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

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Date of Decision:30.01.2019

% W.P.(C) 984/2019

PARA MEDICAL TECHNICAL STAFF WELFARE ASSOCIATION OF
MCD AND ANR. Petitioner

Through: Mr. Tarun Sharma with Ms. Akansha
Kapoor and Mr. Pradeep Singh, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION. Respondent

Through: Mr. Gaurang Kanth with Mrs. Biji
Rajesh, Mr. Aman, Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE PRATEEK JALAN

VIPIN SANGHI, J. (ORAL)

C.M. No. 4411/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 984/2019

1. The petitioner assails the order dated 22.10.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 4311/2017. The Tribunal has rejected the said Original

Application preferred by the petitioners wherein the relief sought by them was that they should be treated as covered by the Old Pension Scheme and not by the New Pension Scheme.

2. The petitioner No. 2 – Amit Jain was initially appointed as a casual labourer on 14.12.2001. The petitioner No.1 association espouses the cause of petitioner No. 2 and presses the petition in respect of others similarly situated as petitioner No.2.

3. The services of petitioner No.2 were regularised on 10.10.2008. The regularisation was made effective from 01.04.2006. The issue before the Tribunal was whether such like employees were entitled to be covered under the Old Pension Scheme or New Pension Scheme. There is no dispute that the members of the petitioner association and petitioner No.2 were entitled to be covered by a Pension Scheme, and the only issue was whether the said coverage would be under the Old Pension Scheme or the New Pension Scheme. In this regard, it is relevant to take note of, firstly, the office memorandum dated 26.02.2016 issued by the DoP&T on the subject of casual labourers with temporary status- clarification regarding contribution to GPF and Pension under the Old Pension Scheme. In so far as it is relevant, this office memorandum states as follows:

“1. Undersigned is directed to refer to this Department’s OM No. 51016/2/90-Estt (C) dated the 10th September, 1993 vide which a scheme for grant of temporary status to the casual employees was framed. The scheme applied to those casual labourers who were in employment on the date of the issue of the OM and had rendered one year of continued

service in Central Government Offices, which meant 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) . The scheme did not apply to Departments of Telecom & Posts and Ministry of Railways.

2. As per the scheme, after rendering three years' continuous service after conferment of temporary status, the casual labourers were to be treated at par with temporary Group D employees for the purpose of contribution to the General Provident Fund. Further, after their regularisation, 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits.

6. The position has been reviewed in the light of the Court judgments in consultation with the Department of Expenditure. It has now been decided that the casual labourers who had been granted temporary status under the scheme, and have completed 3 years of continuous service after that, are entitled to contribute to the General Provident Fund.

8. It is emphasised that the benefit of temporary status is available only to those casual labourers who were in employment on the date of the issue of the OM dated 10th September, 1993 and were otherwise eligible for it. No grant of temporary status is permissible after that date. The employees erroneously granted temporary status between 10.09.1993 and the date of Hon'ble Supreme Court judgment in Union of India And Anr. vs. Mohan Pal, 2002(3) SCR 613 delivered on 29 April, 2002, will however be deemed to have been covered under the scheme of 10.09.93." (emphasis supplied)

4. On 28.07.2016 another office memorandum was issued by the DoP&T on the subject “*Casual Labourers with temporary status-clarification regarding contribution of GPF and Pension under the Old Pension Scheme.*” This office memorandum, inter alia stated:

“The undersigned is directed to refer to this Department’s OM of even number dated 26th February, 2016 on the above subject and to say that some references have been received in this Department from various Ministries/ Departments seeking a clarification with regard to the Para 7 of the referred OM.

2. *The OM was issued in consultation with Department of Expenditure and the Department of Pension and PW. It was clarified vide that OM that this Department’s O.M. dated 26th April, 2004 had been quashed in a series of Orders/ Judgments. The OM dated 26th February, 2016 restores the provisions of the Scheme as it existed prior to the OM dated 26th April, 2004. The benefit of GPF and Old Pension Scheme is applicable to all those casual labourers who are covered under the Scheme of the 10th September, 1993 even if they have regularised on or after 01/01/2004.”* (emphasis supplied)

5. From the above, it would be seen that the Governmental decision was to give the benefit of GPF and Old Pension Scheme to all those Casual Labourers, who were covered under the Scheme of 10.09.1993, which scheme was framed for the purpose of regularisation of casual workers. It was clarified that all those who were regularised under the scheme of 10.09.1993, even if they had been regularised on or after 01.01.2004, would be covered under the Old Pension Scheme.

6. However, those who were regularised subsequently and not under the Scheme of 1993, were not entitled to coverage under the Old Pension Scheme.

7. To substantiate their claim, the petitioners sought to rely upon several decisions before the Tribunal and the Tribunal, while passing the impugned order has dealt with each one of them, specifically pointing out how they were not relevant for raising the issue of the petitioner.

8. Mr. Sharma once again sought to refer to those very judgments in support of his submissions. The crux of the petitioner's submission is that like those casual labourers, who were covered under the regularisation scheme of September 1993, the petitioner No.2 and the members of the petitioner No.1 association are similarly situated. The only difference is in the shift of time.

9. We cannot agree with the submission of Mr. Sharma for the reason that when the Government decides to come out with a scheme for regularization, grant of pension etc., it has to examine the aspect about the financial burden that the exchequer would be put to, and it is in that light that the Government decides, as a matter of policy, as to the nature and extent of benefits which may be extended to a particular class of employees. The petitioner do not have a choice in that matter and cannot, after taking the benefit of regularization, which was not under the scheme of September 1993, seek to derive further benefits which were never intended to be bestowed upon them.

10. We, therefore, find no merit in this petition.

11. Dismissed.

VIPIN SANGHI, J.

PRATEEK JALAN, J.

JANUARY 30, 2019/N.Khanna

