**11.07.2024**
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**WPCT 68 of 2024**
**The Union of India & Others**
*– Versus –*
**Shri Jasamanjoy Paul**

Mr. Swapan Kumar Nandi,
Ms. Banani Bhattacharya
… for the Petitioners/UoI.
Mr. P. C. Das,
Ms. Tithi Paul
… for the Respondent.

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 9th September, 2022 passed by the learned Tribunal in the original application (hereinafter referred to as OA), being OA 350/00626/2019. By the said order the learned Tribunal directed the petitioners to issue necessary orders of coverage under Old Pension Rules (in short, OPS) in favour of the original applicant/respondent herein by three months.

Mr. Nandi, learned advocate appearing for the petitioners submits that the respondent was regularised in service on and from 15th June, 2007 and as such, he was covered under the National Pension Scheme (in short NPS). All Central Government employees appointed on or after 1st January, 2004 would be covered under NPS. The respondent did not render the six years' continuous seasonal service before introduction of NPS. As he was inducted into permanent establishment after 1st January, 2004, he is not entitled to coverage under the OPS.

He further argues that the OM dated 26th February, 2016 is not applicable to the respondent as he was not engaged for a period of 240 days per year. In view thereof, the respondent cannot claim the benefit of OPS.

He further argues that counting of 50% of service on temporary status had no link for contribution to GPF/OPS. Counting of past service is different from treatment of employees under OPS. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

Mr. Das, learned advocate appearing for the original applicant/respondent, however, denies and disputes the contention of the petitioners and submits that the circular dated 26th February, 2016 itself provides that 50% of service rendered under temporary status would be counted for the purpose of retirement benefits in respect of casual labourers who have been regularized in terms of the OM dated 10th September, 1993. Even in the event employees are erroneously granted temporary status in between 10th September, 1993 and 29th April, 2002, they would be deemed to have been covered under the scheme of 10th September, 1993.

He further submits that on and from the date of regularization in service the petitioners had deducted the provident fund subscription from the monthly salary of the respondent treating his service under OPS. In support of such contention, he has drawn our attention to the documents annexed at pages 76, 92, 93 and 94 to the writ petition. Having admitted the respondent's temporary status, subsequent regularization and deduction of contribution, the petitioners cannot turn back and challenge the claim of the respondent towards coverage under the OPS.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the respondent was granted temporary status on and from 1st April, 1999. Subsequent thereto, he was regularised in service, as would be explicit from the memo dated 8th June, 2007. The provident fund subscription was deducted from the monthly salary of the respondent treating his service under OPS. In view thereof, the petitioners could not have reverted back the respondent to NPS.

The learned Tribunal upon dealing with the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the same warranting interference of this Court.

The writ petition, being WPCT 68 of 204 is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

**(Partha Sarathi Chatterjee, J.)** **(Tapabrata Chakraborty, J.)**