

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.1292/98, 1708/98 and 13/99

Wednesday, this the 12th day of July, 2000.
CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

(1) O.A.No.1292/98

K. Bhargavi, W/o T.I. Krishnan,
(Retired Processing Worker,
Integrated Fisheries Project, Kochi-16),
Residing at: Thuruthamangalathu,
Perumanoor, Panambilly Nagar,
Ernakulam.

Applicant

By Advocate Mr T.C. Govindaswamy.

Vs.

1. Union of India through the
Secretary to the Government of India,
Ministry of Agriculture, New Delhi.
2. The Director,
Integrated Fisheries Project,
Kochi-16.
3. The Regional Provident Fund Commissioner,
(Central), Ernakulam.

Respondents

By Advocate Mr S. Krishnamoorthy, Addl.CGSC.

O.A.No.1708/98

1. C.P. Thilothama, W/o K. Kunju,
Retired Processing Worker,
Integrated Fisheries Project, Kochi-16.
Residing at: Chalancheri House,
Thevara Colony, Kochi-13.
2. T.N. Komalam, D/O Nanu,
Retired Processing Worker,
Integrated Fisheries Project, Kochi-16.
Residing at: Thattassery House,
Kurisupalli Road, Perumanoor, Kochi-15.

Applicants

By Advocate Mr T.C. Govindaswamy.

Vs.

1. Union of India represented by the
Secretary to the Government of India,
Ministry of Agriculture, New Delhi.

2. The Director,
Integrated Fisheries Project,
Kochi-16

Respondents

By Advocate Mr. Govindh K. Bharathan, Sr.CGSC

(3) O.A.No.13/99

1.	V.S. George	Processing Worker, Integrated Fisheries Project Kochi-16
2.	P.P. Lawrence	-do-
3.	V.K. Sarojini	-do-
4.	K. Rosy	-do-
5.	P.C. Mary	-do-
6.	C.S. Savithri	-do-
7.	M.K. Visalakshy	-do-
8.	V.K. Anandavalli	-do-
9.	V.S. Sudhayini	-do-
10.	O.A. Philomina	-do-
11.	K.K. Kamalam	-do-
12.	M.N. Ramani	-do-
13.	C.A. Vironi	-do-
14.	K.P. Sarasa	-do-
15.	K.P. Radha	-do-
16.	Chellamma Thankappan	-do-
17.	T.K. Thankamma	-do-
18.	A.K. Subadra	-do-
19.	A.M. Lalitha	-do-
20.	P.P. Visalakshy	-do-
21.	T. Komalavally	-do-
22.	V.N. Baby	-do-
23.	K.N. Treesa	-do-
24.	V.J. Susanna	-do-
25.	A.V. Mary	-do-
26.	T.R. Suseela	-do-
27.	T.M. Rosa	-do-
28.	C.K. Thankamma	-do-
29.	P.R. Radha	-do- .. (Contd.)

30.	K. Bhavani	-do-
31.	C.K. Ambika	-do-
32.	K.S. Pushpa	-do-
33.	A.K. Vimala	-do-
34.	K.K. Bharathy	-do-
35.	N.L. Mary	-do-
36.	Irani Vironi	-do-
37.	K. Chandrasekharan	-do-
38.	K.V. Kousalya	-do-
39.	M.A. Sathi	-do-
40.	Mable D. Kunja	-do-
41.	S.K. Josephine	-do-
42.	N.L. Annamma (Retired)	-do-

Applicants

By Advocate Mr T.C. Govindaswamy.

Vs.

1. Union of India represented by the Secretary to the Government of India, Ministry of Agriculture, New Delhi.
2. The Director, Integrated Fisheries Project, Kochi-16.

Respondents

By Advocate Mr K.R. Rajkumar, Addl.CGSC

The applications having been heard on 16.6.2000,
the Tribunal delivered the following on 11.7.2000.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Facts and questions to be considered being identical in all these O.As, these O.As were heard together and are disposed of by a common order.

2. Applicant in O.A.1292/98 seeks the following reliefs:
 - "(a) Call for the records leading to the issue of Annexures A2 and A3 and quash the same to the extent it authorises and deducts an amount of Rs.739/(Rupees Seven hundred and thirty nine only) from the applicants retirement gratuity and to declare that the applicant is entitled to receive the full amount of retirement gratuity without any deduction.
 - (b) Direct the respondents to pay the applicant the retirement gratuity payable to her on account of her superannuation on 31.8.97 forthwith.
 - (c) Direct the respondents to pay interest on the amount of retirement gratuity payable to the applicant, to be compounded annually and to be calculated from 1.9.1997 upto the date of full and final settlement of the same.
 - (d) Award costs of and incidental to this Application."
3. Applicants in O.A.1708/98 seek the following reliefs:
 - "(a) Declare that Annexures A3, A5 and A7 to the extent they direct the applicants to refund the entire share of employer's contribution remitted under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees Provident Fund Scheme, 1952, with interest calculated upto 30.9.98, is arbitrary, discriminatory, illegal and unconstitutional and quash the same.
 - (b) Direct the respondents to calculate and pay the applicants' retiral benefits including pension, duly reckoning 50% of the casual labour service rendered by the applicants prior to their date of regular absorption, forthwith and to grant the consequential benefits thereof.
 - (c) Award costs of and incidental to this Application".
4. Applicants in O.A.13/99 seek the following reliefs:

"(a) Declare that Annexures A3 and A5 to the extent they direct the applicants to refund the entire share of employers' contribution remitted under the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and the Employees Provident Fund Scheme, 1952, with interest calculated upto 30.9.98 is arbitrary, discriminatory, illegal and unconstitutional and quash the same.

(b) Direct the respondents to reckon 50% of the applicants casual labour service, referred to in Annexure A3 for retiral benefits, at the time of their retirement.

(c) Direct the respondents to refund the amount of employer's contribution plus interest recovered from the retiral benefits of 42nd applicant, with 18% interest calculated from 1.6.98, to be compounded annually.

(d) Award costs of and incidental to this Application."

5. Applicants initially joined the service of the respondents as casual labourers. From the year 1982 onwards employees contribution began to be recovered from the applicants' wages and employer's contribution was also being remitted from the same date. Applicants were regularised during the years 1984 and 1989. Applicants were entitled to draw the amount lying to their credit under the Employees Provident Fund and Miscellaneous Provisions Act, and the Employees Provident Fund Scheme. The amount lying to the credit of applicant's Provident Fund Account under the said scheme was transferred to Integrated Fisheries Project to be credited to applicant's General Provident Fund Account. As per Government of India, Ministry of Finance O.M.No. F.12(1)E.V/68 dated 14.5.1968 applicants are entitled to reckon 50% of casual labour service followed by regular absorption for the purpose of their pensionary benefits on retirement. Respondents passed an office order bearing No.77/97 dated 30.4.97 granting applicants the benefit of 50% of service rendered by them. It contains a rider that the said order is subject the condition that the employee concerned refund to the Government the amount of Employer's contribution, with interest thereon, if any,

transferred to their G.P.Fund consequent on their regular appointment. Thereafter most of the applicants were issued with a memo bearing No.A5/4-1-97 dated 24.10.98. It is stated there that for the purpose of reckoning 50% casual service the entire share of Employer's share of Employees Provident Fund together with interest thereon is required to be deposited in the Government Fund. Applicants are not in receipt of the copy of the Ministry's order referred to in A5. Some of the applicants have superannuated and others are still in service. Stipulation in the impugned orders that applicants are bound to refund the employer's contribution remitted under the Employees Provident Fund and Miscellaneous Provisions Act and Employees Provident Fund Scheme that interest thereon is contrary to law.

6. Respondents resist the O.A. contending that to be eligible to count 50% of casual service for pension/gratuity, the entire share of employer's contribution in the Employees Provident Fund together with interest thereon should be deposited to Government Account as per letter No.5-29/95 Fy (Adm) dated 22.10.97 and clarification issued vide No.5-29/95 Fy (Adm) dated 7.8.98 and 15/9/98 by Ministry of Agriculture. Applicants are bound to refund 100% employer's share together with interest thereon as indicated in the impugned orders. Impugned orders are in compliance with letter dated 22.10.97 and the clarifications issued to the same.

7. It is undisputed that the applicants started their service under the respondents as casual workers and they were later on regularised upon creation of new posts for absorption of casual labourers. It is also not under dispute that while the applicants were working as casual labourers, contribution was remitted by the employer to the Employees Provident Fund.

8. Impugned orders say that 50% of casual service rendered by the applicants will be allowed to count towards Pension/Gratuity on condition that the applicants refund to the Government the amount of employer's contributions with interest thereon, if any transferred to their General Provident Fund, consequent on their regular appointment.

9. In some of the impugned orders it is stated that relevance is placed on Rule 35(b)(ii) & (iii) of General Provident Fund (Central Service) Rules. Learned counsel appearing for the applicants vehemently argued that this Rule has no application to the facts of the cases at hand.

10. Rule 35 deals with procedure on transfer of a Government servant from one department to another. Rule 35(b) says that:

"If a Government servant who is a subscriber to the State Railways Provident Fund or any other Contributory Provident Fund of the Central Government or a Statement Contributory Provident Fund is permanently transferred to pensionable service in a department of Central Government in which he is governed by these rules and unless such a subscriber elects to continue to be governed by the rules of such Fund, when such an option is given etc..."

11. It is the admitted case of both sides that applicants were not engaged against any civil post. So, the applicants were not government servants. There is no transfer also of the applicants as stipulated in Rule 35 (b) of the General Provident Fund (Central Services) Rules. That being the position, Rule 35(b) has no application herein.

12. Though Rule 35(b) relied on in some of the impugned orders is not applicable, that does not mean that those orders are liable to be quashed, if they are otherwise sustainable.

Relying on a wrong provision by itself cannot be said to be a foundation for quashing an order, if they are otherwise sustainable.

13. Learned counsel appearing for the applicants relying on the common order in O.A.Nos.631/94. 813/94 etc. of this Bench of the Tribunal argued that there is no question of "double payment". It is pertinent to note that the question considered in those batch of O.As was with regard to the payment of gratuity under the Payment of Gratuity Act, 1972. The stand of the applicants in those O.As was that gratuity need be paid only when the relationship of master and servant ceases and that termination of service alone creates liability to pay gratuity. Respondents took the stand that gratuity is the benefit gained by reason of service rendered by them as casual employees and subsequent to their appointment as regular department officials. They also stressed that the relationship as master and servant ended. It was only while considering that question it was so held in the same common order relying on Bakshish Singh vs. Darshan Engineering Works and others [1994 SCC (L&S) 302]. It has been stated in Bakshish Singh's case that workmen would be entitled to the benefit of gratuity, in addition to the benefit of Provident Fund. Here, it is not a case of entitlement to gratuity and provident fund.

14. In Indian Hume Pipe Co. Ltd. vs. The Workmen (AIR 1960 sc 251) it has been held that:

"So, on the general contention raised before us that the employees are not entitled to claim double benefit of gratuity and retrenchment compensation there can only one answer, and that is that there is no conflict between the two claims, and industrial tribunals are right in recognising that both claims can be entertained and granted, and reasonable gratuity schemes can and should be framed even after the enactment of S.25F in the Act."

15. Here the question is not whether the applicants are entitled to gratuity and retrenchment compensation or to the benefit of gratuity in addition to the benefit of Provident Fund. Here the question is whether the applicants are entitled to the amount remitted by the employer towards Contributory Provident Fund while they were working as casual labourers and entitled to pension when they were absorbed regularly to the posts carrying pension.

16. The basic aspect that Contributory Provident Fund is available only to those employees who are not eligible or entitled to pension and those employees entitled or eligible for pension cannot have Contributory Provident Fund, but only General Provident Fund, cannot be forgotten.

17. The impugned orders are based on Ministry of Agriculture, Department of Agriculture and Co-operation, New Delhi letters No.5-29/95-Fy(A) dated 26/27.9.96, No.5-29/95-FY (Adm) dated 21/22.10.97 and No.5-29/95-FY(Adm) dated 7.8.98 and 15.9.98. So, the foundation for the impugned orders is the letters referred to therein. Applicants conveniently say that they are not in receipt of the copy of the letters referred to in the impugned orders. It is not a valid excuse, for copies of the letters referred to and relied on in the impugned orders are produced by the respondents. That being so, the applicants cannot pretend ignorance or non-availability of the same.

18. There is no question of quashing the letters referred to and relied on in the impugned orders for the reason that the applicants have not sought for the same. That being the position, the applicants are not entitled to the declaration

sought for or to get quashed the impugned orders to the extent those authorise to deduct the employer's share of contribution in the Contributory Provident Fund.

19. In Government of India, Ministry of Finance O.M.No.17(5)-E.V(A)/60 dated 18th November, 1960 inter alia says that on electing to come over to pension, the accumulations in the Contributory Provident Fund account of the employee concerned will be adjusted in the manner indicated in Rule 33(b) of the General Provident Fund (Central Services) Rules, i.e., the officer's own subscription with interest will be credited to his General Provident Fund Account (to be newly opened) and the Government contribution with interest resumed by Government.

20. In Government of India, Department of Pension & Pensioner's Welfare O.M.No.4//1/87-P.I.C-I dated 1.5.1987 dealing with change-over of employees from Contributory Provident Fund Scheme to Pension Scheme inter alia says that in the case of employees who come over or are deemed to come to Pension Scheme, the Government's contribution to the Contributory Provident Fund together with interest thereon credited to the C.P.Fund Account of the employees will be resumed by the Government. The employees' contribution together with interest thereon at his credit in the C.P.Fund Account will be transferred to the G.P.Fund Account to be allotted to him on his coming over to the Pension Scheme.

21. It is the same principle that is adopted by the respondents herein also.

22. As far as the prayer of the applicants to direct the respondents to calculate and pay their retiral benefits including pension, duly reckoning 50% of the casual service rendered by them prior to their date of regular absorption, is granted to them subject to the condition that the employees concerned refund to the Government the amount of employer's contribution with interest thereon. That condition stands good as the applicants are not entitled to the declaration sought for and to get quashed the impugned orders. So, there is no necessity to direct the respondents to calculate and pay the applicants' retiral benefits including pension, duly reckoning 50% of the casual service rendered by them prior to their regular absorption.

23. Accordingly, all these three Original Applications are dismissed. No costs.

Dated the 11th of July, 2000.

Sd/-
(G.RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

Sd/-
(A.M.SIVADAS)
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THE ORDERS.

(1) O.A.No.1292/98

Annexure A2: True copy of the order No.A4/4-1/97 dated 30.4.97 issued by the second respondent.

Annexure A3: True copy of the order No.A5/4-1/97 dated 14.9.98 issued by the second respondent.

(2) O.A.No.1708/98

Annexure A3: True copy of the office order No.77/97 dated 30.4.97 issued by the second respondent.

Annexure A5: True copy of the Memo. No.A5/4-1/97/4093 dated 30.9.98 issued by the second respondent.

Annexure A7: True copy of the Memo No.A5/4-1/98/4476 dated 3.11.98 issued from the office of the second respondent.

(3) O.A.No.13/99

Annexure A3: True copy of the Office OrderNo.77/97 dated 30.4.97 issued by the second respondent.

Annexure A5: True copy of the Memo No.A5/4-1/97 dated 24.10.98 issued by the second respondent.