

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION No.170/01726/2018

DATED THIS THE 12TH DAY OF DECEMBER 2019

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV. SANKAR, MEMBER (A)

K. Venkanna,
S/o Sri Dodda Kempaiah,
Aged about 63 years,
Casual Labour (T.S),
Indian Institute of Horticultural Research,
Hessaragatta, Bangalore – 89.
Residing at No.....,
Hessaragatta Post,
Bilijaji, Bangalore North Taluk Bilijaji,
Hessaragatta,
Bangalore – 560 088

.....Applicant

(By Advocate Shri K. Sreeram)

Vs.

1.The Secretary,
Indian Council of Agricultural Research,
Kristi Bhawan,
Dr. Rajendra Prasad Road,
New Delhi – 110 001

2.The Director,
Indian Institute of Horticultural Research,
Hessaragatta Lake Post,
Bangalore – 560 089

3.The Chief Administrative Officer,
Indian Institute of Horticultural Research,
Hessaragatta Lake Post,
Bangalore – 560 089

.....Respondents

(By Shri B.A. Chandrashekar, Counsel)

O R D E R (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER(J)

1. Heard. Apparently, the matter is covered by our earlier order in OA.576/2018 dated 20.2.1019 which we quote:-

"O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J)

We heard the matter today. It appears that the DoPT vide No.49014/2/2014-Estt(C) dated 28.07.2016 has passed the following OM, which we quote:

***"No.49014/2/2014-Estt(C)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training***

*North Block, New Delhi,
Dated the 28th July, 2016*

OFFICE MEMORANDUM

Subject: Casual labourers with temporary status — clarification regarding contribution of GPF and Pension under the Old Pension Scheme.

The undersigned is directed to refer to this Department's OM of even number dated 26th February, 2016 on the above subject and to say that some references have been received in this Department from various Ministries/Departments seeking a clarification with regard to the Para 7 of the referred OM.

2. *The OM was issued in consultation with Department of Expenditure and the Department of Pension and PW. It was clarified vide that OM that this Department's O.M dated 26th April, 2004 had been quashed in a series of Orders/Judgements. The OM dated 26th February, 2016 restores the provisions of the Scheme as it existed prior*

to the OM dated 26th April, 2004. The benefit of GPF and Old Pension Scheme is applicable to all those casual labourers who are covered under the Scheme of the 10th September, 1993 even if they have been regularized on or after 01/01/2004.

3. As the benefit of Old Pension Scheme and GPF is admissible only to those Casual workers who are covered under the Scheme of 1993, all Ministries/Department may strictly ensure that it does not lead to demand by regularly recruited fresh employees appointed on or after 1.1.2004 for similar benefit in place of NPS.

4. This issues with the concurrence of Department of Expenditure vide their I.D.No.1(15)/E-V/2015 dated 27.07.2016

*Sd/-
(Mukesh Chaturvedi)
Director(E)
Tele: 23093176*

*To
All Ministries/Departments”*

2. Therefore, it appears that the government itself had resolved the issue. The OA is, therefore, allowed to the limited extent covered by the said order. If the applicant is eligible for the benefit under the said order, then it may be extended to him within two months next.

3. At this point of time, the learned counsel for the applicant submits that vide Annexure-A2 it has been granted to him and, even though it has been already granted, it has not been extended to him and no reason is allegedly forthcoming. They would say that the matter is covered by Annexure-R1 and R2. We quote Annexure-R1 dated 26.02.2016 but R2 is not sufficiently enlightening as submitted by the learned counsel for the respondents:

*“No.49014/2/2014-Estt (C)
Government of India
Ministry of Personnel, Public Grievances and PG
Department of Personnel and Training
Establishment Division*

New Delhi, North Block,

February 26th, 2016

OFFICE MEMORANDUM

Subject: Casual Labourers with temporary status-clarification regarding contribution to GPF and Pension under the old pension scheme

Undersigned is directed to refer to this Department's OM No. 51016/2/90-Estt (C) dated the 10th September, 1993 vide which a scheme for grant of temporary status to the casual employees was framed. The scheme applied to those casual labourers who were in employment on the date of the issue of the OM and had rendered one year of continued service in Central Government offices, which meant that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week). The scheme did not apply to Departments of Telecom & Posts and Ministry of Railways.

2. As per the scheme, after rendering three years' continuous service after conferment of temporary status, the casual labourers were to be treated at par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund. Further, after their regularisation, 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits.

3. As per para 8 of the scheme, two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfill the minimum qualification prescribed for post, regularisation will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.

4. Vide the O.M. No.49014/1/2004 -Estt (C) dated the 26th April, 2004, the above scheme was reviewed in the light of introduction of New Pension Scheme in respect of persons appointed to the Central • Government service on or after 1.1.2004 as under:

(i) As the new pension scheme is based on defined contributions, the length of qualifying service for the purpose of retirement benefits has lost its relevance, no credit of casual service, as specified in para 5 (v), shall be available to the casual labourers on their regularisation against Group 'D' posts on or after 1.1.2004.

(ii) As there is no provision of General Provident Fund in the new pension scheme, it will not serve any useful purpose to continue deductions towards GPF from the existing casual employees, in terms of para 5 (vi) of the scheme for grant of temporary status. It is, therefore, requested that no further deduction towards General

Provident Fund shall be effected from the casual labourers w. e. f. 1.1.2004 onwards and the amount lying in their General Provident Fund accounts, including deductions made after 1.1.2004, shall be paid to them.

2. The existing guidelines contained in this Department's OM No. 49014/2/86-Estt.(C) dated 7.6.88 may continue to be followed in the matter of engagement of casual workers in the Central Government Offices.

5. The OM dated 26th April, 2004 has been quashed by various benches of CAT/High Courts who have decided that the scheme could not be modified retrospectively. The SLPs filed in the Hon'ble Supreme Court have been dismissed by the Apex Court in UOI & Ors v Rameshwar Singh, CC 1829/2014, UOI & Ors v Ramsaran & Ors, SLP (C) No. 25360-25362 of 2008, SLP 17358/2008, SLP 25360-62/09, Union of India etc v Ajay Kumar & Ors, SLP No.19673-19678/2009.

6. The position has been reviewed in the light of the Court judgements in consultation with the Department of Expenditure. It has now been decided that the casual labourers 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 10 th September, 1993 and were otherwise eligible for it. No grant of temporary status is permissible after that date. The employees erroneously granted temporary status between 10.09.1993 and the date of Hon'ble Supreme Court judgement in Union Of India And Anr vs Mohan Pal, 2002 (3) SCR 613, delivered on 29 April, 2002, will however be deemed to have been covered under the scheme of 10.09.93.

9. Ministries/Departments are also requested to identify cases where temporary status has been granted wrongly to those not covered under the OM dated 10.09.1993 and fix responsibility for the same.

Sd/-

(Mukesh Chaturvedi)

Director (E)

To

All Secretaries of Ministries/ Departments."

4. In fact, the learned counsel for the applicant relies on our order in OA

No. 990/2015 dated 12.02.2016, which we quote:

"ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. The applicant was appointed in 1993, thereafter he was granted temporary status and regularized in 2004. But it was in October, 2004 that he was regularized. The new pension scheme came into force on 01.01.2004. The question was raised by the respondents as whether applicant will be entitled to be deemed in the old scheme or the new scheme. In any case, they have followed the principles taken up earlier and which was also concretized by orders of the Hon'ble Apex Court. The earlier service of the applicant will also be considered and, therefore, without any doubt, he will be within the beneficial ambit of the old pension. This is hereby declared. OA is allowed to this extent. Benefits, if any, to be made available within 3 months next. No order as to costs."

5. *Therefore, since the applicant has retired only in 2008, the contention that applicant was appointed after 01.01.2004 is not very valid. Therefore, we hereby declare that applicant is eligible to be in the Old Pension Scheme and to be eligible for the benefit under the DoPT circular issued and explained earlier.*

6. *The OA is thus allowed. Benefits to be made available within two months next. No order as to costs."*

2. It is also covered by " On the recommendation of the Selection Committee the respondents were pleased to appoint the applicants. They were placed on probation for 2 years. At the same OM it was stated that the existing system of Defined Benefit Pension Scheme and General Provident Fund would not be applicable and the applicants would be covered under the New Defined Contribution Pension Scheme which is applicable to the new entrant to Government service w.e.f 1.1.2004. But then, applicants say that they have rendered service since 1.1.1993 to 25.10.2005 in temporary status, which period will count for

pension. As such they cannot be considered as new entrant to the service. Further, there is no reason as to why only 50% of the service rendered in temporary status should be counted for the purpose of pension". But then this view, now raised by the applicants will not lie because it has been settled law that 50% of the service rendered in temporary status should be counted for the purpose of pension. But in all other respects it is similar to the earlier matter except for the reason that the applicants herein are retired. Therefore, since the matter is pending in the Hon'ble High Court of Karnataka in Writ Petition No.36425/2019 (S-CAT), we hold that the applicants herein also are eligible to the benefits of the said order which the Hon'ble High Court may pass in the said Writ Petition, whatever it may be. Therefore, if the order is beneficial to the applicants herein, it will be extended to them also within a period of 2 months next. With this direction, OA is closed.

3. At this point of time, learned counsel for the respondents submits that only one among the applicants is regularized. But then, after granting temporary status, within the appropriate time they ought to have been regularized. For the fault of the respondents, they cannot say a prejudice must be placed on the shoulders of the applicant.

4. We, therefore, hold that the distinction now sought to be brought in on regularized people and not regularized people will not arise because after 240 days of temporary status being given, they were supposed to be regularized within 3 years. Anyhow, it is crystal clearly stipulated in Constitution of India and established in Article 38 that human

labour cannot be exploited. That being so, no technical ground raised will stand on the way benefits being given to the concerned citizens of India. If they have complied with and completed with the statutory requirement, if the 3 years period is completed, then they were to have been regularized. But then, if, it is so that they have not completed with the required period, then naturally they will not be eligible. These questions, we will leave it to the respondents themselves to answer. Therefore, within 2 months of the Hon'ble High Court of Karnataka passes the order in WP. No.36425/2019 (S-CAT), appropriate orders may be passed either in favour or against the applicants. We grant further liberty to both the parties. OA is disposed off. No order as to costs.

(CV. SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the applicant in OA No. 1726/2018

Annexure-A1: Copy of the Office Order dt: 25.02.1995

Annexure-A2: Copy of the Office Order dt: 11.05.2012

Annexure-A3: Copy of the (ICAR) Letter dt: 27.10.2014

Annexure-A4: Copy of the (DOPT) O.M. dt: 26.02.2016

Annexure-A5: Copy of the (DOPT) O.M. dt: 28.07.2016

Annexure-A6: Copy of the Representation dt: 23.10.2017

Annexure-A7: Copy of the (ICAR) Letter dt: 24.11.2017

Annexure-A8: Copy of the RTI Letter dt: 02.07.2018

and reply dt: 21.07.2018

Annexures with reply statement

Annexure-R1: Copy of ICAR endorsement dt: 4.8.2015

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