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

% *Date of Judgment : 29th January, 2020*

+ **W.P.(C) 1068/2020**

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr. R.V. Sinha, Advocate with
Mr. A.S. Singh & Mr. Vaibhav Pratap
Singh, Advocates

versus

JAGBIRI DEVI

..... 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 3527/2020 (for additional documents)

Additional documents be placed on record, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 1068/2020

The present petition is directed against order dated 15.10.2019 passed by learned Central Administrative Tribunal ('Tribunal'), by which O.A. No. 1789/2018 filed by a 54 year old widow, seeking grant of family pension, has been allowed.

2. Notice to show cause as to why this petition be not admitted. Mr. S.K. Gupta, learned counsel for the respondent accepts notice.
3. With consent of the parties, the present petition is taken-up for final

hearing at the admission stage itself.

4. In this case, undisputedly the respondent's husband Prem Singh, since deceased, was initially employed as a Chowkidar in the Department of Posts w.e.f. 01.10.1974 on daily wage basis under petitioner No. 5. During his lifetime *vide* communication dated 30.09.1991 issued by petitioner No. 5 he was conferred temporary status w.e.f. 29.11.1989 in compliance with the Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Government of India dated 10.09.1993.

5. The case set-up by the respondent/widow before the Tribunal was that although there were various vacancies in Group 'D' employees, however late Prem Singh was not regularized during his lifetime even after 26 years of service even though late Prem Singh was enjoying all the benefits of a regular employee. It is also submitted that General Provident Fund was deducted from the salary of late Prem Singh from January 1993 upto 2000.

6. This writ petition has been filed assailing order dated 15.10.2019 made by the learned Tribunal directing the respondents to treat late Prem Singh as deemed regularized with effect from the date of his death and to grant gratuity, leave encashment and family pension along with arrears ; with a further direction to release all payments within a period of 3 months.

7. In the O.A. the respondent had 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 as 1996 (7) SCC 113. The widow complains that despite the settled position of law as

aforesaid, her request for family pension has been declined.

8. 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 regularized and a direction was issued for grant of family pension, the Tribunal has allowed the respondent's O.A.

9. Mr. R.V. Sinha, 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. Sinha further submits that none of the juniors of late Prem Singh have been regularized ; and therefore, no right accrues in favour of the widow.

10. We have heard learned counsel for the parties and have carefully examined order dated 15.10.2019 passed by the Tribunal.

11. It is not in dispute that prior to the demise of Mr. Prem Singh he had served on casual basis since the year 1974 for a period of around 26 years; and was conferred temporary status on 29.11.1989. In our view, the Tribunal has correctly relied upon the earlier decision of 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 Katakhar*** (*supra*), the relevant portion of which Supreme Court ruling, 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.

12. This court in *Union of India & Anr. vs. Kuntesh* : W.P.(C) 10013/2019 decided on 18.09.2019 has also taken a similar view.

13. In light of the above, 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.

14. 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 15.10.2019 passed by the Tribunal be now complied with, within 8 weeks from today.

CM APPL. 3526/2020 (stay)

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

G.S. SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 29, 2020/uj