w.e.f 9.12.2005 cannot be faulted.

15. As per the provisions of the New Pension Scheme, the employees who are appointed on or before 1.1.2004 are governed by the New Pension Scheme and from the counter affidavit filed by the respondent before the Central Administrative Tribunal, it is seen that, for petitioner herein, a fresh appointment on regular basis was given only on 9.12.2005.

16. The Hon'ble Supreme Court in the decision in S.L.P. (Civil) No. 2224 of 2000 (Union Of India And Anr vs Mohan Pal Etc), held that the scheme of 1993 is not an ongoing scheme and the temporary status can be conferred on the casual labourers under that scheme only if they were on employment on the date of commencement of the scheme and they should have rendered continuous service of at least one year. Therefore, following the above said decision of the Hon'ble Apex Court, the applicants cannot claim to have been regularized from the date of their ad-hoc appointment and hence they are not entitled for pensionary benefits as per the Old Pension Scheme and hence, in view of the admitted service conditions of the petitioner herein and the

fresh appointment order on regular basis was issued only on 9.12.2005 which is admittedly after the cut off date namely 1.1.2004 for the New Pension Scheme.

17. In the light of the above referred decision, we have no hesitation to hold that the petitioners are falling only under the New Pension Scheme and they are not entitled for the Old Pension Scheme. A similar finding recorded by the Central Administrative Tribunal is well considered and well merited and does not call for any interference as the same does not suffer from any illegality or irregularity and accordingly, the said order of Central Administrative Tribunal is hereby confirmed. The order passed by the second respondent in rejecting the representation of the petitioners for extending the Old Pension Scheme to them, is hereby confirmed.

In the result, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. Union of India rep by
The Secretary,
Ministry of Defence,
New Delhi.

2. The Commandant,
Officer's Training Academy,
St Thomas Mount,
Chennai - 600 016.

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The Central Administrative Tribunal,
Chennai Bench, High Court Complex,
Chennai - 600 104.

+1cc to Mr.C.V.RAMACHANDRAMURTHY, Advocate, S.R.No. 91051

Pre-delivery judgment in
W.P.22336 of 2017

KAN (CO)
TR(19/01/2018)