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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1055/2004

Date of Decision 4th May 2005

Smt. Guddi

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Applicant

(By Advocate : Sh. Yogesh Sharma)

Versus

NCT of Delhi & Ors.

....

Respondents

(By Advocaes : Mrs. Renu George)

Coram:

The Hon'ble Shri Shanker Raju, Member(J)

1. TO BE REFERRED TO THE REPORTER OR ~~NOT~~? Yes
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL? Yes.

S. Raju
(Shanker Raju)
Member(J)

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**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1055/2004

New Delhi this the 5th day of May, 2005.

Hon'ble Shri Shanker Raju, Member(J)

Smt. Guddi,
W/o late Shri Ram Phal,
R/o RZA-47, Gopal Nagar,
G.No.14, Najafgarh,
New Delhi.

..... Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. NCT of Delhi through
the Secretary,
New Sectt.,
New Delhi.
2. The Chief Engineer,
Dept. of I&F, NCT of Delhi,
4th Floor, ISBT Building,
Delhi.
3. The Executive Engineer,
Civil Division No. VII,
Govt. of Delhi, L.M. Bund,
Shastri Nagar, Delhi.

..... Respondents

(through Mrs. Renu George, Advocate)

O R D E R

Widow of the ex-casual Baildar has challenged respondents' orders dated 20.12.2002 and 19.02.2003 whereby her request for posthumous regularization of services of the deceased husband and grant of retiral benefits i.e. family pension etc. has been turned down.

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2. Applicant's late husband, who was appointed as casual Baildar on 01.02.1987, was working on work charge basis against a sanctioned post on daily wages.

3. Applicant and other similarly circumstanced filed WP(Civil) 253/88) before the Apex Court for regularisation and by an order dated 31.10.1988 following directions have been issued:-

"We have heard learned counsel for both the parties. The respondents are directed to frame a scheme for the regularisation of the services of all the petitioners and person similarly situated who have been in service for more than one year. Until the scheme is so framed and the question of regularisation of the petitioners is considered in the light of the scheme and final orders are passed thereon by the respondents, their services shall not be terminated. Until the question of regularisation is so determined the petitioner shall be paid with effect from 1st November, 1988 the minimum salary payable to a person regularly appointed and doing the same kind of work in the Department. The Writ Petition is disposed of."

4. Vide another order dated 16.11.1988 regarding preparation of Scheme for regularisation, 6 months' time was accorded in WP(Civil) 253/1988.

5. In pursuance to the above, respondents framed a Scheme for regularisation of daily wage workers by accord of temporary status to those who were in employment on 01.06.1989 having rendered 240 days service continuously or at least one year with a stipulation regarding regularisation, relaxation was also accorded. Accordingly, 828 posts were sanctioned and services of 828 casual Baidars were regularized.

6. Similarly circumstanced daily wagers filed OA-1056/1995 where directions have been issued to regularize their services with retrospective effect. These persons were regularised from 1989. A representation preferred for grant of family pension, when not responded to, led to filing of OA-1980/2002 by the applicant which was disposed of on 29.07.2002 with a direction to the

respondents to pass a reasoned order with liberty thereof. In pursuance thereof an order passed on 20.12.2001 rejected the claim of the applicant with decision that as and when sanctioned posts become available, incumbent will be regularised as per seniority.

7. In one of the cases of Smt. Suresh Bala in OA-1274/2000, this Tribunal by an order dated 07.11.2001 allowed posthumous regularisation and accorded retiral benefits to the widow and in the case of Smt. Kiran Kumar widow of late Sh. Suresh Kumar also posthumous regularisation was accorded on 10.04.2002.

8. The above discrimination led to issue of a legal notice on behalf of the applicant which was responded to on 19.02.2003 reiterating the earlier decision.

9. Learned counsel of the applicant Sh. Yogesh Sharma contended that the directions of the Apex Court have deemed the applicant as holder of temporary status with minimum of the regular scale as on 01.11.1998 and delay in regularisation of the deceased husband has caused prejudice to the applicant in deprivation of family pension and other retiral benefits.

10. In the above conspectus, learned counsel relies upon a decision of the Division Bench of this Tribunal Badri & Ors. Vs. Union Territory, Chandigarh & Ors. (2004(1)SLJ(CAT)205) to contend that plea of 'no vacancy' is no failure to deny regularisation.

11. Further reliance has been placed on the decision of the Apex Court in State of West Bengal & Ors. Vs. Pantha Chatterjee & Ors. (2004(1)SLJ SC 135). It is contended that working continuously for many years takes away character of casual employment and on the basis of the decision of Apex Court in State of Haryana Vs. Piara Singh (1992(3)SLJ SC 34), it is contended that working long draws a presumption of existence of post.

12. Learned counsel of the applicant has also relied upon a Division Bench decision of the Madras Bench of the Tribunal in K. Pattammal Vs. U.O.I. & Ors. (1994(26)ATC 290) to contend that posthumous regularisation is permissible in law.

13. On the other hand, respondents' counsel Mrs. Renu George vehemently opposed the contentions and stated that in pursuance of directions of Apex Court, seniority list was prepared where name of the late husband of the applicant stood at Serial No. 1019. As the Government had sanctioned 828 posts, in the matter of seniority 828 Baildars were regularised, as and when vacancy arises, claim would be considered for regularisation.

14. As regards grant of benefit to Sunil Kumar, it is contended that there is no discrimination as Sunil Kumar was at Serial No.608 in the seniority list whereas his junior has been regularised w.e.f. 1989, accordingly posthumous regularisation was accorded.

15. It is contended that as the late husband of the applicant was not regularised, applicant is not entitled for pensionary benefits as posthumous regularisation would not be possible as various employees senior to the husband of the applicant are still working as temporary status Baildars.

16. I have carefully considered the rival contentions of the parties and perused the material placed on record.

17. From the bare reading of the decision of the Apex court, it was obligated upon the respondents to frame a Scheme and also to consider regularisation of the petitioners therein and persons similarly situated. In the above backdrop that the temporary Scheme was formulated, number of posts were not created by the Government of NCT of Delhi.

18. No doubt regularisation cannot be de hors the rules or instructions and also cannot be without availability of vacant post. It is also trite law that daily wager does not hold a civil post and even a temporary status holder has no right to pension, ^{his} full service would be counted towards qualifying service is no more res integra. However, the import and tenor of the directions of the Apex Court was to consider all the petitioners including the applicant and as only 828 posts were created, the compliance has not been done in true letter and spirit. The respondents should have created more vacancies and regularised all the petitioners before the Apex Court as well as similarly circumstanced.

19. The Apex Court in Distt. Collector/Chairman and Others Vs. T. Devederpal Singh and Others (1998 SCC(L&S) 1747), a three Judges Bench has dealt with a similar situation where directions have been issued to regularize daily wagers who have completed 5 years of continuous service, the following directions have been made:-

"We have heard the learned counsel for the parties. These matters relate to regularisation and payments of wages to the respondents who were employed on daily-wage basis. By the impugned judgment, the Division Bench of the High Court, while affirming with modification the order passed by the learned Single Judge has directed that all employees who have complete five years of continuous service should be considered for regularisation in accordance with the terms of GOMs No. 212 dated 22-4-1994 and that they should be paid their wages on a par with the wages paid to the permanent employees of that category. As regards payment of wages, there is no dispute between the parties that the same have to be paid from the date of regularisation. Insofar as regularisation is concerned, we are of the view that the High Court has rightly directed that on the basis of Notification GOMs No.212, the respondent-employees shall be regularised with effect from the date or dates they completed five years' continuous service. It is, however, made clear that the other conditions laid down in the said GOMs No. 212 will have to be satisfied for the purpose of

regularisation. The special leave petitions are disposed of accordingly. No costs."

20. If one has regard to the above, the compliance of the Apex Court decision was to consider regularisation with a deemed situation of availability of vacancies to adjust all the daily wagers who had completed 240 days and had completed one year as on 01.11.1988. By accord of minimum salary, their status had been deemed to be the holder of temporary status. In a fact situation in State of West Bengal & Ors. Vs. Pantha Chatterjee & Ors. (supra) where casual home guards who had been working on part time basis since 1977, the following directions have been made:-

"14. Surprisingly, the point of it being a voluntary organization is beaten time and again by the State as well as by the Centre, despite their own admission that voluntary character of the Scheme was lost due to continuous deployment of the petitioners for long number of years and their non-relieving after three months to enable them to go back to their vocational engagement. In that connection it may again be pertinent to reproduce Paragraph 4 of the counter-affidavit filed in this Court by the Central Government on 4.5.1998:

"The contents of Para 4 of the counter affidavit needs no reply since matters of record. The present situation which led to BWHG volunteers claiming service benefits is due to the fact that voluntary concept which is backbone of Home Guards Organisations was not followed in letter and spirit by the State Government. Due to continuous deployment neither the turnover of personnel was carried nor apparently mandatory training was imparted....." By whose fault this scheme lost character of Voluntary Nature is not relevant for the purposes of the petitioners. It was the Scheme of the Central Government, it should have monitored its implementation to see that it was being executed as framed. Then again, the BWHGs were deployed and continued by BSF authorities, who were authorised in that behalf by the Central Government. BWHG could not be left in a lurch after being engaged

continuously for more than 10 to 15 years for patrolling the borders under the conditions worthy of those who were doing the same job under the label of permanent staff. During all this period they were paid less and facilities and amenities were also almost nil. After suffering such a discrimination for a period of about a decade or more, when they approached the Court, then alone a decision is taken to disengage them for the reason that cases were being filed in the Court for being provided with similar conditions of service which were being enjoyed by their counter-part under the label of permanent staff. The Central Government could not hanker on technicalities of voluntary nature of their engagement despite their own admission of facts to the contrary. The stand of the State and the Central Government both are not bonafide. It is not good for an ideal employer to avoid liability and deny to give, what is legally due to one. Defeating such genuine and legal claims on technicalities would only result in great injustice."

21. If one has regard to the above and keeping in light the decision of Piara Singh (supra) where a daily wager working continuously for a number of years, a presumption is to be drawn of availability of post.

22. The Division Bench in Badri & Ors. case (supra) while considering plethora of decisions, following directions have been made:-

"In the case of Nasib Singh v. State of Punjab & Others, 1999(5)SLR 497, the pensionary benefits were denied to the petitioner on the ground that his services were less than ten years. Instructions had been issued by the Government whereby the daily wage workers were regularised on 20.1.1995. The petitioner had 13 years of service to his credit. It was held that if a temporary or adhoc service is followed by regular service, the entire period of service shall count for purposes of pension. There is yet another decision of the same High Court in the case of Kewal Singh v. State of Punjab, 2000(4)SCT 650 in which, relying upon the Full Bench decision in the case of Kesar Chand v. State of Punjab through the Secretary, PWD B&R, Chandigarh & Others, 1988(92)PLR 223, it was held that the period of service rendered by an

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employee on work charge basis prior to regularisation of his services, has to be considered as qualifying service while determining the pension. In Kewal Singh's case, the petitioner had admittedly served the department for more than 15 years. Apparently, there was nothing against him which could disentitle him to get pension. It was held that mere failure of the Government to sanction a regular post, should not result in deprivation of the pension at the end of the service. It was directed that the petitioner's case of regularisation of his services prior to the date of his retirement shall be considered and thereafter his claim for pension shall be re-examined and whatever is found due, shall be paid to him. In CWP No. 19732 of 2001 – Hazura Singh vs. State of Punjab & Others, decided on 14.1.2003, the law on the point was elaborately discussed and it was concluded that the service rendered on the establishment, even on casual or daily rated basis, is to be counted as qualifying service. Consequently, the writ petition was allowed with a direction to the respondents to re-determine the retiral benefits after taking into consideration the adhoc/temporary service of one year, six months and 20 days rendered by the petitioners."

23. If one has regard to the above, what has been discerned as a ratio decidendi is that failure of Government to sanction a regular post would not deprive a person of his pension. I find that there has been a delay by the Government of NCT to sanction the post which should have been immediate as the applicant had worked for more than 13 years having acquired temporary status. Had the directions of the Apex Court been complied expeditiously, the applicant would have been regularised.

24. Apart from the above view, doctrine of legitimate expectation bestows a person an equitable assumption of the fact that by continuing a person on daily wages his right for regularisation has to ripen. This legitimate expectation when pitted with laxity in administrative action the net result would be deprivation of fruits of service rendered by the person concerned. Unless service matures into a status, there would be ^{no} consequential flow or automatic grant of retiral benefits

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on death of a person. Though right of livelihood and permanency may not be culminated into right to livelihood yet State, as a model employer keeping in view the welfare, has an onerous duty to timely and expeditiously regularize the services by operating the Scheme and if creation of post and its sanction is a via media to implement, the same should not be an impediment for a deceased employee to be accorded posthumous regularisation. Pension is a right not a bounty which would mutatis mutandis apply to retiral benefits as well. I support my conclusions on a pragmatic view in the light of decision of the Apex Court in Constitution Bench in D.S. Nakara Vs. U.O.I. 1983 SCC (L&S) 145) as well as Delhi Transport Corporation Vs. DT Mazdoor Congress and Ors (1991 SCC(L&S) 1213).

25. A Division Bench's decision in Pattammal's case is binding on me, which facilitates grant of posthumous regularisation and grant of retiral benefits to the applicant.

26. It is also trite law that this Court cannot direct Government to create post but in deserving cases on equitable consideration there are ways and means with the Government to posthumously regularize the services of the late husband of the applicant which would not divest away her claim for retiral benefits, leaving her to wait on a contingency of creation of post and the said act would not be only inhuman but would be arbitrary.

27. For the foregoing reasons, the ground of non-availability of post is not a valid ground to deny the relief to the applicant.

28. In the result, OA is allowed. Impugned orders are set aside. Respondents are directed to expeditiously regularize the services of late husband of applicant posthumously and in that event the applicant shall be

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entitled to all retiral benefits due to her. The same shall be paid to the applicant within two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)
4/5/05

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