CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 841 of 2004
Original Application No. 844 of 2004

Indore, this the 29th day of April, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Ms. Sadhna Srivastava, Judicial Member

1. Smt. Gyarsibai ... Applicant in OA No. 841/2004

2. Smt. Jainabai ... Applicant in OA No. 844/2004

(By Advocate - Smt. Swati Ukhale in all the OAs)

V e r s u s

Union of India & Ors. ... Respondents in all the OAs

(By Advocate - Shri Umesh Gajankush in all the OAs)

O R D E R (Common)

As the issue involved in both the cases is common and facts and grounds raised are identical, for the sake of convenience, we are disposing of these Original Applications by this common order.

2. The applicants have sought direction for quashing of the order dated 29.11.1997 (Annexure A-3 in all the OAs) and for modification of the order Annexure A-6 in all the OAs by adding therein the names of the applicants. Vide Annexure A-3 in all the OAs the applicants were retired due to crossing the prescribed age of superannuation. The claim of the applicants is that they were appointed as Casual Labourers initially and were granted status of temporary employees. (Copy of the order of grant of temporary status is not enclosed with the OAs). The order dated 14.10.1994 at Annexure A-2 in all the OAs mentions their date of births as 6.8.48 & 1.2.48 respectively. However, the applicants have been ordered to be retired on the age of superannuation as per the impugned

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orders dated 29.11.1997 (Annexure A-3 in all the OAs) treating their date of births different shown in Annexure A-2. The applicants have further stated that no opportunity was given before correcting the date of birth as mentioned by the respondents in their letter dated 14.10.1994. The applicants have also not been informed that there were anything in the possession of the respondents that their correct date of birth as stated by the respondents themselves was incorrect. The learned counsel for the applicants have submitted that similarly situated person whose services had been terminated alongwith the applicants has been reinstated in pursuance of the order dated 13th May, 2003 passed in OA No. 233/1998 (Annexure A-5 in all the OAs) by this Tribunal. Therefore, the applicants have prayed for the similar benefits to be extended in their cases as well.

3. The respondents are silent on the fact that the applicants have been granted the status of temporary status of casual labour. They have not disputed the facts alleged in the OAs and have taken the objection only with regard to the limitation. The counsel for the respondents argued that the benefit of the judgment passed in the aforesaid OA No. 233/1998 cannot be extended to the applicants because that judgment is in personam and not in rem. Since, that OA was filed only by Smt. Lila Bai, the benefit of that judgment cannot be extended to the present applicants. Hence, the applicants were properly retired on reaching the age of

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superannuation on the basis of date of birth available on their records.

4. Heard the learned counsel for the parties and carefully perused the pleadings.

5. The respondents have admitted in their reply that the applicants were initially engaged as Casual Labourer and were given temporary status (copy of the order of grant of temporary status is not enclosed). It appears that there was some dispute of the actual date of birth of the applicants as recorded in the records of the respondents. It further appears that the rejection of the applicants petitions for change of date of birth have not been intimated to them before terminating their services at the age of superannuation. In the circumstances, in the interest of justice, we are of the view that the matter should be re-examined by the respondents with an opportunity to the applicants of being heard before taking any decision in the matter. There will be some corroborative evidence like medical examination or the records of initial appointment or service book of the applicants. Those should be examined and preferably a show-cause notice should be given to the applicants before taking a final decision in the matter and the applicants should be heard and their evidence if any be considered and decision on the matter should be taken by a speaking order. After the applicants are given such an opportunity of being heard and decision on the correct date of birth is communicated to the applicants, only then the respondents may proceed to take a decision afresh in the matter. Reinstatement or any other consequential benefits will be dependent on the outcome of the investigation and order passed by the respondents as directed hereinbefore. This exercise should be completed within a period of 3 months from the date of receipt of copy of this order.

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6. In view of our direction in the preceding paragraph, these Original Applications are disposed of without any order as to costs.

7. The Registry is directed to supply the copy of memo of parties while issuing the certified copies of this order to the concerned parties.

(Ms. Sadhna Srivastava)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन सं ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि
(1) सचिव, उच्च
(2) आवेदक श्री
(3) प्रत्यर्थी
(4) यांगणा
.....के काउंसल
.....के काउंसल
सूचना एवं आवश्यक कार्यवाही
न्यायिक रजिस्ट्रार

R.K. Shukla Ukhale
Dr. B.S.D
Y. Ramakrishna Rao
Dr. B.S.D
16-5-05

Issued
16/5/05