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

% *Date of Judgment : 18th September, 2019*

+ **W.P.(C) 10013/2019**

UNION OF INDIA AND ANR. Petitioners
Through Mr. Arun Bhardwaj, CGSC.

versus

KUNTESH Respondent
Through Mr. S.K. Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM APPL 41436/2019 & 41437/2019 (exemptions)

1. Exemptions are allowed subject to all just exceptions.
2. Applications stand disposed of.

W.P.(C) 10013/2019

3. The present petition is directed against order dated 31.01.2018 passed by learned Central Administrative Tribunal by which O.A. 4226/2015 filed by a 39 year old widow seeking grant of family pension has been allowed.
4. Notice to show cause as to why this petition be not admitted. Mr. S.K. Gupta, learned counsel for the respondent accepts notice.
5. With consent of the parties, the present petition is taken-up for final hearing at the preliminary stage itself.
6. In this case undisputedly the respondent's husband Ram Kishan (since

deceased) was initially employed in the office of petitioner No.2 on casual basis in the year 1988. During his lifetime, he was conferred temporary status w.e.f. 01.12.1993 vide communication dated 17.12.1993 issued by the petitioners in compliance with the Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Government of India dated 10.09.1993.

7. The case set-up by the respondent/widow before the Tribunal was that even during the lifetime of late Mr. Ram Kishan, he was entitled to be considered for regularization. During his lifetime the deceased had made two representations to the petitioners dated 16.09.2009 and 04.03.2011, but no action was taken on his representations. Mr. Ram Kishan unfortunately died on 28.03.2012 before the representations could be decided.
8. The respondent had also made a prayer in O.A. No.144/2013 claiming a job on compassionate grounds, which was however rejected by order dated 31.10.2012. The writ petition being W.P. (C) 11934/2015 filed assailing order dated 31.10.2012 made by the learned Tribunal was allowed partly on 01.03.2016 with directions to the present petitioners to consider Mohit Kumar, the son of the deceased employee, for compassionate appointment in accordance with the scheme and as per law. Meaning thereby that the application would be examined within the relevant scheme; and would not be rejected merely on the ground that the respondent's husband was not a regular employee.
9. In the O.A. the respondent also averred that in a decision of the Delhi High Court, in an identical case titled *Sharda Devi Vs. Union of India*, W.P. (C) 3018/2012 decided on 25.04.2013, benefits of family pension

had been allowed to a widow. In the said case, the Delhi High Court had taken note of a decision of the Supreme Court of India in the case of *Yashwant Hari Katakhar Vs. Union of India & others*, reported at 1996 (7) SCC 113. The widow complains that despite the settled position of law as aforesaid, her request for family pension has been declined.

10. The Tribunal, while relying on a decision dated 11.11.2016 rendered by the Allahabad Bench of the Tribunal in the case of *Khacheru Singh Vs. Union of India and others*, O.A. 1847/2012 wherein the deceased employee was deemed to be regularised and a direction was issued for grant of family pension, allowed the respondent's O.A.
11. Mr. Arun Bhardwaj, learned counsel for the petitioners submits that the learned Tribunal has exceeded its jurisdiction in granting family pension to the widow of a deceased who was not a regular employee. He further submits that the order of the Tribunal is bad in law and is liable to be set-aside. Mr. Bhardwaj further submits that none of the juniors of late Mr. Ram Kishan have been regularized and therefore, no right accrues in favour of the deceased widow.
12. We have heard learned counsel for the parties and have carefully examined order dated 31.01.2018 passed by the Tribunal.
13. It is not in dispute that prior to the demise of Mr. Ram Kishan, he had served on casual basis since the year 1988 for a period of around 24 years; and was conferred temporary status on 01.12.1993. The Tribunal in our view has rightly relied upon the earlier decision passed by the Allahabad Bench of the Tribunal and also the decision of the Delhi High Court in the case of *Sharda Devi (supra)*, which in turn has

placed reliance on the Supreme Court verdict in *Yashwant Hari Katakkar* (*supra*), the relevant portion of which, reads as under :

“3. Dr Anand Prakash, learned Senior Advocate appearing for the Union of India, has contended that on 7-3-1980 when the appellant was prematurely retired he had put in 18 ½ years of quasi-permanent service. According to him, to earn pension it was necessary to have a minimum of 10 years of permanent service. It is contended that since the total service of the appellant was in quasi-permanent capacity he was not entitled to the pensionary benefit. There is nothing on the record to show as to why the appellant was not made permanent even when he had served the Government for 18 ½ years. It would be travesty of justice if the appellant is denied the pensionary benefits simply on the ground that he was not a permanent employee of the Government. The appellant having served the Government for almost two decades it would be unfair to treat him as temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits. We allow the appeal, set aside the judgment of the Tribunal and direct the respondents to treat the appellant as having been retired from service on 7-3-1980 after serving the Government for 18 ½ years (more than 10 years of permanent service) and as such his case for grant of pension be finalised within six months from the receipt of this order. The appellant shall be entitled to all the arrears of pension from the date of retirement. No costs.

14. We see no reason why the respondent should not get benefit of the same view as taken by the Supreme Court, the Delhi High Court and the Allahabad Bench of the Tribunal in the afore-cited cases. In view of the

foregoing discussion, we find no infirmity in the Tribunal's order and no merit in this writ petition. The writ petition is accordingly dismissed.

15. Let the order dated 31.01.2018 passed by the learned Tribunal be now complied with, within 8 weeks from today.

CM Appl. 41435/2019 (stay)

16. In view of the order passed in the writ petition, the application stands dismissed.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 18, 2019/ck