



2024:DHC:8866-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 9256/2024, CM APPL. 37922/2024, CM APPL. 37923/2024 & CM APPL. 37924/2024

UNION OF INDIA AND ORSPetitioners
Through: Ms. Radhika Bishwajit Dubey,
CGSC with Ms. Drishti Rawal, Advs.

versus

MRS SAROJ DEVIRespondent
Through: Mr. Puneet Taneja, Mr. Amit
Yadav, Mr. Manmohan Singh Narula and
Mr. Anil Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE GIRISH KATHPALIA

JUDGMENT (ORAL)
13.11.2024

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C. HARI SHANKAR, J.

1. U.N. Jha¹, the husband of the respondent Saroj Devi, was appointed by the First Secretary to the Indian Embassy, Nepal, on behalf of the President of India, as Lower Divisional Clerk² in temporary capacity in the Military Pension Paying Branch, Kathmandu, *vide* Chancery Order No. 57 dated 1 August 1956. He was regularised and promoted as Assistant on 29 July 1976, w.e.f.³ 5 September 1976, and was further promoted as Sub-Treasury Officer

¹ "Jha" hereinafter

² "LDC"

³ with effect from



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w.e.f. 26 August 1979. He superannuated as Sub-Treasury Officer on 31 January 1995.

2. Jha, unfortunately, expired on 7 August 2007. The respondent applied for release, to her, as the widow of Jha, of his pensionary benefits along with interest. As the benefits were not released, the respondent approached the Central Administrative Tribunal⁴ by way of OA 2615/2019.

3. The Tribunal has, by judgment dated 7 October 2022, allowed the OA, relying on the decision of this Court in *Shiv Mangal Rai v UOI*⁵.

4. The Tribunal has found that the dispute in *Shiv Mangal Rai* is identical to the dispute in the present and that, therefore, the controversy is fully covered.

5. The petitioners have, therefore, been directed to release, to the respondent, the family pension as was due and payable to Jha within 90 days of the judgment along with 6% interest from the date of filing of the OA.

6. Aggrieved thereby, the respondents before the Tribunal have approached this Court.

7. Ms. Radhika Bishwajit Dubey, who appears for the petitioner,

⁴“the Tribunal” hereinafter
⁵(2018) SCC OnLine Del 12848



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fairly conceded that it is not possible to distinguish the decision in *Shiv Mangal Rai* from the facts of the present case. She, however, contends that *Shiv Mangal Rai* was wrongly decided.

8. We are not inclined to re-visit the decision in *Shiv Mangal Rai*, especially as the petitioners carried the decision of the Division Bench in *Shiv Mangal Rai* by way of appeal to the Supreme Court vide SLP No. 027328/2019, which was dismissed on 18 November 2019 albeit keeping the question of law open.

9. The mere fact that the question of fact has been kept open does not, in our view, does not erode the precedential value of the judgment of the Coordinate Bench in *Shiv Mangal Rai*. The Supreme Court has held, in *Mary Pushpam v Telvi Curusumary*⁶, that one bench of the High Court should ordinarily not disagree with the decision of Coordinate Bench, which has binding precedential value. Though it is permissible, legally, for one Bench to differ with another coordinate Bench and refer the matter to a larger Bench, that course of action is ordinarily not expected to be followed, so as to maintain consistency and certainty in law. It is only, therefore, if the decision of the coordinate Bench is completely unacceptable that the matter should be referred to a larger bench.

10. We do not find any reason to doubt the correctness of the decision of the coordinate Bench in *Shiv Mangal Rai*.

11. We have, to satisfy ourselves, compared the facts of the present



case with those of *Shiv Mangal Rai*, and find that they are, to all intents and purposes, identical. The petitioners in *Shiv Mangal Rai* were also appointed as LDCs by the First Secretary, Indian Embassy, Nepal, on temporary basis. As was the case with Jha, the petitioners in *Shiv Mangal Rai* were also confirmed on the post on which they were appointed, on permanent basis and were subsequently promoted as Head Clerks and sub-treasury officer, from which post they superannuated.

12. As in the present case, the petitioners in *Shiv Mangal Rai* were denied pensionary benefits on the ground that they were locally recruited staff and, therefore, they were not entitled to pension under the Central Civil Service (Pension) Rules, 1972⁷.

13. As in the present case, the stand of the Ministry of External Affairs⁸ was that, as the petitioners in *Shiv Mangal Rai* were locally recruited employees in Indian Missions/Posts abroad, the CCS (Pension) Rules did not apply to them.

14. The Division Bench of this Court addressed the issue thus:

“5. At the onset and before we get on to the voyage to ascertain the applicability of the Rules for the entitlement of the petitioners to the pension, it is necessary to look into the aspect of who is the employer of the petitioners. Though, it is true that the petitioners were initially appointed in a purely temporary capacity by the First Secretary, Indian Embassy, Nepal, on behalf of the Ambassador of the Embassy, it is clear from the record that they were so appointed in pursuance of the sanction of posts accorded by the President, for the Establishment of all-the-year round pension paying offices at Pokhra and Dhankutta, to the Chief of the Army staff vide letter

⁷ “CCS (Pension) Rules”

⁸ “MEA”



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dated 05.09.1960 issued by the Ministry of Defence and not the Ministry of the External Affairs. Copy of the pay bill of Shiv, copy whereof is Annexure P-13, the veracity whereof is not disputed, further endorses the fact that the pay and other allowances etc. were also being released to the petitioners by none else but the Ministry of Defence. Ministry of Defence has not chosen to dispute such material factual aspects inasmuch as it has not even filed its counter-affidavit to controvert any of the assertions of the petitioners that they were the employees of Ministry of Defence and not the Ministry of External Affairs. Even the Ministry of External Affairs in its affidavit does not dispute such a fact. We have therefore no hesitation in coming to the conclusion that the petitioners were the employees of the Ministry of Defence against the sanctioned posts for discharging their duties at all-the-year round pension paying office at Pokhra. In view thereof, we proceed to consider the plea of the Ministry of the External Affairs in refusing the grant of pensionary benefits to the petitioners on the plea that CCS (Pension) Rules were not applicable to the locally recruited employees of Indian Missions/Posts abroad and that, it was so confirmed by DoPT vide their clarification dated 17.06.2008.

6. Undisputedly, the petitioners, initially appointed in a purely temporary capacity, were regularised against sanctioned posts on 28.03.1972. A perusal of the appendix to the letter dated 05.09.1960 issued by the Ministry of Defence to the Chief of the Army Staff which forms part of Annexure P-4 to the writ petition, would show that such appointments could be made either on local recruitment or recruited from India or found from existing staff or deputed from offices in India. In other words, it did not provide for any such appointment locally from Nepal only. This sanction letter dated 05.09.1960 and the appendix thereto, also does not even impliedly suggest that the appointments made against the sanctioned posts, were to be governed by the Temporary Service Rules. It is also not the case of the Ministry of the External Affairs that at the time the petitioners were regularised to the post of LDC and/or they were promoted from time to time against the sanctioned posts, they submitted for being treated as temporary or contractual employees and be not entitled to the pensionary benefits. We therefore, find it difficult to fathom a proposition to the contrary. The petitioners having been regularised against the sanctioned posts and thereafter, having been given promotions upto Sub-Treasurer Officers, the initial appointment of the petitioners as LDCs on purely temporary basis, loses its significance. It appears that the establishment of all-the-year round pension paying offices at Nepal was an exceptional establishment of the offices for the purpose by the Ministry of Defence, to cater to its special

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requirements, in view of the topography of Nepal and the available man-force. Suffice to say, none of the respondents has come forward to point out that any such offices have come to be established in any other part of the world but for Nepal. On the face of it therefore, establishment of such offices by the Ministry of Defence, though, within the premises and possibly, under the administrative control of the Embassy there, cannot be construed to imply that the appointments and the deployment in such offices, *ipso facto*, has the effect of diluting their substantive rights, which their regular service attracts. The contention of the learned counsel for the respondents that the petitioners were governed by the guidelines for employment of local employees in Indian Missions/Posts abroad, in the given facts and circumstances, is wholly meritless. Not only that, if, one adverts to these guidelines, which are annexed to the counter affidavit of the Ministry of External Affairs as Annexure C, it would be seen that these guidelines are for the Indian Missions/Posts abroad and the employees, who are recruited locally and are required to execute a labour contract. It simply implies that such guidelines are attracted only in case of the persons signing the labour contracts or in other words, are the contractual employees and not the regular employees. The purported clarification given by DoPT copy whereof is annexed to the counter affidavit of Ministry of External Affairs as Annexure F, is therefore, unmerited. For the same reason, the contention of the respondents for the exclusion of the petitioners from the applicability of CCS (Pension) Rules, 1972 deserves rejection inasmuch as Rule 2(f) of the CCS (Pension) Rules, 1972 excludes its applicability to the persons locally recruited for service in diplomatic, consular or other Indian establishment in foreign countries. Rule 2 of CCS (Pension) Rules reads, as follows:

“2. Application

Save as otherwise provided in these rules, [these rules shall apply to Government servants appointed on or before the 31st day of December, 2003] including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to -

- (a) railway servants;
- (b) persons in casual and daily-rated employment;
- (c) persons paid from contingencies;
- (d) persons entitled to the benefit of a Contributory Provident Fund;
- (e) members of the All India Services;



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(f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries;

(g) persons employed on contract except when the contract provides otherwise; and

(h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.”

7. A plain reading of the rule foregoing, shows that it is also applicable to civil government servants in defence services in connection with the affairs of the Union of India. In the said context, it is to recall that we have already observed that the petitioners are the employees of the Ministry of Defence and not that of the Ministry of External Affairs and therefore, by no means, the exclusion as provided for under sub-rule (f) of rule 2 is attracted. Sub-rule (f) pertains to the employees of the Embassy or in other words, the Ministry of External Affairs and not the Ministry of Defence. Any plea to the contrary is therefore, rejected. Even, rule 1(3)(i) read with rule 10(1-B) of the Temporary Service Rules provide for payment of pension to all persons, who hold a civil post including all civilians paid from the defence services estimates under the Govt. of India, which is the case in hand. Relevant rules to that effect of the Temporary Services Rules read, as under:

“1 Short, title commencement and application.

(1) These rules may be called the Central Civil Services (Temporary Services) Rules, 1965.

(2) They shall come into force with effect from 1st May, 1965.

(3) Subject to the provisions of sub-rule (4), these rules shall apply to all persons:—

(i) who hold a civil post including all civilians paid from the defence services estimates under the Government of India and who are under the rule making control of the President, but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government;

10 Terminal gratuity payable to temporary Government servants.

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(1) Subject to the provisions of sub-rule (1-B), a temporary Government servant who retires on superannuation or is discharged from service or is declared invalid for further service shall be eligible for gratuity on the same scale as admissible to a permanent Government servant under the Central Civil Service (Pension) Rules, 1972.

(1-A) In the case of a temporary Government servant who is compulsorily retired from service as a disciplinary measure, the provisions of sub-rule (1) shall apply subject to the modification that the rate of gratuity payable in his case shall not be less than two-thirds of, but in no case exceeding, the rate specified in sub-rule (1).

(1-B) In the case of a temporary Government servant who retires from service on attaining the age of superannuation or on his being declared to be permanently incapacitated for further Government service by the appropriate medical authority, after he has rendered temporary service of not less than 10 years or who has sought voluntary retirement by giving three months notice in writing on completion of 20 years service, provisions of sub-rule (1) shall not apply and in accordance with the provisions of the Central Civil Services (Pension) Rules, 1972 -

(i) Such a Government servant shall be eligible for the grant of superannuation, invalid or retiring pension, as the case may be, and retirement gratuity; and.....
.....”

8. As per these Temporary Service Rules, a Government servant, who renders even temporary service of not less than ten years is entitled to pension as per the CCS (Pension) Rules, 1972. We also take note of the fact that the respondents have equally not disputed the fact that a similar placed another employee Sh. Ram Sarup Sharma, who was granted the relief of pension by CAT vide judgment dated 20.04.1988 and that judgment was affirmed by the Supreme Court. Even, on the grounds of parity, the petitioners have been entitled to the relief prayed. In the given factual conspectus, we are dismayed by the fact that CAT repeatedly failed to advert to the genesis of the grievance of the petitioners despite having been approached repeatedly, especially, on the Review Application, which has come to be dismissed vide the impugned order.

9. In view of the foregoing, the writ petitions are allowed and the impugned order is set aside. Consequently, the Ministry of



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Defence-the respondent no. 1 is directed to release the pensionary benefits of the petitioners and pay the arrears with interest @ 6% p.a. within four weeks from today, failing which, the arrears shall attract interest @ 12% p.a. Writ petitions stand disposed of accordingly. No order as to costs.”

15. The above findings of the Division Bench apply on all fours to the facts at hand. Jha was also entitled, applying the principles in *Shiv Mangal Rai*, to be regarded as an employee of the Ministry of Defence, and not as an employee of the MEA. His having been confirmed on the post of LDC on which he was initially appointed and subsequently promoted, he was entitled to pensionary benefits in accordance with CCS (Pension) Rules.

16. We, therefore, find no cause to interfere with the impugned judgment of the Tribunal, which is accordingly upheld in its entirety.

17. The writ petition is dismissed.

18. Let the judgment of the Tribunal be implemented within a period of four weeks from today.

19. Pending applications also stand disposed of.

C. HARI SHANKAR, J.

GIRISH KATHPALIA, J.

NOVEMBER 13, 2024/p/dsn

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