

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 378 of 2005

_____ day, this the 8th day of **November**, 2007

Hon'ble Mr. K.S. Menon, Member (A)

1. Janki S/o Shri Hardayal resident of village Lakara, District Jhansi.
2. Dhani Ram S/o Shri Param, resident of Village and Post Bhojia, District Jhansi.
3. Gulab Singh S/o Shri Shreeram, resident of Village Lakara, District Jhansi.
4. Sobran Singh S/o Shri Shreeram, resident of Village Lakara, District Jhansi.
5. Ganesh S/o Shri Hardas, resident of Village Padri, Post Budda, District Jhansi.
6. Bhaiya Lal S/o Shri Panna Lal Village Karari, District Jhansi.
7. Ramgopal S/o Latorey, resident of Village Kot Post Issagarh, District Jhansi.
8. Shaligram S/o Panni R/o Village and Post Karari, District Jhansi.
9. Ramkishun S/o Shri Mukundi R/o Village Padri, Post Buda, District Jhansi.
10. Ayodhya S/o Shri Sadhu R/o Village Kot Post Issagarh, District Jhansi.
11. Pooran S/o Shri Bhagwandas, resident of Village Peetampur, District Jhansi.
12. Parasram S/o Shri Munna resident of Village Bhojla, District Jhansi.
13. Hariram S/o Shri Murlidhar resident of Village Padri, District Jhansi.
14. Passu S/o Shri Himmey resident of Village, Lakara, District Jhansi.



15. Kishori S/o Shri Dhanjoo, resident of Village Bhojla, District Jhansi.
16. Babu Son of Shri Ranje, resident of Village Lakara, District Jhansi.
17. Hardas S/o Shri Amarjoo, resident of Village Roneeja, District Jhansi.
18. Hariram S/o Shri Khude resident of Village Lakara, District Jhansi.
19. Nalu S/o Shri Khubi, resident of Village Lakara, District Jhansi.
20. Devi Singh S/o Shri Sarman, resident of Village Lakara, District Jhansi.
21. Balloo S/o Shri Kunwara, resident of Village Karari, District Jhansi.
22. Gopi S/o Shri Lachhoo, resident of Village Bharari, District Jhansi.
23. Khuman S/o Shri Halke resident of Village Bhojla, District Jhansi.

By Advocate Sri R.P. Tewari

Applicants

Versus

1. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Govt. of India, New Delhi.
2. Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
3. Director, Indian Grassland and Fodder Research Institute, Gwalior Road, Jhansi.

Respondents

By Advocate Sri S. Singh

ORDER

By K.S. Menon, Member (A)

This O.A. is filed against the impugned O.M. dated 26.04.2004 (Annexure A-I) and 21.02.2005 (annexure A-II) by respondent No.1 and 2 respectively purporting to introduce a new pension scheme w.e.f. 01.01.2004 on the basis of which the G.P.F. Scheme ceases to exist hence deductions of G.P.F. in respect of the applicants were proposed to be discontinued and outstanding balances and deductions, if any, made after 01.01.2004 were to be refunded to the applicants with interest. This the applicants say was done without giving the affected

persons an opportunity of being heard and without the approval of the competent authority i.e. Ministry of Labour.

2. The applicants' case in brief is that they had been working as daily wagers for the last more than 20 years in the Indian Grassland and Fodder Research Institute, Jhansi under the respondent No.3. All of them were granted temporary status in the pay scale of Rs.2550-3200 with effect from 25.04.1995, since they had worked for more than 3 years and acquired the temporary status, the G.P.F. contributions are required to be deducted from their salaries as per the rules, as it is mandatory whereas the respondents in pursuance of their Pension Scheme introduced from 01.01.2004 proposed to stop G.P.F. deductions and refund amounts collected so far based on the accumulations in their account alongwith interest upto 30.04.2004. Applicants contend that the action of the respondents is a clear breach of violation of Articles 14 and 16 of the Constitution and is liable to be dismissed. The applicants, therefore, sought the directions of this Tribunal to quash the impugned order dated 26.04.2004 and 21.02.2005 and directions to the respondents not to stop deduction of Provident Fund subscriptions from the running pay bills of the applicants and continue to deduct the provident fund subscriptions so stopped, from further pay bills and restore the G.P.F. accounts of the applicants.

3. The learned counsel for the respondents Shri Saumitra Singh in the Counter Affidavit has clarified the position of Casual Labourer as under: -

"As per the guidelines issued by the Department in pursuance of Judgment dated 17th January, 1986 of the Supreme Court in the case of Shri Surinder Singh & Others Vs. Union of India, vide O.M. dated 7.6.88, persons on daily wages could be recruited for work which is casual/seasonal/intermittent or for work which is not of full time nature for which regular posts cannot be created. Hence, the engagement of casual labourer is for casual/seasonal nature of work. Once the casual/seasonal work for which they were recruited is over, they are liable to be discharged."

4. They contend that the Scheme for grant of temporary status is as per Department's O.M. dated 10th September 1993 which

was formulated in pursuance of Central Administrative Tribunal, Principal Bench's Judgment dated 16th February 1990 in ^{Shri} Raj Kamal and others Vs. Union of India. The Scheme clearly stipulates that conferment of temporary status would be without reference to creation/availability of regular Group 'D' posts, hence conferment of temporary status on a Casual Labourer would not involve any change in his duties and responsibilities. They are paid on daily rates of pay and engagement is on need basis. In view of this they submit that it is totally incorrect to claim that casual labourers are regular temporary Government servants or have any vested right.

5. On the substantive issue of applicability or otherwise of the new pension scheme w.e.f. 01.01.2004 to casual labourers granted temporary status, the respondents submit that the new pension rules are applicable to casual labourers who may be appointed on regular basis against Group 'D' post on or after 01.01.2004 i.e. they will be governed by rules/instructions as may be in force on the date of their regular appointment to a civil post under the Government. The main components of the new pension scheme in so far as temporary status employees concerned are: -

- (i) New Pension Scheme is based on defined contributions, therefore, the length of qualifying service for retirement benefits has lost its relevance, no credit of casual service shall be available to the casual labourer on their regularisation against Group 'D' posts on or after 01.01.2004.
- (ii) There is no provision of G.P.F. in the new Pension Scheme, therefore, no further deductions towards G.P.F. shall be effected from casual labourers w.e.f. 01.01.2004 and amounts lying in their G.P.F. accounts, including deduction made after 01.01.2004 shall be paid to them. (A subsequent clarification was issued to the effect that interest payments were to be calculated upto 30.04.2004).

6. In view of the above and the Judgment of Central Administrative Tribunal, Principal Bench in ~~O.A. 91 of 1994~~ ^{Shri} Raj Kamal and Others Vs. Union of India dated 19.08.1994 wherein it was held that casual labourers have to wait for regularisation against Group 'D' post for bringing their terms and conditions at par with regular employees, the respondents approved stoppage

of deduction of G.P.F. from the salary of March 2005 onwards of the temporary status employees vide their letter dated 19.02.2005 (Annexure-5 to C.A.). Respondents say that they have received no representation from the applicants against such a stoppage of GPF deductions, instead they have filed the present O.A. Since the O.A. is devoid of merits and is totally baseless, they contend that the O.A. does not call for any interference by the Tribunal and deserves to be set aside.

7. Heard, the counsels for both parties and perused the pleadings on record. The first issue to be settled is whether the applicants are Government servants by virtue of the fact that they have been granted temporary status and hence eligible for equal treatment with those regularly employed. This issue appears to have been adequately addressed and settled in Central Administrative Tribunal, Principal Bench's Judgment in ~~O.A. 91/1994~~ ^{Shri} in ^{g w} Raj Kamal and others Vs. Union of India wherein it was clarified that casual labourers have to wait regularisation against Group 'D' posts for bringing their terms and conditions at par with regular employees. The counsel for the respondents Sri Saumitra Singh has placed on record a letter from D.O.P.T. dated 26.09.2006 annexed with his Supplementary Affidavit in which D.O.P.T. have referred to some of the important observations of the Supreme Court in CA Nos. 3595-3612 of 1999 State of Karnataka Vs. Uma Devi and Others dated 10.04.2006, in which the nature of appointment of daily wagers vis-à-vis the appointments consistent with the Constitutional Scheme of Public appointment was exhaustively examined. The sum and substance of the above decision is that "the casual employment comes to an end when the casual nature of appointment is discontinued and the person is appointed against a regular post, recruitment rules for which have been notified under Article 309 of the Constitution. The rules regarding pay fixation on appointment etc. are regulated by FRs, pension rules etc. which have a statutory effect. The CCS (Pension) Rules, 1972 are not applicable to a person appointed to a regular post after 31.12.2003. The conferment of temporary status on a casual labour would not involve any change

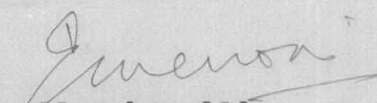
(16)

in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. The GPF Rules are also not applicable to an employee appointed after 31.12.2003. Therefore, the question of qualifying service for pension and deduction of GPF have become irrelevant for a casual worker who has not yet been appointed to a regular post in the Government under the constitutional scheme of appointment. Casual workers with temporary status are not treated as holders of civil posts. The Supreme Court has clearly held in the aforesaid Judgment that the right of casual worker cannot be extended to claim equal treatment with regularly employed."

8. In the wake of introduction of the new pension scheme w.e.f. 01.01.2004, the D.O.P. & T. reviewed the Scheme for grant of Temporary Status and Regularisation of Casual Labourers and modified the Scheme relevant provisions of which have been brought out at paragraph No. 5⁴ above.

9. In view of the above, it is seen that the applicants have not yet been brought on permanent establishment, through a regular selection process for group 'D' posts as per terms of the modified Scheme for grant of temporary status prior to 01.01.2004 and are not eligible to have GPF deductions made from their salaries. In other words, GPF Rules would have been applicable to the applicants had they been regularised in a permanent post³s before 01.01.2004. Hence the action of the competent authority to stop G.P.F. deduction from the salary of March 2005 onwards of the applicants and make payment of the accumulations in their G.P.F. account alongwith interest upto 30.04.2004 is in order and does not require any interference by this Court.

10. The O.A. being without merit is accordingly dismissed. No order as to costs.


Member (A)

/M.M./