$~

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

% *Date of Judgment: 11th December, 2018*

\+ W.P. (C) 2601/2018 & CM No. 10643/2018

UNION OF INDIA & ORS. ..... Petitioners

Through: Ms. Ruchi Jain, Advocate.

versus

RAJO ..... Respondent

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

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. ***(ORAL)***

1. The present writ petition under Article 226/227 of the Constitution of India has been filed seeking quashing and setting aside of the judgment dated 06.09.2017 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 708/2015, whereby the learned Tribunal has allowed the OA and has directed the petitioners herein to pay leave encashment to the respondent herein as per rules alongwith interest @8% as well as pay interest on delayed payment of gratuity as per DCRG Rules.

2. The brief facts necessary for adjudication of the present writ petition are as follows:

(i) Late Sh. Jai Prakash was engaged as daily wager with the Equine Breeding Stud , Babugarh, Hapur, Uttar Pradesh on 'as required basis' from February, 1980 to 30.06.1996.

(ii) He was thereafter granted Casual Labourer with Temporary Status (CLTS) on 01.07.1996 in accordance with the DOP&T, OM dated 10.09.1993.

(iii) Late Sh. Jai Prakash alongwith some other similarly placed employees challenged the selection process of regularlisation for the years 2005 and 2008, wherein he was considered ineligible for regularization. A similar challenge was made for the selections relating to the years 2012 and 2013.

(iv) The pleadings indicate that the said litigation did not yield any favourable result and late Sh. Jai Prakash was never regularized.

(v) On 28.12.2013, late Sh. Jai Prakash, unfortunately passed away and hence, his status remained as that of a CLTS.

(vi) The widow of late Sh. Jai Prakash, namely, Smt. Rajo filed an OA bearing No. 708/2015 seeking payment of leave encashment as well as service gratuity due to her late husband for the period of his employment alongwith 12% interest per annum from the day it fell due till it was paid to her. In so far as the gratuity is concerned, an amount of Rs.1,63,248/- was paid to the respondent herein on 07.07.2015 during pendency of the proceedings before the learned Tribunal.

(vii) Vide judgment dated 06.09.2017, the learned Tribunal allowed the OA and directed the petitioners herein to pay the leave encashment due to the respondent as per the Rules alongwith the interest @8% per annum. Noticing the fact that the husband of the respondent had died on 28.12.2013 whereas gratuity was paid only on 07.07.2015, the learned Tribunal directed payment of interest on delayed payment of gratuity as per DCRG Rules. It further directed compliance of its directions within a period of 90 days from the receipt of the certified copy of the order.

3. When the present writ petition came for admission before this Court on 19.03.2018, the learned counsel for the petitioners stated, on instructions, that they were willing to release the interest component payable on the gratuity amount without prejudice to their plea that the respondent had submitted representation only on 17.06.2014 and in these circumstances, they could only be made liable to pay interest on the gratuity from 17.06.2014. It was also pointed out that in the meantime, the respondent had filed a contempt petition for execution of the impugned judgment and it was likely that coercive steps would be taken against the petitioners. This court had then directed the petitioners to deposit the amount payable to the respondent on account of leave encashment as well as the entire interest on delayed payment of gratuity, in favour of the respondent, without prejudice to their rights and subject to such deposit, it was directed that no coercive steps shall be taken in the contempt proceedings.

4. By an order dated 18.04.2018, this Court had directed that the amount so deposited will be placed in a FDR by the registry for a period of 6

months, to be renewed thereafter from time to time. Finally, the petitioners paid Rs.13,060/- to the respondent on 24.05.2018 towards the interest on delayed payment of gratuity and a receipt to that effect was placed on record of this Court. A demand draft dated 24.05.2018 was also prepared for a sum of Rs.1,77,576/- and was deposited with the registry of this Court.

5. Learned counsel for the petitioners has argued that late Sh. Jai Prakash was engaged only as a daily wager and at the time of his death, he was a casual labourer with temporary status and had never been regularized. She submits that benefit of leave encashment is available only to an employee whose services have been regularized. She pointed out that the litigation initiated by late Sh. Jai Prakash for regularization of his service was unsuccessful and he died in the year 2013 as a temporary employee and thus was not entitled to leave encashment. In support of her submissions, learned counsel has relied upon an OM dated 10.09.1993 which relates to grant of temporary status and formulation of a scheme for regularization of casual workers. The attention of this Court has been drawn to Para 5 (III) to contend that in accordance with this Para, only an employee who is regularized can carry forward the leave at his credit and there is no entitlement of a temporary employee to leave encashment. It was also contended that as per this paragraph, an employee will not be entitled to encashment of leave on termination of service for any reason or on his / her quitting the service and that death is a form of termination of service. She therefore contended that the learned Tribunal has erred in granting the leave encashment benefit to the respondent.

6. On the other hand, learned counsel for the respondent has submitted that there is no error in the judgment of the learned Tribunal as the learned Tribunal has correctly appreciated and interpreted Para 5(III) of the DOP&T, OM dated 10.09.1993. He submitted that the leave encashment can be granted to an employee who has temporary status and the only exception to such a grant is that his/ her services have been terminated or he/she has quit the services. He further submitted that the respondent's husband was granted a temporary status and he had died on 28.12.2013 and so his services had neither been terminated nor had he quit the services and was thus clearly entitled to leave encashment.

7. In so far as the payment of gratuity is concerned, as observed above, the same had been paid during the pendency of the OA before the learned Tribunal. The only dispute raised in the present petition was with regard to the interest on delayed payment. Although at the stage of admission of this petition, the deposit of the interest component was without prejudice to the rights and contentions of the petitioners, but when the matter was argued today, learned counsel for the petitioners fairly conceded that she would not press or contest the issue of interest component on payment of gratuity.

8. This Court is therefore now only concerned with adjudication of the issue with respect to leave encashment payable to the respondent. In so far as the entitlement to leave encashment of the respondent is concerned, a bare perusal of Para 5 (III) of the OM dated 10.09.1993 shows that it stipulates the benefits to which a casual labourer will be

entitled on account of his temporary status. The relevant para is being extracted hereinunder for ready reference:

> *" 5. Temporary status would entitle the casual labourers to the following benefits:-*
>
> *……*
>
> *III) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of works 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 regularization. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service."*

9. The above provision, on its own reading is very clear and needs no interpretation. It clearly stipulates that for a casual labourer with temporary status, leave entitlement will be on a pro-rata basis @ of one day for every 10 days of work. Casual or any other kind of leave, except maternity leave, would not be admissible. The only bar as discernible from this para, for the grant of leave encashment, is on the contingency of termination or of an employee quitting the service. This para also entitles an employee, on regularization, to carry forward the leave at his credit. There is nothing in this provision which even remotely suggests that leave encashment will be given only on regularization, and that a temporary status employee will not be entitled to the same. It is an undisputed fact that the respondent's late husband had died and his services were neither terminated, nor he had quit the service. It would be travesty of justice, if this Court was to consider 'death' as a mode of 'termination' of service as the word is

ordinarily understood in service jurisprudence. This Court thus finds that by virtue of Para 5 (III) of the OM dated 10.09.1993, respondent's husband was clearly entitled to leave encashment and the learned Tribunal has rightly allowed the OA granting the said benefit to the respondent. We thus find no infirmity in the judgment of the learned Tribunal.

10. There is no merit in the petition and same is hereby dismissed with no order as to costs. Pending application also stands disposed of accordingly.

11. Since the amount towards leave encashment has already been deposited in this Court, the registry is directed to release the said amount to the respondent alongwith accrued interest on the respondent taking necessary steps for its release.

JYOTI SINGH, J.

VIPIN SANGHI, J.

DECEMBER 11, 2018
PB