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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.111 of 2013

Cuttack this the 20th day of June, 2017

CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

1. B.Sitaram, aged about 54 years, S/o.B.Vennkanna, at present working as SWA in the C&D Wireless Station, CWC, Kashinagar, Permanent resident of Village/PO/PS-Kashinagar, Dist-Gajapati
2. B.Ramakrishna Rao, aged about 54 years, S/o.B.Apala Swami, at present working as SWA in the C&D Wireless Station, CWC, Kashinagar, Permanent resident of Village/PO/PS-Kashinagar, Dist-Gajapati
3. MajhiKhadanga, aged about 52 years, S/o.lateGangadharKhadanga, at present working as SWA in the C&D Wireless Station, CWC, Kashinagar, Permanent resident of Village/PO/PS-Gunupur, Dist-Rayagada

...Applicants

By the Advocate(s)-Mr.T.Rath

-VERSUS-

Union of India represented through:

1. Ministry of Water Resources, At/PO-Shrama Shakti Bhawan, Rafi Marg, New Delhi-110 001
2. Chairman, Central Water Commission, 323(S), SewaBhavan, RK Puram, New Delhi-110 066
3. Under Secretary, Government of India, Central Water Commission, Room Number-312, Sewa Bhawan, RK Puram, New Delhi-110 066
4. The Chief Engineer, M&ERO, Central Water Commission, Mahanadi Bhawan, Plot No.A-13 & 14, At/PO-Bhoiagar, Bhubaneswar-751 022

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5. Superintending Engineer(Hydrological Observation Circle), Government of India, Central Water Commission, Mahanadi Bhawan, Plot No.A-13/14, Bhoi nagar, Bhubaneswar-651 022
6. Executive Engineer, Government of India, Central Water Commission, Eastern River Division, Plot Number-A/13 & 14, At/PO-Bhoi nagar, Bhubaneswar-651 022
7. Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training (CS Division) 2nd Floor, Lok Nayak Bhavan, New Delhi

...Respondents

By the Advocate(s)-Mr.S.Behera

ORDER

A.K.PATNAIK, MEMBER(J):

Three applicants having a common cause of action and on being permitted by this Tribunal, have joined together to prosecute this Original Application. All the applicants are presently working as SWA under the Respondent-Department. They have, in this Original Application, sought for the following relief.

“...direct the respondents to apply the provisions of CCS(Pension Scheme) 1972 in respect of the applicants by declaring Clause 3.1 of Annexure-A/5 series as bad and illegal and quash the same.

...and consequently direct the Respondents to continue to extent the benefits under the GPF Rules to the applicants by deducting the monthly subscription regularly and without any interruptions and hold the Annexure-A/7 not applicable to the applicants; Or in the alternative quash Annexure-A/7.

...Further direction may be issued quashing the orders under Annexure-A/9, A/10 and A/12.

...And further also direction may be issued commanding the Respondents to extend similar benefit to the applicants as has been granted to the applicants of the judgment of the Hon'ble Central Administrative Tribunal,

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Hyderabad Bench in the case of G.Appa Rao and others vs. Secretary, Railway Board and others (O.A.No.492/2010) and O.A.616/2010 disposed of on 31.8.2010) and other similar cases.

...And pass any consequential orders benefitting to the facts and circumstances of the case.

2. Facts of the matter in brief are that initially all the applicants were recruited as Casual Khalasiin the year 1980 under the Respondents. Subsequently, they were granted temporary status in the year 1997 and while continuing as such, vide Memorandum dated 17.05.2007(A/5) series, they were brought over to regular establishment.

3. Grievance of the applicants is directed against Para-3(i) of the Memorandum dated 17.05.2007, in which it has been stipulated that they are eligible to New Pension Scheme introduced for all Central Government servants who joined on or after 01.01.2004. According to applicants, since they had been contributing to GPF during the course of temporary status, the same contribution to GPF should be carried into effect after their regularization even though their regularization is made after 01.01.2004 when the New Pension Scheme came into force. In other words, it is the contention of the applicants that they cannot be governed under the New Pension Scheme which came into effect from 01.01.2004.

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4. Contesting the claim of the applicants, respondents have filed their reply statement in which they have prayed that the O.A. being devoid of merit is liable to be dismissed.

5. We have heard the learned counsel for both the sides and perused the records.

6. It is to be noted that during the pendency of this O.A., respondents had filed a Misc.Application No.612 of 2014 stating therein that the matter on being taken up, the DOP&T has advised to resume GPF contribution for all casual labourers with temporary status subject to outcome of SLP No.19673 of 2009 to SLP No. 19678 of 2009 in order to avoid multiplicity of litigations and in view of this, necessary direction has been issued to resume GPF contribution for all seasonal and regular Khalasi (now SWA) regularized on or after 01.4.2004. Accordingly, it was pointed out that the O.A. may be disposed for having become infructuous. Applicants contested this Misc.Application by filing an objection. This being the position, the Tribunal, vide order dated 28.01.2016 passed the following order.

"Heard Mr.T.Rath, Ld.Counsel for the applicant and Mr.S.Bhera, Ld.Sr.CGSC appearing for the Respondents-Union of India

M.A.No.612/14 has been filed by the Respondents praying to dispose of this O.A. being infructuous as the authorities have already resumed the GPF deduction from all the applicants. On the other hand, Mr.Rath had strongly refuted the averments and submissions made in M.A.No.612/14 by stating that the said resumption is by way of temporary measure and after the judgment in the SLP authorities can again take any coercive action.

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Hence, we want the instructions regarding LSP filed before the Hon'ble Supreme Court of India.

Today, by filing a Memo, Mr.Rath enclosed the judgment dated 24.02.2015 rendered by the Hon'ble Supreme Court of India in SLP Nos.19673-19678 of 2009 along with other cases tagged together and brought to our notice that all those SLPs except SLP No.25521 of 2014 have been dismissed. Mr.Rath, therefore, submitted that he does not want to file rejoinder in view of the submission made by the Respondents in M.A.No.612/14 as well as judgment rendered by the Hon'ble Supreme Court of India. Memo is taken on record.

Pleadings are taken to be complete. List this matter for hearing on 15.02.2016.

Mr.Rath may keep the order of Hon'ble High Court of Delhi ready at the time of hearing".

7. After the hearing in the matter was complete, both the sides were permitted to file written notes of submissions and accordingly, they have so filed. In the written notes of submissions, respondents have reiterated the same facts as stated in M.A.No.612/14. In the written notes of submission filed by the applicants, it has been brought to the notice of the Tribunal a Memorandum dated 26.02.2016 (A/13) issued by the Government of India, Ministry of Personnel, Public Grievances and PG, Department of Personnel and Training in the matter of casual labourers with temporary status – clarification regarding contribution to GPF and Pension under the old pension scheme. Paragraphs-6 and 7 of the said Memorandum are quoted hereunder.

6. The position has been reviewed in the light of the Court judgments in consultation with the Department of

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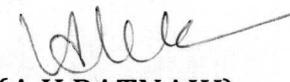
Expenditure. It has now been decided that the casual labourers who had been granted temporary status under the scheme, and have completed 3 years of continuous service after that, are entitled to contribute to the General Provident Fund.

7. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of those casual labouresrs who have been regularized in terms of Para-8 of the OM dated 10.09.1993".

8. A harmonious reading of the submissions made by the Respondents in M.A.No.612/14 read with the written notes of submission and the Memorandum dated 26.02.2016 issued by the DOP&T, it is crystal clear that the grievances of the applicants have already been redressed in the hands of the respondents, leaving no room for further adjudication of the matter. However, we would direct the respondents to abide by the clarification issued by the DOP&T in the Memorandum dated 26.02.2016 in so far as applicants are concerned.

9. With the above observation and direction, this O.A. is disposed of, leaving the parties to bear their respective costs.


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER(J)