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

Date of Decision: 3rd February, 2020

+ **W.P.(C) 10019/2019**

UNION OF INDIA & ORS.

..... Petitioners

Through : Mr. R.V. Sinha, Advocate
with Mr. Amit Sinha,
Advocate, Mr. A.S. Singh,
Advocate, Mr. Vaibhav Pratap
Singh, Advocate and Ms.
Sharanya Sinha, Advocate.

versus

BEENA DEVI

..... Respondent

Through : Mr. T.D. Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

1. The present petition is directed against order dated 16.04.2019 passed by the learned Central Administrative Tribunal ('Tribunal' for short) by which O.A. No. 763/2016 filed by a 51 year old widow seeking grant of family pension has been allowed.

2. With consent of the parties, the present petition is taken-up for final hearing and disposal at the admission stage itself.

3. In this case, undisputedly the respondent's husband Prem Chand (since deceased) was initially employed as contingency paid

chowkidar in Bulandshahr Head Post Office w.e.f 25.03.1980 on daily wages basis. During his lifetime, he was conferred temporary status w.e.f. 29.11.1989 *vide* communication dated 09.10.1991, issued by the petitioners in compliance with the Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Government of India dated 12.04.1991.

4. The case set-up by the respondent/widow before the Tribunal was that even during the lifetime of late Mr. Prem Chand, he was entitled to be considered for regularization. The other employees who were granted temporary status alongwith Mr. Prem Chand were regularized w.e.f. 29.12.1997 *vide* order dated 14.05.2012. Even the Departmental Promotion Committee (DPC) had recommended on 14.01.2013 for regularizing Mr. Prem Chand. However, Mr. Prem Chand unfortunately died on 24.02.2015.

5. The respondent made a representation dated 30.04.2015 to the petitioners to consider appointing her son in the same post as her late husband on compassionate grounds; and for payment of retiral dues; and family pension. Since she did not receive any response, the respondent made another representation on 31.07.2015. Having not received any response to the aforesaid representations and feeling aggrieved by the same respondent filed an O.A. before the Tribunal.

6. In the O.A. the respondent 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 Katakkar Vs. Union of India & Others*, reported as 1996 (7) SCC 113. The widow complained that despite the settled position of law as aforesaid, her request for family pension has been declined.

7. 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 have been regularised and a direction was issued for grant of family pension, allowed the respondent's O.A.

8. 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.

9. We have heard learned counsel for the parties and have carefully examined order dated 16.04.2019 passed by the Tribunal.

10. It is not in dispute that prior to the demise of Mr. Prem Chand he had served on casual basis since the year 1980 for a period of around 33 years; and was conferred temporary status on 29.11.1989. The Tribunal, in our view 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 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. "

11. 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.

12. Let the order dated 16.04.2019 passed by the learned Tribunal be now complied with, within 8 weeks from today.

C.M. No. 41450/2019 (stay)

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

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 03, 2020

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