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W.P. No.4983 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 20.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P. No.4983 of 2018
and WMP.No.6144 of 2018

1. Union of India,
Rep. by the Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Pensions and Pensioners Welfare,
3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi 110 003.
2. The Secretary,
Ministry of Communications IT,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi 110 011.
3. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
4. Senior Superintendent,
Railway Mail Service,
Chennai Sorting Division,
Chennai 600 008.
5. Head Record Officer,
Chennai Sorting Division,
Chennai 600 008.

.. Petitioners



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Versus

1. N.Srinivasan
2. The Registrar,
Central Administrative Tribunal,
High Court,
Chennai 104.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records dated 27.03.2017 made in OA.No.310/00836/2016 on the file of the Central Administrative Tribunal, Chennai Bench and quash the same in so far it is against the petitioners.

For petitioner : Mr.V.Balasubramanian
For respondents
for R1 : Mr.R.Malaichamy
for R2 : Tribunal

ORDER

(The Order of the Court was made by D.KRISHNAKUMAR, J)

This petition has been filed to quash the order dated 27.03.2017 made in OA.No.310/00836/2016 on the file of the Central Administrative Tribunal, Chennai Bench.



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2. It is the case of the first respondent that he entered the petitioner Department as a Mazdoor in the year 1984. Subsequently, he was conferred with temporary status on 01.01.2001 and he retired from service on 04.09.2005. It is his contention that while he was in service, he was granted benefits such as PF, Medical aid, leave, holiday etc., hence he is covered by the Old Pension Rules. According to him, once he was brought into the ambit of temporary status, all benefits of a Government employee must be made available to him. However, the petitioner Department failed to grant pensionary benefits, hence he filed the present Original Application. The Tribunal allowed the said Original Application and directed the petitioner Department to grant entire retirement service benefits including arrears of pension. Challenging the same, the Department has come before this Court.

3. The learned counsel for the petitioner submitted that the first respondent was appointed in the petitioner Department as Mazdoor only in order to meet the emergent contingencies in MTS cadre. He further submitted that the Temporary status of casual labourers will not come under



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the regular establishment. Since the services of the first respondent had not been regularised till his retirement, he is not entitled for the pensionary benefits.

4. It is contention of the learned counsel for the first respondent that the first respondent was recruited in the petitioner Department as Mazdoor through Employment Exchange. The first respondent completed 240 days of work in the calendar year in 1985, but he was granted temporary status only w.e.f. 01.01.2001. Though he was granted all benefits of a regularized service, viz., pay scale, annual increments, GPF contribution, etc., his services were not regularised. He further submitted that the case of the first respondent is squarely covered by a judgment of the Supreme Court in the case of ***Sheo Narain Nagar and others vs. State of Uttar Pradesh and others*** in Civil Appeal No.18510 of 2017. The relevant portion of the said order reads as follows:

"9. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back



in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.

10. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Uma Devi (supra). Since the appellants had completed 10 years of service and temporary



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status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today."

5. When a similar matter came up before this Court in WP.No.28647 of 2017, this Court vide order dated 19.11.2019 granted pensionary benefits to the employee therein. The relevant portion of the said order reads as follows:

"3.It is not in dispute that the very same issue came up before the Tribunal on an earlier occasion, against which, a writ petition in W.P.No.7258 of 2012 was filed before the High Court of Karnataka. The said writ petition was dismissed by order dated 11.07.2013 and following is the operative portion:

"7.We find these are odd cases and if it is a fact that the person had worked as casual labour from the year 1987 onwards and the Tribunal under the circumstances had directed grant of pension and it had directed on and after the date of conferring temporary status casual employee on par with Group D employee and therefore even pension which temporary status D Group employee would have got on being confirmed



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should have been extended, we do not think we should interfere with such orders to the detriment of the respondent and having regard to the peculiar facts and circumstances of the case, therefore, we do not go into the question of eligibility under the rule and do not wish to disturb the order passed by the Tribunal and dismiss this writ petition.

8.We make it clear that this is not ruling given by the Court, for the purpose of laying down any law, but as an exceptional case having regard to the hardship faced by the respondent, we do not propose to interfere with the order of the Tribunal.

9.We grant four more months time from today to give effect to the order of the Tribunal."

4.The special leave petition filed against the above said order was dismissed by the Apex Court on 08.07.2014. Resultantly, the order of the Tribunal was given effect to. The aforesaid order of the High Court of Karnataka was relied upon by the Tribunal while allowing the present Original Application, which is the subject matter before us.

5.Learned counsel appearing for the petitioners would submit that the earlier order cannot be considered as a precedent. Therefore, the relief sought for being contrary to the Rule and Scheme, the writ petition will have to be allowed.

6.Learned counsel appearing for the contesting respondent/second respondent would submit that facts being



the same, the same discretion will have to be extended to the case on hand as well.

7.We find force in the submissions made by the learned counsel appearing for the contesting respondent. It is not in dispute that the facts are similar and the only difference is year. In the case on hand, the contesting respondent was appointed as casual labourer from the year 1984, which is much prior to the case involved before the Division Bench of Karnataka High Court. Therefore, if at all, the contesting respondent has to be considered, on a better footing. Otherwise, the facts are absolutely similar. Therefore, the peculiar facts involved are available to the case on hand. The order of the Tribunal, as confirmed by the Division Bench of Karnataka High Court and Apex Court, has to be given effect to by the petitioners. Inasmuch as the contesting respondent, being a lady, is also similarly placed, we deem it appropriate that the orders will have to be extended to her as well.

8.In such view of the matter, we do not find any error in the order of the Tribunal warranting interference. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed."



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Challenging the aforesaid order in WP.No.28647 of 2017, the Department had preferred appeal before the Hon'ble Supreme Court in SPL(Civil) Diary No.35685 of 2019 and the said appeal came to be dismissed leaving the question of law open and also observed that this order shall not be treated as a precedent.

6. It is not in dispute that the first respondent was appointed as Mazdoor and he was granted temporary status. In view of the above decisions of the supreme Court and this Court in WP.No.28647 of 2017, this Court is of the view that the contention of the first respondent that he is eligible for pensionary benefits has some force. However, at first instance, the first respondent ought to have sought for regularisation of his service instead of pensionary benefits.

7. In view of the foregoing discussions, the impugned order dated 27.03.2017 passed by the Tribunal is set aside. The writ petition is allowed with the following directions:



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- i. The first respondent shall submit a fresh application to the petitioner Department within a period of three weeks from the date of receipt of a copy of this order.
- ii. Upon receipt of such application, the petitioner Department shall pass appropriate orders taking note of the decisions of the Hon'ble Supreme Court and this Court cited supra, without any further delay.
- iii. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K., J] [P.D.B., J]
20.12.2023

Speaking order: Yes/No
Index : Yes/No
pvs

To
The Registrar,
Central Administrative Tribunal,
High Court,
Chennai 104.



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