

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 13836 of 2019

Reserved on : 28.03.2024
Pronounced on: 20.06.2024

Shri Chitta Ranjan Dash & Ors.

...Petitioners

-Vs-

Union of India & Ors.

... Respondents

Present:-

Mr. Niladri Saha

... for the Petitioners

Mr. Saptarshi Mukherjee
Mr. Pramit Kumar Shee

...for the Respondents

Rajarshi Bharadwaj, J:

1. The present writ application is directed against the refusal of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Union of India herein the respondent No.1 in extending the facilities of General Provident Fund (G.P.F) under the Central Civil Services (Pension) Rules 1972 to twenty-seven employees of Victoria Memorial Hall herein the writ petitioners.

2. The genesis of the case is that respondent No.1 formulated a scheme for grant temporary status and regularization of the services of casual labourers working in its various departments vide office memorandum (OM No.51016/2/90) dated 10.09.1993. All casual workers engaged in

continuous service for at least 240 days in a year as on date of issuance of OM would be conferred temporary status and two out of every three vacancies in Group-D cadre in respective offices would be filled up from amongst casual workers with temporary status as per extant recruitment rules.

3. The Secretary and Curator, Victoria Memorial Hall, and autonomus organization under administrative control of respondent No.1 herein respondent No. 2 following O.M No. 51016/2/90 dated 10.09.1993, issued O.M vide V.M 30/IIIB-29/93 dated 12.01.1995 admitting certain facilities to the petitioners who were casual workers employed between 1985-1991. The petitioners were granted wages at daily rates with reference to the minimum of the scale for a corresponding regular Group D official including Dearness Allowance (DA), leave of one day on pro rata basis for every 10 (ten) days' work and sanction of maternity leave.

4. The petitioners challenging existing vacancies in Group -D staff preferred an industrial dispute being Reference No 10. Of 1999. The Learned Tribunal was pleased to pass the following award on 07.10.2002:

“ 8.... Ministry sought a solution by directing the management to take 30 persons in regular posts out of the casual workers working under them. Since these 30 posts have been identified and the management has received the direction from the Ministry to give chance to the workman concerned, it will in the fitness of the things that the persons should be regularised and selected for appointment according to the seniority, unless a particular person is otherwise found unsuitable for the job.

9. So far as the other persons are concerned, if the management feels that some of them are required to be continued, it is the direction of the management. However, so far as the question of consideration of their previous service is concerned, the management can consider the part services of the candidates for the purpose of giving them seniority from the date from which the vacancies oriented, but the workman cannot be given seniority from date

when the vacancy did not exist. This way the absorption and regularisation should be done by the management with all fairness. Because the posts were not existing since when they were absorbed, the question of payment of salary and wages at par with the regular workers does not arise. However, so far as the retrenchment or consideration of their appointment against vacancies to be created in future is concerned, the provisions of sections 250 and 25H should be strictly followed by the management.”

5. Thereafter, the writ petitioners were appointed as Group D employees by respondent No.2 in 2005-2006 in terms of seniority of engagement and depending on the requirement of service. The petitioners were granted a scale of pay of Rs.2,550/- to Rs.3,200/- and with usual allowances admissible to the employees of Victoria Memorial Hall.

6. The rules regarding contribution to GPF and pension under Central Civil Services (Pension) Rules 1972 were subsequently clarified by respondent No.1 vide O.M No. 49014/2/2014- Estt (C) dated 26.02.2016 thereby setting aside O.M No. 49014/1/2004- Estt (C) dated 26.04.2004. The O.M clarified that:

“6.... the casual workers who had been granted temporary status under the scheme and have completed 3 years of continuous service after that, are entitled to contribute to the General Provident Fund.

7. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of those casual labourers who have been regularised in terms of para 8 of the OM dated 10.09.1993.

8. It is emphasised that the benefit of temporary status is available only to those casual labourers who were in employment on the date of the issue of the OM dated 10th September, 1993 and were otherwise eligible for it. No grant of temporary status is permissible after that date.”

Such retiral benefits were requested to be implemented by respondent No.2 vide V.M No 2013/2018 on 20.02.2018. Aggrieved by the inaction of respondent No.1 in allowing GPF and other retirement benefits under the

Central Civil Services (Pension) Rules 1972, the present writ application is preferred.

7. Learned Counsel for the writ petitioners submits at the offset that the petitioners are eligible for the benefits of GPF under the Central Civil Services (Pension) Rules 1972 and retirement benefits accounting for 50 % of the service rendered under temporary status as per O.M dated 26.02.2016. The petitioners who were casual workers at the time of O.M dated 10.09.1993, fulfilled the criteria laid down and were granted temporary status and thus also qualify under O.M. dated 26.02.2016. At the time services of the petitioners were regularised as per O.M dated 10.09.1993 and their successive appointment as Group D staff in pursuance of award of Ld Tribunal dated 07.10.2002, the Central Civil Services (Pension) Rules 1972 were in force and the New Contributory Pension Scheme 2004 was yet to be introduced.

8. It is further submitted that out of all the petitioners who were casual workers with temporary status vide Office Memorandum dated 10.09.1993, the ones who were regularised in 2002 remained under the GPF linked Old Pension Scheme under the Central Civil Services (Pension) Rules 1972 whereas the others recruited as Group-D employee in 2004-2005 though brought under the New Contributory Pension Scheme 2004, continued to receive GPF linked benefits for few months. GPF deductions made from the salaries of the petitioners were stopped vide Office Memorandum No. 49014/1/2004- Estt (C) dated 26.04.2004. In the face of quashing Office Memorandum dated 26.04.2004, the Office Memorandum dated 28.07.2016 expressly restores the benefits of GPF to casual workers covered under the Office Memorandum dated 10.09.1993 and regularised in or after 2004. The facilities under GPF Linked Old Pension Scheme of which the petitioners were deprived of ought to be reintroduced.

9. The Learned Counsel for respondent No. 2 submits that the O.M dated 10.09.1993 granting temporary status to casual workers is not applicable to

the writ petitioners. The O.M applies to casual workers engaged in the Ministries or Departments of the Government or subordinate offices attached with the Government. The grant of temporary status was a onetime measure and not a continuous process enabling casual workers subsequently engaged to claim status of temporary workers at a period later than 01.09.1993.

10. It is further submitted that the petitioners were not granted temporary status or benefits under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India 1993 because Victoria Memorial Hall is neither a Department of the Government nor an attached or subordinate office of the Government and no claim for granting temporary status was raised by them in the industrial dispute. The O.M dated 26.04.2016 has reference to employees who had been granted temporary status for being eligible to GPF linked facilities. Therefore, the writ petitioners cannot claim such benefit under O.M dated 28.07.2016.

11. It is further argued that the writ petitioners had not been appointed through regular process of recruitment on being sponsored by Employment Exchange against sanctioned vacant posts and were not entitled to the benefits of employees of the Central Government. Their appointment in Group-D posts as regular employees 2005 onwards is in consonance with the award of the Learned Tribunal dated 07.10.2002 and are naturally subject to the retiral facilities granted under New Contributory Pension Scheme 2004. The period spent on duty as casual worker till the appointment as regular employees cannot be considered as period of past service for computing retirement benefits.

12. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the writ petitioners are not eligible for retirement benefits.

13. It is well settled that receiving temporary status in terms of O.M dated 10.09.1993 is a necessary pre requisite in order to avail pensionary benefits under the Central Civil Services (Pension) Rules 1972 for temporary

employees regularized after 01.01.2004 according to O.M dated 28.07.2016. The O.M dated 10.09.1993 and the O.M dated 28.07.2016 ought to be read compositely and as a uniform package. No case has been made out by the writ petitioners that they were given temporary status following O.M. dated 10.09.1993 while working as casual workers. Till their services were regularized by the award of the Learned Tribunal dated 07.10.2002, the writ petitioners were casual workers and therefore they cannot avail GPF and other retiral facilities by counting 50% of casual service rendered under temporary status in the service records of the Old Pension Rules under the Central Civil Services (Pension) Rules 1972.

14. The Supreme Court in **Malook Singh & ors -versus- State of Punjab & Ors.** reported in **2021 SCC OnLine SC 876** opined that “ 20.... *If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause...*”

15. The writ petitioners were admittedly not appointed in accordance with the relevant recruitment rules in force. When entering into service through back door, employees cannot seek the benefit of retrospective regularisation from the date on which they were initially appointed. The writ petitioners appointed as regular Group -D employees from 2005 cannot be treated as Group-D employees prior to the respective dates of their appointment and must be subject to the relevant pension rules in force at the date of regularisation of service.

16. In such view, the writ application being WPA No 13836 of 2019 lacks merit and the same is dismissed accordingly.

15. There will be no order as to costs.

16. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

20.06.2024

PA (BS)