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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.658 OF 2005

Cuttack this the 28th day of July, 2006


Mukunda Khilla & Ors. ... Applicants

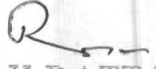
-VERSUS-

Union of India & Ors. ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
 2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?
- } Yes.


(B.B. MISHRA)
MEMBER (ADMN.)


(R.K. BATTA)
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.658 OF 2005

Cuttack this the 28th day of July, 2006

CORAM:

**THE HON'BLE MR. JUSTICE R.K.BATTA, VICE-CHAIRMAN
AND
THE HON'BLE MR B.B.MISHRA, MEMBER (ADMINISTRATIVE)**

- ...
1. Mukunda Khilla, aged about 45 years, son of Dhanurjaya Khilla, At-Uperkolap, PO-Sunurbeli, Nuagarh, Dist-Koraput
 2. Gurunath Nayak, aged about 47 years, Son of Maguni Nayak, At-Madhabarida, PO-Netenga, PS-Gobara, Dist-Ganjam
 3. S.K.Behera, aged about 43 years, Son of Khali Behera, At/PO-Inginathy, PS-Bhanjanagar, Dist-Ganjam
 4. Satrugan Sahoo, aged about 46 years, Son of Balaram Sahoo, At-Keshmnagar, PO-Bharigada, PO-Rajkonika, Dist-Kendrapara
 5. Arjuna Pujhari, aged about 44 years, Son of Gangadhar Pujhari, At-Devpujhariput, PO-Voumali, Dist-Koraput
 6. Damodar Bora, aged about 40 years Son of Arjuna Bora, At-Majhipur, PO-Badal, Machhand, Dist-Koraput
 7. Gopal Krushna Sahoo, aged about 44 years, Son of Somanath Sahoo, At/PO-Babanpur, Dist-Ganjam
 8. P.K.Mishra, aged about 49 years, Son of R.M.Mishra, At-Gobardhanpur, PO-Dharakat, Dist-Ganjam
 9. Janardan Mishra, aged about 44 years, Son of Trilochan Mishra, At/PO-Srimore, Via-Baghmari, Dist-Khurda
 10. G.B.Bhanja, aged about 45 years, Son of M.C.Bhanja, At-Dekudi, PO-Benipur, Dist-Jajpur

All are working as Temporary status workers in Central Cattle Breeding Farm, Semiliguda, PO-Sunabeda, Dist-Koraput

... Applicants

By the Advocates : M/s.Kalpataru Panigrahi
A.K.Pati

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-VERSUS-

1. Union of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying, Krishi Bhawan, represented through its Secretary, New Delhi
2. Government of India, Department of Personnel Training, represented through it's Secretary, New Delhi
3. Director, Central Cattle Breeding Farm, Semiliguda, PO-Sunabeda-2, Dist-Koraput

...Respondents

By the Advocates : Mr.B.Dash, A.S.C.

ORDER

MR.JUSTICE R.K.BATTA, VICE-CHAIRMAN: The applicants were appointed as Casual Labourers in the Central Cattle Breeding Farm and were conferred with temporary status with effect from 1.9.1993 vide order dated 28.12.1994 of Respondent No.3, in terms of the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993. According to applicants, by the said order dated 28.12.1994, certain benefits were conferred on them which relate to contribution to GPF and counting of 30% of service rendered under temporary status for the purpose of retirement benefits after regularization. The applicants further contend that the Respondents vide O.M. No.49014/1/2004-Estt© dated 26.4.2004 (Annexure-2) have reviewed and modified the scheme dated 10.9.1993 in the light of introduction of new pension scheme in respect of persons

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appointed to the Central Government service on or after 1.1.2004. The applicant further complain that in terms of the guidelines dated 26.4.2004 (Annexure-2), the benefits granted to the applicants vide order dated 28.12.1994 (Annexure-1) have been taken away and deduction towards general provident fund with effect from 1.1.2004 has been prohibited and the amounts lying in their general provident fund account have been ordered to be refunded. The case of the applicants is that new pension scheme is applicable only to persons appointed on or after 1.1.2004 and the same cannot be applied to them by issuing further guidelines thereunder, as has been done by issuing O.M. dated 26.4.2004. The Respondents have issued order dated 30.9.2004 (Annexure-3) for stopping the subscription and recovery towards GPF in respect of casual labourers, who were conferred with temporary status and by order dated 6.1.2005 (Annexure-4) have conveyed the sanction for final withdrawal and payment of GPF balance to the temporary status workers. The said orders (Annexures-3 and 4) and O.M. dated 26.4.2004 (Annexure-2) are subject matter of challenge in this O.A. and the applicants pray for quashing of the same, with further direction to accept the GPF contributions and to continue the benefit of counting 30% of service rendered under temporary status for the purpose of retirement benefits after regularization.

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2. The Respondents in their counter have admitted that the Union of India introduced a new Pension Scheme in respect of persons appointed to Central Government Service with effect from 1.1.2004. It is further contended that as the new pension scheme is based on defined contribution, the length of service for the purpose of retirement has lost its relevance and no credit of casual service is available to casual labourers on their regularization against Group-D posts on or after 2004. The Respondents further contend that there is no provision for GPF in the new pension scheme and it will not serve any purpose to continue deduction towards GPF from the existing casual employees. The Respondents have further submitted that the Government has power to introduce, change or modify its own scheme/policy in consideration of the public exigencies. Therefore, according to Respondents, the subsequent orders passed in terms of OM dated 26.4.2004 do not call for any interference. The Respondents have further contended that excepting these 10 applicants all the other temporary status employees have filed applications for refund of GPF balance.

3. We have heard counsel appearing on both sides. There is no doubt that pursuant to Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993 dated 10.9.1993, the applicants were granted temporary status with effect from 1.9.1993 vide

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order dated 28.12.1994 (Annexure-1) on certain conditions and two of the conditions which are relevant for the present O.A. are as under:

- "v) 30% of the service rendered under Temporary status would be counted for the purpose of retirement benefit after their regularization.
- vi) After rendering three years of continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group D employees for the purpose of contribution to the General Provident Fund and would also further be eligible for the grant of Festival advance/Flood advance on the same conditions as are applicable to temporary Group D employees, provided they furnish two sureties from permanent Govt. servants of their Department"

4. Subsequently, the Government of India came out with new Pension Scheme vide G.I., M.F.No.1(7)(2)/2003/TA/11 dated 7.1.2004 read with O.M.No.1(7)/2003/TA/67-74 dated 4.2.2004 (Annexure-5). It is pertinent to note that new pension scheme comes into operation with effect from 1.1.2004 and is applicable to all new entrants to Central Government Service except to Armed Forces joining Government service on or after 1.1.2004. In this scheme it is provided that no deduction will be made towards GPF contribution from the Government servants joining the service on or after 1.1.2004 as the GPF scheme is not applicable to them. Thus, the scheme only provides for that no deduction will be made towards GPF contribution from the Government servants joining the service on or after

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2004 as the GPF scheme is not applicable to them. Taking shelter under the new Pension Scheme, the Respondents have issued O.M. No.49014/1/2004-Estt.© dated 26.4.2004 for modification of Scheme for Grant of Temporary Status. The said OM provides that the matter has been reviewed in the light of the new pension scheme in respect of persons appointed to the Central Government service on or after 1.1.2004 and it has been decided to modify the scheme 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 lots its relevance, no credit of casual service, as specified in Para.5(v) shall be available to the casual labourers on their regularization 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 deductions towards General Provident Fund shall be effected from the casual labourers with effect from 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”.

5. Admittedly, the applicants have not been regularized against Group D posts and the said O.M. dated 26.4.2004 would not be applicable them. Even the new pension scheme is applicable to the new entrants to Central Government service on or after 1.1.2004. It is pertinent to note that the



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applicants were conferred temporary status vide order dated 28.12.1994(Annexure-1) on certain conditions which included condition No. v and vi, which we have already referred to above. As per ^{Condition} No v, 30% of service rendered under temporary status was to be counted for the purpose of retirement benefits after regularization. This benefit which was granted to the applicants cannot simply be taken away without duly compensating them with reference to the said condition and the same will have to be taken into consideration while regulating their pensionary benefits even after the regularization of the applicants. Therefore, the modification of the scheme under Item -1 in OM dated 26.4.2004 cannot on the face of it be sustained, because if no credit is given to the applicants in respect of the benefits granted to them under order dated 28.12.1994, the applicants are bound to suffer irreparable loss in the matter of pensionary benefit. May be, the Government may have to come out with a proper scheme in respect of such employees who were granted temporary status after taking into consideration the benefits conferred on them under Clause-5 of order dated 28.12.1994. It is no doubt true that the Government is competent to take policy decision, frame and modify the Scheme and the Courts/Tribunals do not normally interfere in such matters, but if the decision is arbitrary and does not take into consideration all the relevant aspects, such decision cannot be sustained.

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In so far as the question relating to GPF contribution is concerned, the applicants were treated, after completion of three years of continuous service after conferment of temporary status, on par with temporary Group-D employees for the purpose of GPF. Admittedly the applicants have not been regularized as yet and at this stage, without regularization stopping the recovery of GPF contribution and refund of the GPF contribution in their account would again be contrary to Condition-vi of the OM dated 28.12.1994. As and when the applicants are made regular, the provisions of new pension scheme could perhaps be applied to them in respect of GPF contribution. But at this premature stage the deductions from GPF need not be stopped nor the amounts in the credit of the employees be refunded. It is only when the new scheme is applicable in terms of the said scheme deductions towards GPF can be stopped since at that point the GPF scheme may not be applicable to them. At any rate, the Government may have to come with an appropriate scheme giving proper weightage with reference to the service rendered by the applicants under the temporary status in terms of O.M. dated 28.12.1994. The same cannot altogether be ignored.

6. In view of the above, we are of the opinion that O.M. dated 26.4.2004 (Annexure-2) cannot be sustained and is required to be quashed. Accordingly, the same is hereby quashed. Consequently, orders dated



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30.9.2004 (Annexure-3) and 6.1.2005(Annexure-4) are set aside. The application is allowed in the aforesaid terms with no order as to costs.


(B.B. MISHRA)
MEMBER(ADMN.)


(R.K. BATT A)
VICE-CHAIRMAN