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

% ***Judgment Dated: 8th February, 2017***

+ **W.P.(C) 5706/2002**

UNION OF INDIA AND ORS

..... Petitioners

Through : Mr. Ripu Daman Bhardwaj, CGSC
with Mr. T.P. Singh and Mr. Sahaj
Garg, Advocates

versus

CENTRAL ADMINISTRATIVE TRIBUNAL AND ANR

..... Respondents

Through : Mr. Pradeep Kumar, Advocate for
respondent no.2.

CORAM:

**HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE VINOD GOEL**

G.S.SISTANI, J (ORAL)

1. Rule DB was issued in this matter on 09.09.2002.
2. Challenge in this writ petition is to the order dated 22.04.2002 passed by the Central Administrative Tribunal (briefly the '*Tribunal*') in O.A. No. 2559/2001, by which the application filed by respondent no. 2 herein/Sh. Zile Singh was allowed.
3. The necessary facts which are required to be noticed for disposal of this writ petition are that the respondent no. 2 was engaged as a Casual Labourer in Faridabad NIT Head Post Office and was later conferred with temporary status w.e.f. 29.11.1989. According to the respondent no. 2, after his having been conferred with temporary status, he became eligible for all benefits admissible to a temporary Group 'D' employees of the petitioner. Admittedly, the respondent no.2 was paid bonus in the year 1998-99 at the rate applicable to temporary Group 'D' employees in

accordance with D.G. (Posts) letter No.66-9/91.SPB-I dated 30.11.1992.

4. It is the case of the petitioner herein that infact the respondent no. 2 was eligible for payment of bonus only at the rate applicable to Casual Labourers as per the clarificatory orders issued vide D.G. (Posts) letter No.26-11/96-PAP dated 19.09.2000 and 29.08.2001. Even during the course of hearing, the counsel for the petitioner has placed strong reliance on the aforesaid letters. It is contended that the employees with temporary status are eligible for grant of bonus at the rates applicable to Casual workers and not at par with temporary Group 'D' employees. It is contended that as per the clarificatory order dated 19.09.2000, the respondent no.2 was entitled to for bonus of Rs. 1184/-, i.e. at the rate applicable to the casual workers, for the year 1998-99 and for this reason recovery of over-paid amount of Rs.2763/- was worked out. It is also pointed out by the learned counsel for the petitioner that out of the over-paid amount, Rs. 1400/- stands recovered from respondent no. 2 by deduction of Rs. 700/- per month from the salary for the months of October and November, 2000.
5. The learned counsel for the petitioner contends that although the Tribunal has relied upon a judgment of the Supreme Court in the case of ***Jagrit Mazdoor Union (Regd.) v. Mahanagar Telephone Nigam Ltd., 1990 Supp SCC 113: 1990 SCC (L&S) 606***, but as per this judgment the question of payment of bonus was to be decided in arbitration or in the Consultative Council and this judgment would cover all benefits except bonus. He relies upon paragraphs 11 and 12 of the judgment, which read as under:

“11. This tentative scheme does not take into account the several specific claims advanced by the petitioners in the two writ petitions. These are House Rent Allowance, City Compensatory Allowance, Bonus and Earned Leave. There are

also demands for weekly off day, postal holiday and maternity leave. Weekly off has now been given to RTPs, casual labourers and substitutes under order of this Court and the claim does not survive for adjudication. All these three categories in these two writ petitions are also being given three National Holidays. For the remaining postal holidays, the claim has been pressed but we are of the view that until absorption, they may not be granted. It has been agreed before us that the claim of bonus may be left to arbitration or for being dealt with by the Consultative Council.

12. As regards House Rent Allowance, City Compensatory Allowance and Maternity Leave, we see no justification for treating the employees of the Postal Department differently from those covered under the Regularisation Rules in the Telecommunications Department. Temporary status would be available to the casual labourers in the Postal Department on completion of one year of continuous service with at least 240 days of work (206 days in the case of officers observing five days' week) and on conferment of temporary status, House Rent Allowance and City Compensatory Allowance shall be admissible. There would be no justification to withhold Maternity Leave as that is an obligation of the employer under the law and the State as an ideal employer fulfilling the Directive Principles of State Policy envisaged in Part IV of the Constitution should provide the same. After rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Grade '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.

(Emphasis Supplied)

6. Learned counsel for the respondent no. 2 submits that the casual labourers who had worked for three years after grant of temporary status were entitled to bonus and were to be treated at par with temporary Group 'D' employees of the Department of Post for the purposes of grant of bonus. He submits that the respondent no. 2 had completed three years of service and he was thus to be treated at par with temporary

Group 'D' employees. He further submits that the bonus was granted to the respondent no.2 based on the Office Order No. 66-9/91-SPB-I dated 30.11.1992 and that the subsequent communication dated 19.09.2000 cannot override an Office Order. He also contends that this communication cannot be styled as a clarificatory order as submitted by the learned counsel for the petitioner.

7. Learned counsel submits that the judgment in the case of ***Jagrit Mazdoor Union (Supra)*** has to be read as a whole. The impact of the judgment as rightly held by the Tribunal was that casual labourers are entitled to all benefits at par with temporary Group 'D' employees.
8. We have heard the learned counsel for the parties and considered their rival submissions.
9. It is not in dispute that the respondent no.2 was working as a casual employee. During the year 1998-99, he was paid bonus at par with regular Group 'D' employees.
10. The respondent no. 2 was initially granted bonus at par with temporary Group 'D' employees as per the Office Order No.66-9/91-SPB-I dated 30.11.1992, which reads as under:

“ Vide this office circular letter No.45-95/87-SPB-I dated 12.4.1991, a scheme for giving temporary status to casual labourers fulfilling certain conditions was circulated.

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.

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 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 3 years of service in that status while granting them pension and retirement benefits after their regularization.
4. Central Government Employees Insurance Scheme.
5. G.P.F.
6. Medical Aid
7. L.T.C.
8. All advances admissible to temporary Group D employees.
9. Bonus

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

(Emphasis Supplied)

11. The learned counsel for the petitioner has relied upon the order bearing No. 26-11/96-PAP dated 19.09.2000, which reads as under:

“Sub:- Payment of productivity Linked bonus to temporary status casual labourers on par with Group 'D'.

It has come to the notice of this Directorate that some Circles are paying adhoc bonus to temporary status casual labourers on par with regular Group 'D' since 1995-96, though there is no such order in the bonus order issued by this Directorate every year. The bonus order clearly indicates the eligibility ceiling of adhoc bonus at Rs.750/- to casual labourers having more than three years service. The Ministry of Finance has also clarified that the employees with Temporary Status are eligible for grant of bonus at the rates applicable to casual workers and not at par with regular

Group 'D' employees.

It is, therefore, requested to re-examine all the cases in your circle and recover the over paid amount of adhoc bonus from the recipients if payment is not in conformity with this Directorate bonus order issued every year keeping in view the Ministry of Finance observation. Kindly intimate the full particulars of over payment, if any along with the names of officers who took the decision at circle level.”

(Emphasis Supplied)

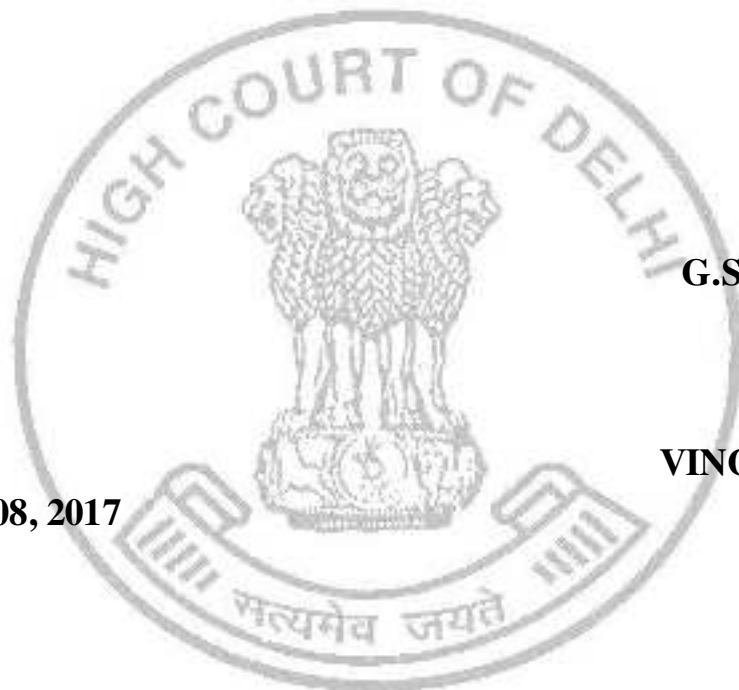
12. The Office Order dated 30.11.1992, makes it abundantly clear that based on the directive of the Supreme Court, it was decided that casual labourers of this Department conferred with temporary status were to be treated at par with temporary Group 'D' employees. It was based on this order that respondent no. 2 was to be treated at par with temporary Group 'D' employees. In our view the subsequent communication dated 19.09.2000 does not deal with the order dated 30.11.1992. Nothing is placed before us to show that this order was to supersede the earlier order or a decision taken that subsequent order was to override the same. We are informed that the respondent no. 2 was given the status of temporary Group 'D' employee subsequently and even given permanent employment.
13. Next aspect to be seen is the scope of the judgment of the Supreme Court in ***Jagrit Mazdoor Union (Supra)***. We may note, though not argued before us, that certain orders of the Mumbai Bench and Bangalore Bench of the Tribunal have also been placed on record which deal with the issue. The Mumbai Bench of the Tribunal in ***Sh. Bapu Eknath Jadhav & Ors. v. Union of India & Ors., OA 737/2000*** dated 25.06.2001 has held that the question of bonus, being a policy decision, should not be interfered with; but, at the same time, restrained the respondents from recovering the excess amount paid. We note that the Mumbai Bench has

not discussed the scope of ***Jagrit Mazdoor Union (Supra)***.

14. A Three-member Bench of the Tribunal, Bangalore Bench has extensively dealt with the scope of ***Jagrit Mazdoor Union (Supra)*** in ***V. Suresh Kumar & Ors. v. The Sr. Supdt. & Ors., OA 1517 & 1577-1646/2000*** dated 01.05.2001. The majority opinion was that the concluding line in paragraph 11 of ***Jagrit Mazdoor Union (Supra)*** makes it clear that the concluding sentence in paragraph 12 can relate only to claims of benefits other than the claim of bonus. The minority opinion was that the Supreme Court in ***Jagrit Mazdoor Union (Supra)*** had granted all benefits, including bonus, at par with temporary Group 'D' employees.
15. No doubt the concluding line in paragraph 11 of the judgment in ***Jagrit Mazdoor Union (Supra)*** reads as “[i]t has been agreed before us that the claim of bonus may be left to arbitration or for being dealt with by the Consultative Council.”, but at the same time, the Full Bench in paragraph 12 has come to the conclusion that “[a]fter rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Grade '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.” It is settled law that it is impermissible to cull out one sentence or word from a judgment and read it as a settled pronouncement of law. Judgments should be read holistically in view of the questions before the Court. [See ***CIT v. Sun Engineering Works (P) Ltd., (1992) 4 SCC 363*** (paragraph 39); ***N.K. Gupta and Ors. v. Secretary, Railway Board & Ors., MANU/DE/3454/2016*** (paragraph 12)].
16. Upon a comprehensive reading of ***Jagrit Mazdoor Union (Supra)***, we are in agreement with the learned counsel for the respondent no. 2 that

the endeavour was to treat casual labourers at par with temporary Group 'D' employees for all benefits, including bonus.

17. Even otherwise, the government being a model employer cannot be allowed to disentitle one benefit when all other benefits have been accorded at par with temporary Group 'D' employees. The same would clearly run afoul of Article 14 of the Constitution of India.
18. Resultantly, we find no ground to interfere with the order passed by the Tribunal. We find no merit in the writ petition, the same is dismissed accordingly. Any recovery made, shall be refunded to the respondent no. 2.
19. No costs.



G.S.SISTANI, J.

VINOD GOEL, J.

FEBRUARY 08, 2017

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