

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 83 / 2008

Wednesday, this the 1st day of April, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

G.Ponnamma,
Kovoormalayil House,
Kattookkara Muri, Thiruvalla.P.O.
Pathanamthitta Dist.Applicant

(By Advocate Mr M.N.Mathew)

v.

1. Union of India represented by
the Secretary to Government of India,
Department of Pension & Pensioners
Welfare, Lok Nayak Bhavan,
Khan Market, New Delhi-110 003.
2. The Chief Commissioner of Income Tax,
C.R.Building, I.S.Press Road,
Kochi-682 018, Ernakulam Dist.
3. The Income Tax Officer,
Ward-I, I.T.Office,
Thiruvalla.P.O. 689 101,
Pathanamthitta Dist.Respondents

(By Advocate Mr George Joseph, ACGSC)

This application having been finally heard on 20.3.2009, the Tribunal on 1.4.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has sought the following reliefs in this O.A:

- (i) Declare that the applicant is eligible and entitled to regularization of the service in Group'D' post from 15.5.1967 for reckoning the qualifying service for Gratuity and Pensionary benefits.

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- (ii) Declare that the applicant is eligible and entitled to regular appointment and remuneration in the time scale of Group D post from the year 1973 for the purpose of monetary benefits during the service period.
- (iii) Declare that the applicant is eligible and entitled to reckon 50% of her service from 15.5.1967 to 1973 and full service from 1973 until 31.8.2000 as qualifying service for payment of Gratuity, Pensionary and all consequential benefits.
- (iv) Direct the 2nd respondent to modify the Annexure A-6 appointment order dated 7.8.1991 to the above extent.
- (v) Direct the 2nd respondent to issue orders of notional promotion of the applicant to the post of Farash from the date of promotion of Kamamma, her junior and place her in appropriate seniority position in the disposition list.
- (vi) Direct the 2nd respondent to grant and pay the consequential monetary benefits to the applicant with interest for the service rendered from the year 1973 to 31.8.2000.
- (vii) Direct the 2nd respondent to grant and pay with interest DCRG, Pension and all retirement, pensionary and consequential benefits to the applicant at the applicable rates after notional fixation of her pay at the appropriate stage of the pay scale of Farash as amended from time to time.

2. The applicant's claim is that she has been performing the duties of Sweeper in the office of the 3rd respondent from 15.5.1967. In support thereof, she has produced Annexure A-2 "statement of facts" given to her by Shri T.A.Abraham on 28.2.1991 the then Income Tax Inspector in the office of the 3rd respondent according to which he was working in the said office from its inception on 15.5.1967 itself till the year 1970 and in the initial years, one Smt. Kiamamma, Kovoov Malayil appointed as the Sweeper. Since she was 60 years old her daughter-in-law Smt.G Ponnamma, who is the applicant herein, was helping her. But the salary was being paid to only Smt.Kiamamma. Later, due to illness, Kiamamma could not perform the duties of Sweeper and the applicant was appointed as a Sweeper from the year 1973 onwards. The applicant has also



produced the Annexure A-3 letter from Shri V.Gopinathan Pillai, the then Income Tax Officer stating that Smt Kaliaamma used to take the applicant to assist her in her work and it was continuing even at the time of his transfer in June 1970.

3. Vide Annexure A-8 representation dated 15.4.1986, the applicant made a request to the 2nd respondent to appoint her in a Group'D' post in relaxation of age limit as she was still working only as a contingent paid staff (Sweeper). She has also submitted that she had earlier made similar request to the respondents on 27.1.1986 but the same was not granted as her age as on the date of application was above 35 years, her date of birth being 22.8.1940. Vide Annexure A-1 letter dated 25.7.1986, the 2nd respondent again rejected her request on the ground that she was above the prescribed age limit in February, 1973. The applicant's contention was that since she was working in the office of the 3rd respondent from its very inception in 1967 along with her mother-in-law, if that date was taken into consideration, the question of age limit would not have arisen. However, she expressed her satisfaction that at least from February, 1973, the respondents 2 & 3 have confirmed that she had been working as a Sweeper in the office of the 3rd respondent. Vide Annexure A-9 letter dated 4.2.1991, the applicant again made a representation to the 2nd respondent stating that from the middle of 1968 at least she has been independently doing the duties of Sweeper in the office of the 3rd respondent as Smt.Kaliaamma, her mother-in-law was not physically fit to perform the duties due to illness and paralysis. Later on, vide Annexure A-4 letter dated 21.5.1991, the 2nd respondent asked the 3rd respondent to confirm whether or not the applicant has been working as a contingent worker continuously from a date before 31.3.1979 to consider her for appointment as regular Group'D' staff subject to production of age proof. On the basis of the confirmation received from the 3rd respondent vide Annexure A-5 letter dated 29.5.1991, the date of certificate showing her



date of birth as 7.11.1116 (Malayalam Era) corresponding to 22.8.1940 in Christian Era, on the directions of the 2nd respondent, the 3rd respondent vide Annexure A-6 letter dated 7.8.1991, appointed the applicant as a Group'D' Farash/Watchman in the scale Rs.750-940 on a temporary and provisional basis. Later, vide Annexure A-7 letter dated 18.11.1997, as in the case of other similarly placed persons, her designation was changed as "Group'D Sweeper".


4. Again, she made the Annexure A-10 representation dated 5.4.2000 stating that she was due to retire on 31.8.2000 and with her regular service as Group 'D' from 7.8.1991, she will not have 10 years minimum qualifying service to be become eligible for superannuation pension. She has, therefore, requested to count her past contingent service also for pensionary benefits. As the respondents did not take a favourable decision on her request, she retired from service on 31.8.2000 without any pension. However, she continued to represent to the 2nd respondent vide Annexure A-11 representation dated 27.9.2001 and Annexure A-12 representation dated 16.5.2006. She submitted that while her request for appointment in Group'D' post was rejected vide Annexure A-1 letter dated 25.7.1996 on the ground that she was found over aged as in February, 1973, the respondents themselves, vide Annexure A-4 letter dated 21.5.1991 found that she was suitable to be appointed as a regular Group'D' staff. She has also submitted that when other 7 similarly placed contingent staff including her junior one Kamalamma was regularised and appointed as Farash with effect from 1.4.1998, by virtue of her seniority in Annexure A-7 disposition list, she also should have been promoted as Farash at least from the same date i.e. 1.4.1998. According to her, the delay in granting her relaxation of age was not due to her but it was due to the fault of the 2nd respondent who delayed the matter without any reason. She has also submitted that she was entitled to be regularised from the year 1973 in terms of the casual



Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 issued by the Department of Personnel & Training, Government of India. If the respondents had conferred her with temporary status in terms of the aforesaid scheme from 15.5.1967, 50% of that service could have been counted for the purpose of pension and full service from 1973 onwards. In this regard learned counsel for the applicant has relied upon the judgments of the Apex Court in **Union of India & another v. Mohan Pal and others** [(2002) 4 SCC 573] and **Mineral Exploration Corporation Employees' Union v. Mineral Exploration Corporation** [(2006) 6 SCC 310].


5. She has also stated that her husband died on 1.7.2002 and she has no other source of income for livelihood.

6. In the reply statement, the respondents have submitted that the applicant was engaged as a contingent paid Sweeper only from 1.11.1978 as seen from her service register and any length of service as contingent paid staff does not confer any right for being considered for regularisation. They have also produced the Annexure R-1 letter dated 27.3.1991 of the 3rd respondent sending her service particulars to the 2nd respondent according to which, her date of birth is 22.8.1940, her educational qualification is Vth Standard and her date of appointment is 1.11.1978. They have stated that the Annexure A-2 and A-3 produced by the applicant were not official documents as they were not issued under any authorisation and her claim that she was performing the duties of Sweeper from February, 1973 on behalf of her mother-in-law is not valid for the purpose of claiming any service benefits. Further, they have submitted that her appointment on regular basis with effect from 7.8.1991 was made on the basis of Annexure R-2 OM No.49014/2/86-Estt.(C) dated 8.4.1991 issued by the Government of India, DOPT, regarding engagement and regularization in casual




workers of Central Government offices, by which the Government, in consultation with the Director General Employment & Training, Ministry of Labour, keeping in view the fact that the casual employees belong to the economically weaker section of the society and termination of their services will cause undue hardship to them, decided, as a one time measure, to consider all casual workers recruited before 7.6.88 and who are in service on the date of issue of those instructions for regular appointment to Group'D' posts in terms of the general instructions, even if they were recruited otherwise than through employment exchange and had crossed the upper age limit prescribed for the post, provided they are otherwise eligible for regular appointment in all other respects. According to them, till the age relaxation was granted by the aforesaid Annexure R-2 memorandum, the applicant was not eligible for appointment as Group'D' as her age at the time of joining was more than the upper age limit as prescribed in the Annexure R-3 Recruitment Rules where in the age limit for direct recruitment has been prescribed as "18-25 years (Relaxable for Government servants upto 35 years in accordance with the instruction or orders issued by the Central Government". According to them, since her regular appointment was only with effect from 7.8.1991 and she retired on 31.8.2000, she is not eligible for pension in terms of Rule 13 of the CCS(Pension) Rules, 1972 as she has less than 10 years of service. The service rendered as contingent paid worker is not included as qualifying service in terms of the aforesaid rules. They have also submitted that Annexure A-10 and A-11 representations were considered and suitable reply was given to her vide Annexure R-4 memorandum dated 1.8.2000 stating that when persons paid from contingencies on whole time basis did not come within the purview of CCS(Pension) Rules, 1972, the question of treating part time contingent paid service as qualifying service for pension did not arise at all.

7. We have heard the learned counsel Shri M.N.Mathew for the applicant and Shri George Joseph, ACGSC for respondents. The undisputed fact is that with her date of birth as 22.8.1940, even if the applicant's claim that she has been working as Sweeper with the 3rd respondent from its inception i.e. from 15.5.1967 is admitted, she was overaged on that date also as per the age limit prescribed in the Annexure R-3 Recruitment Rules for appointment as Farash, Safaiwala etc. which is 25 years. She was 26 years and about 9 months as on 15.5.1967. Secondly, her initial appointment was not on regular basis. But it is another fact which it has been revealed from the records maintained by the respondents themselves that they have earlier considered her request for appointment on Group'D' post but it was rejected vide Annexure A-1 letter dated 25.7.1986 for the reason that she was found over-aged as in February, 1973. This fact is also corroborated by the Annexure A-2 'statement of facts' dated 28.2.1991 given by Shri T.A.Abraham, the then Income Tax Inspector. Therefore, it cannot be denied that the applicant was in engagement with the respondent at least from February, 1973 and the later submission of the respondents that she commenced her service only with effect from 1.11.1978 as mentioned in Annexure R-1 letter dated 27.3.1991 cannot be accepted. In any case, by the Annexure R-6 OM No.49014/18/84-Estt(C) dated 7.5.1985 of the DoPT, even though it was decided that the casual labourers recruited even otherwise than through Employment Exchange should be regularised as a one time measure it did not come to the rescue of the applicant as the conditions contained therein was that the casual labourers concerned should be otherwise eligible for regular appointment in all other respects. Again, the DoPT vide OM No.49014/2/86-Estt.(C) dated 7.6.1988 issued guidelines in the matter of engagement and remuneration of casual workers in the Central Government offices. According to the said OM also, while considering services of casual labourers for regularization, they could be granted relaxation, in the upper age




limit only if, at the time of initial engagement as casual worker, they had not crossed the upper age limit for the relevant post. Subsequently, the DoPT has issued the OM No.49014/4/90-Estt.(C) dated 8.4.1991 (Annexure R-2) and finally, as a one time relaxation, all the casual labourers recruited before 7.6.1988 were considered for regular appointment in Group'D' post in terms of the general instructions, even if they were recruited otherwise than through Employment Exchange and had crossed the age limit prescribed for the post provided they are otherwise eligible in all other respects. It was in accordance with the said O.M, that the respondents have regularised service of the applicant as a Group'D' employee from 7.8.1991 vide Annexure A-6 letter dated 7.8.1991.

8. Now, the question is whether the reliefs sought by the applicant can be granted or not. The first and the second reliefs sought by her are to regularise her service as Group'D' with effect from 15.5.1967 or from February 1973. Obviously, these prayers cannot be granted to her as the same are not covered under any of the rules/instructions. However, since it was on the basis of the Annexure R-2 Memorandum dated 8.4.1991, the respondents have regularised her service with effect from 7.8.1991 she could have very well been regularised from the said date of its issue itself as she was fulfilled all the conditions for such regularisation. The reliefs at Sl.No.(iii) to (vi) are to treat her as casual labour from 15.5.1967 or from February 1973 to the date of regularization of her service and reckon 50% of her service as qualifying service for payment of gratuity, pension and other terminal benefits. Since there is no conclusive proof that the applicant has been serving as casual labour from 15.5.1967, there is no question of considering her as a casual labourer from that date. However, since the respondents themselves have considered her for regularization from February 1973 vide Annexure A-1 letter dated 25.7.1986 and it was not done only because she was overaged on that date, it is quite clear that she was



serving as a casual labourer from February 1973 on 10.9.1993. Now the question is whether she can claim temporary status from a date subsequent to February 1973 till her date of regularization. The concept of temporary status was alien to Department of Personnel & Training before the issuance of the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Government of India 1993". According to the said scheme, all casual labourers who were employed on the date of issue of the said OM and who have rendered continuous regular service at least one year, which means that they have been engaged for a period of 240 days (206 days in the case of offices observing five days week) shall be conferred with temporary status. One of the benefits granted to the casual labourers with temporary status was that 50% of the service rendered by them under temporary status would be counted for the purpose of retirement benefits after their regularization. A question was raised whether casual labourers initially engaged after crossing the upper age limit prescribed for recruitment to Group'D' post be eligible for grant of temporary status. The clarification given by the DoPT vide their own O.M.No.49014/2/93-Estt.(C) dated 12.7.1994 was that while no age limit has been prescribed for grant of temporary status, but for the purpose of subsequent regularization, the conditions regarding age and educational qualification prescribed in the relevant Recruitment Rules will apply. The applicant could not avail herself of the aforesaid facility of temporary status in terms of 1993 scheme only because of the fact that she had already been appointed as Group'D' staff with effect from 7.8.1991 on regular basis. Otherwise, she would have got the temporary status under the aforesaid scheme with effect from February 1974. If that was the case, she would have got 50% of the temporary status service from February 1974 to the date of her regularization counted for pensionary purpose under the "Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993. But this is only a hypothetical situation.



9. But another aspect of this case is that according to the O.M No.F.12(1)-E.V/68 dated 14.5.1968 (Printed under Rule 14 of the Swamy's Compilation of Pension Rules 7th Edition), half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to certain conditions. The said O.M reads as under:

"(2) Counting half of the service paid from contingencies with regular service – Under Article 368 of the CSRs (Rule 14), periods of service paid from contingencies do not count as qualifying service for pension. In some cases, employees paid from contingencies are employed in types of work requiring services of whole time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases service paid from contingencies should be allowed to count for pension and if so, to what extent has been considered in the National Council and in pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions, viz:-

(a) Service paid from contingencies should have been in a job involving whole time employment (and not part time for a portion of the day).

(b) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g.malis, chowkidars, khalasis, etc.

© The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

(e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January, 1961, for which authentic records of service may be available."

10. The question is whether the applicant was a part time contingent employee or a full time contingent employee before her absorption. In the reply the respondents have not specifically stated whether the applicant was working as Part Time or Full Time Contingent staff. However, in reply to one of the



representations of the applicant, the respondent No.2 vide Annexure R-4 Memorandum dated 1.8.2000 has informed the applicant as under:

"In a similar case the Ministry of Finance, Department of Revenue (C.B.D.T) has examined the matter in consultation with the Department of Pension & Pensioner's Welfare. They have opined that as even persons paid from contingencies on whole time basis did not come within the purview of CCS (Pension) Rules, 1972 the question of treating part time contingencies paid service as qualifying service for pension did not arise at all."

We have, therefore, called for the service book of the applicant. According to the letter No.F.No.13/Estt/9/90 dated 1.8.1991 issued by the 3rd respondent to the 2nd respondent asking the latter to issue the appointment order in favour of the applicant as a Group'D' Farash/Watchman, it was stated in para 7 thereof as under:

"7. The candidate shall continue to do the same duty as at present and also such other duties as may be required to be done by him/her from time to time. The duration of their working shall be from 6.00 a.m. To 2.30 p.m. With ½ hour break for lunch etc. and he/she shall relieve the night watchman from his duty at 6.00 a.m."

It was also stated in the aforesaid letter that the applicant was working as "contingent paid worker" till then. It was in pursuance of the said letter, the respondent No.3 has issued the Annexure A-6 appointment letter dated 7.8.1991. From the aforesaid records, it is clear that the applicant has been working as a full time contingent paid staff till 7.8.1991.

10. In view of the above position, the applicant having admittedly served the respondents over 27 years from February 1973 (say 1.2.1973) to 31.8.2000, denying her the due pensionary benefits cannot be countenanced. We, therefore, allow this O.A and direct the respondents

(i) to treat her service as regularise with effect from 8.4.1991 i.e. the date on which the Annexure R-2 Office Memorandum was issued,

(ii) to reckon 50% of her service from 1.2.1973 to 7.8.1991 paid from

contingencies as qualifying service for computation of her retiral benefits,

(iii) to grant all consequential benefits including arrears of pay and allowances, pensionary benefits, enhanced DCRG etc.

(iv) The aforesaid directions shall be complied with, within a period of four months from the date of receipt of copy of this order. There shall be no order as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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