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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.**

Original Application No. 161/2005 and 162/2005

Date of order: 27.01.2006

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

Original Application No. 161/2005

Panna Ram Son of late Shri Pratap Ji, aged 60 years, R/o 320, Ward No. 3, Bhatwada, District Pali, Husband of Smt. Kakku Devi – An Mazdoor in the Central Arid Zone Research Institute, Pali Farm, Pali.

....**Applicant.**

Original Application No. 162/2005

Smt. Kalu Devi Widow of Late Shri Goma Ji, aged 60 years, R/o 316, Ward No. 3, Bhatwada, District Pali, Shri Goma Ji – an ex Mazdoor in the Central Arid Zone Research Institute, Pali Farm, Pali.

....**Applicant.**

For the applicants: Mr. Vijay Mehta, and Mr. J.C. Singhvi, counsel in all the O.As.



VERSUS

1. Indian Council of Agricultural Research, through its Director General, Krashi Bhawan, New Delhi.
2. Director, Central Arid Zone Research Institute, Jodhpur.

....**Respondents in all the O.As.**

Mr. V.S. Gurjar, counsel for respondents in all the O.As.

ORDER

Shri Panna Ram and Smt. Kalu Devi have filed their individual Original Application No. 161/2005 and 162/2005, respectively, under section 19 of the A T Act 1985. The common questions of law and facts are involved in these cases, hence they are being decided by a common order.

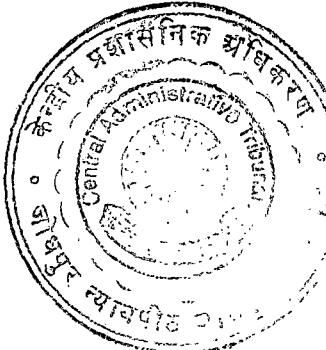
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2. Both the learned counsel for the parties were heard in piecemeal and today the arguments have been concluded. I have carefully heard the arguments advanced by both the learned counsel for the parties and also perused the pleadings as well as the records of same.

3. The indubitable facts necessary for resolving the controversy involved in these cases are within a narrow compass. The applicant in OA No. 161/2005 is the widower of late Smt Kakku Devi. The applicant in OA No. 162/2005 is the widow of Late Shri Gomaji. Said Smt Kakku Devi and Shri Gomaji were initially appointed in the Central Arid Zone Research Institute, Jodhpur on the post of Mazdoor in the year 1973. They were granted temporary status on the post of Mazdoor and they served the department without any interruption upto 4.2.2000 and 1.3.92, respectively. Late Smt. Kakku Devi and Shri Gomaji expired on the said dates while in service. Certain disputes has been adduced regarding the status of the above deceased government servants. As per applicants' version, the late government servants were regularised after prolonged litigations wherein diverse orders were passed by the Courts of law, starting from the Labour Court to the Apex Court. The applicants have not been granted the family pension and other terminal benefits.

4. On the other hand, the respondents have refuted this position and averred that the said persons were only granted



temporary status in implementation with the Award and as per the provisions envisaged in the Casual Labourers (Grant of Temporary Status and regularization) Government of India Scheme of 1993 (for brevity scheme 1993). There is no provision for grant of family pension to widow/widower of a temporary status casual labour as per the scheme of 1993 until one is regularized and the said deceased employees were not regularized. It is also averred the judgement passed by the Hon'ble High Court affirming the decision of this Tribunal in Smt Santosh has been stayed in SLP by the apex court and the SLP is still pending.

5. Both the learned counsel have reiterated the facts and grounds mentioned in their respective pleadings. At the very outset, the learned counsel for the applicants has drawn my attention to one of the decisions rendered by this very Bench of the Tribunal, wherein myself is one of the party, in the case of **Smt. Santosh vs. ICAR and others** [2004 (3) ATJ. 42]. He has submitted that even if the deceased government servants were only temporary status holder (though they were regular employees) the controversy involved in the instant case is squarely covered on all fours and this issue is well settled therein and does not remain res integra. He also apprised the latest development in the matter in as much as a Writ Petition was preferred by the respondents against the order of this Tribunal in **Smt. Santosh's** case supra before Hon'ble High Court of Rajasthan at Jodhpur, in D.B Civil Writ Petition No. 1038/2005,



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and their Lordships have been pleased to dismiss the same vide order dated 21.02.2005 and the order of this Bench of the Tribunal in the case of **Smt. Santosh** supra has been upheld. The same has neither been modified nor nullified in any manner and the stay in SLP would not make any difference. Therefore, he contended that present case could be decided on similar lines.

6. The learned counsel for the applicants has made me to traverse through the various awards, judgment of Hon'ble High Court and some other orders passed thereto. He has tried to demonstrate that as per the award there was no direction for grant of temporary status and the direction was for regularization of the casual labour fulfilling certain conditions and the same was to be done by framing a scheme and by creating the requisite number of posts. The deceased government servants fulfilled the eligibility conditions meant for regularization. He has contended that the respondents have not implemented the award and a false statement has been made in the reply just to mislead this Tribunal in as much as prosecution proceedings are going on before the appropriate forum regarding non-implementation of award. He also submitted that the respondents despite specific direction of this Tribunal have not produced even so-called order of grant of temporary status in implementation of the award. The deceased government servants in particular and other similarly situated employees in general should be treated as regular employees after expiry of six months period from the date of award i.e. 29.10.1989 and



the terminal benefits ought to have been paid to their legal heirs; after all the employees and their legal heirs should not be made to suffer due to the inaction of the authorities in power.

7. Per contra, the learned counsel for the respondents has reiterated the defence of the respondents as set out in the reply. He has submitted that no written order as such for implementation of the award has been passed. The casual labours including the deceased government servants have been granted temporary status as per the provisions of scheme of 1993. Incidentally the matter remained under litigation and by the time the question of implementation arose; the scheme of 1993 came in existence. Therefore, framing of new scheme as per the award was not considered necessary. As regards the regularization, the same has been done in accordance with the said scheme and number of casual labours were regularised but the turn of deceased employees did not come. The learned counsel was questioned from the court as to why a subsequent scheme was only applied and not the scheme of 7.6.88 or the scheme indicated in award, which were very much in force at the relevant time. The reply forthcoming was that when the regularization was processed, the scheme of 1993 was in force.

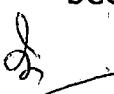
8. I have considered the rival submissions and also gone through the records of this case as well as the decision of this Tribunal in the case of Smt. Santosh supra as upheld by the Hon'ble High Court of Rajasthan at Jodhpur. At this juncture, I



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can only assert that the controversy involved in this case is fully covered by the decision in **Smt. Santosh case** supra and no fresh debate is called for. There is yet another reason for accepting the version of the learned counsel for the applicant since the order of this Tribunal in **Smt. Santosh** case supra has been upheld by the Hon'ble High Court of Rajasthan at Jodhpur and I am otherwise bound by the same. The same has neither been modified nor overruled and the ratio is in force. If that were so there is absolutely no hesitation in applying the ratio of the judgement in **Smt. Santosh** case (supra) and decide the case on similar lines. In another case of **Badri & Others Vs. Union Territory, Chandigarh & ors** 2004 (1) SLJ CAT 204 (para 14), the Coordinate bench of this Tribunal was pleased to direct that the casual labours working for a long time for more than 25-29 years would be entitled for pension by counting the total period rendered by them as daily wages, casual or ad hoc etc. In the present case the deceased government servants had rendered over thirteen years. In any case for grant of family pension only one year service is enough.

Q. Looking the controversy from another angle, I find that there is force in the contention of the learned counsel for the applicant that the deceased government servants ought to have been deemed to be a regular employees as if the award issued in their favour was implemented. The respondents have not given the clear picture and it would be safe to infer that they have not been fair in the matter. I am unable to concur the action of the



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respondents that they could get rid of by remaining inactive or justify their action by granting certain benefits in accordance with subsequent scheme ignoring the scheme in force at the relevant time. While I am not concerned here with implementation of the award, but I consider it expedient and judicious to treat the deceased employees in particular and other similarly situated eligible employees in general, as regular from 29.10.89 in terms of the ibid award (Annexure A/6) passed in their favour. It is also otherwise justified for the reason that the employees should not be penalised for the fault and inaction of the authorities in power. If that were so, the applicants would be entitled for family pension and other terminal benefits.



19. In view of what has been said and discussed above, I find ample force in these OAs and the same stand allowed accordingly. The respondents are directed to grant family pension and other retrial benefits to the applicants from the due date and they shall also be entitled to all consequential benefits including arrears thereof along with interest @ 8% p.a. from the due date till the date of payment. This order shall be complied with within a period of three months from the date of receipt of a copy of the same. No costs.

Dr. J. K. KAUSHIK
(J.K. KAUSHIK)
JUDICIAL MEMBER

jsv