

OA. 060/00042/2014

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
**OA. 060-00042-2014
(Reserved on 11.09.2014)**

Chandigarh, this the 15th day of September, 2014

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER(A)**

Bimla Devi widow of late Sh. Shamu, resident of Khuda Lahora, Union Territory, Chandigarh.

...APPLICANT

BY ADVOCATE: MR. MANDEEP KUMAR VICE MR. ROHIT SHARMA

VERSUS

1. Union Territory, Chandigarh through its Home Secretary, Secretariat, Sector 9, Chandigarh.
2. Chief Engineer, UT Chandigarh.
3. Superintending Engineer, Public Health Circle, UT Chandigarh.
4. Executive Engineer (Project), Public Health Division-3, Chandigarh

...RESPONDENTS

BY ADVOCATE: NONE

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

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“(i) Quash the communication/reply to the legal notice dated 19.11.2013 (Annexure A-1) passed by respondent No. 4 vide which claim of the applicant has been rejected qua family pension as well as other service benefits of her late husband.

(ii) Direct the respondents to regularize the services of the husband of the applicant post his death and to grant family pension plus consequential benefits alongwith interest to the applicant in view of the facts and circumstances set out in the present case.”

2. It has been stated in the OA that the applicant is the widow of late Sh. Shamu who was appointed as work-charged Group D employed as Sweeper-cum-Chowkidar vide order dated 15.4.1985 (Annexure A-2) and he worked as such for about 16 years before his death on 14.2.2000. It is claimed that the applicant is entitled to family pension as her husband had rendered 16 years service and the job on which Sh. Shamu was working was of a regular nature and therefore, he was entitled for regularization. The applicant had served legal notice dated 23.10.2013 on respondents No. 2-4 regarding her claim for family pension (Annexure A-4), but the same had been rejected vide communication dated 19.11.2013 (Annexure A-1). Hence this OA.

3. In the grounds for relief, it is stated that the husband of the applicant had rendered more than 16 years' service with the

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respondents and in terms of the policy guidelines in force, he was entitled to regularization and he had been pursuing the matter with the concerned authorities. Hence, the services of the husband of the applicant should be deemed to be regularized before the date of his death and the applicant was therefore entitled for family pension. Moreover, persons who were similarly situated as the husband of the applicant had been regularized and they had got the other benefits whereas similar relief had been denied to the applicant and family pension had not been released to her.

4. In the written statement filed on behalf of the respondents, it has been stated that late Sh. Shamu, the husband of the applicant was engaged on purely work charged basis against a particular work to which his monthly wages were debited. Sh. Shamu expired while working purely on work charged basis and had not gained the status of a Government employee while in service till his death on 14.2.2000. As such, legal heirs of the deceased worker did not become entitled to the grant of family pension and other retiral benefits. The applicant was only entitled to the release of terminal gratuity and the respondents had paid her a sum of Rs. 27450 in this regard. As —

5. The pension and other retiral benefits are granted under the provisions made under the Punjab Civil Services Rules as made applicable to the employees of Union Territory, Chandigarh. The eligibility of the application of these rules to the categories of employees have been decided under Rule 1.2(1) of the Punjab Civil Services Rules, Volume I Part-1 under which it is provided that "these rules shall apply to all Government employees belonging to the categories mentioned below who are under the administrative control of the Punjab Government and whose pay is debitale to the Consolidated Fund of the State of Punjab:-

- (i) Members of Provincial Services, Class I and II
- (ii) Members of Provincial Services, Class III
- (iii) Members of Provincial Services, Class IV

The daily wage/work charged employees have been kept out of the ambit of the Punjab Civil Services Rules and thus these rules were not applicable to the husband of the applicant. Further, under the provisions as made in the Punjab Civil Services Rules, Volume II, family pension scheme has been introduced for the employees working in a pensionable establishment. Since the husband of the applicant was working on purely work charged basis, as such was

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not governed by the Civil Services Rules Volume II. Also in rule 3.12 and 3.17 of the Punjab Civil Services Volume II, it is provided that "the services of a Government employee does not qualify for pension unless it confirms to the following three conditions:-

- (i) The service must be under Government.
- (ii) The employment must be substantive and permanent.
- (iii) The service must be paid by Government.

Since the husband of the applicant was working on purely work charge basis and was not brought on regular cadre during his life time till his death, as such did not fulfil the requirements of the statutory rules as stated above, thus the applicant is not entitled to the grant of family pension.

6. It is further stated that the work charged and regular employees are two distinct classes and are not equal in status. Since the husband of the applicant was engaged on purely work charged basis against a work; had not been appointed against a sanctioned post on permanent basis, and his salary was not debited to the Consolidated Fund of the State, as such he was not a Government employee and the Punjab Service Rules under which the pensionary benefits are granted, were not applicable to the husband of the applicant. The Division Bench of the Punjab and

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Haryana High Court in the case of **Smt. Kasturi Devi V. State of Haryana, 2008(2) SCT -622** has held in para 3 of the judgement that “The statutory provisions as noticed, herein above, debar grant of family pension in favour of the family members, as the deceased employee was a work-charged employee and not a permanent employee or temporary employee. The period during which an employee worked as a work charged could be taken into consideration only when his services are regularized and he becomes permanent and not otherwise”. Similar view has been taken by the Division Bench of the Punjab and Haryana High Court in the case of **Om Parkash Vs. Uttar Bijli Vitran Nigam Ltd., 2008(2) SCT-204** while considering Rule 3.17 A(g) of the Punjab Civil Services Rules. Similarly, the Hon’ble Supreme Court in the case of **Uttar Haryana Bijli Vitran Nigam Vs. Surji Devi, 2008(1) SCT-657**, while considering Punjab CSR Vol-2, Rule 3.12, 3.17 – Family Pension Scheme has held in para 14 of the judgement that “The scheme relating to grant of pension was made under a statue. A person would be entitled to the benefit thereof subject to statutory interdicts. From a bare perusal of the provisions contained in the Punjab CSR Vol-2 vis-à-vis the Family

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Pension Scheme, it would be evident that the respondent was not entitled to the grant of any family pension as the husband of the respondent was a work charged employee. His service had never been regularized, it may be unfortunate that he had worked for 11 years. He expired before he could get the benefit of the regularization scheme but sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law.....The statutory provisions, as noticed hereinbefore debar grant of family pension in favour of the family members as the deceased employee was a work charged employee and not a permanent employee or temporary employee. The period during which an employee worked as work charged employee could be taken into consideration only when his services are regularized and he become permanent.”

7. Besides, the matter of regularization of services of daily wage/work charge employee has since been settled by the Hon'ble Supreme Court vide its judgement dated 29.3.1996 in the case of **Union of India and Ors. Vs. Dharam Pal and Ors.**, **J.T.1996(4)SC-371** wherein it was held that “In view of the settled law by recent decisions, all the daily wage employees are

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required to be regularized in accordance with the rules in vogue following the principles of rules of recruitment, reservation and existence of vacancies". It was further directed therein that "In view of the scheme now framed, the appellants are directed to regularize all those who have completed the prescribed period of days viz. 240 days against the existing vacancies applying the rules of reservation in the order of seniority in the respective categories mentioned in the scheme". Being a small department, no vacancy of the post of Sweeper-cum-Chowkidar required to be filled by direct recruitment existed with the respondents against which the case of the husband of the applicant could be considered for regularization alongwith others senior to him. Thus, due to non-availability of vacancies of the post of Sweeper-cum-Chowkidars, the services of the husband of the applicant could not be brought on regular cadre. Since the husband of the applicant was a purely work charged employee and not a Government employee appointed to a sanctioned post, as such the pension rules were not applicable to him. The Hon'ble Apex Court in the case of **U.P. Madhyamik Shiksha Prishad Sangh and Ors. Vs. State of U.P.** reported as **1996(1) SC SLJ-77**, has held that "Unless posts

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are created, the petitioners cannot be fitted into any regular post" and further directed that "direction for regularization can only be issued if there is any vacant post".

8. Sh. Mandeep Kumar, Advocate appeared vice Sh. Rohit Sharma, learned counsel for the applicant and was heard in the matter. He cited **Nihal Singh & Ors. Vs. State of Punjab & Ors., 2013(11) JT 289** and **Maninder Kaur Vs. State of Punjab, 2003(4) SLR 771** to press that since the husband of the applicant had worked for 16 years with the respondent department, he had to be deemed to be regularized and hence the applicant was entitled to family pension on account of the service rendered by her husband.

9. None was present on behalf of the respondents. Hence, Rule 16 of the CAT Procedure Rules, 1987 has been invoked and we proceed to decide the matter.

10. Perusal of the material on record shows that the husband of the applicant expired while he was still working on work charged basis and it has been explained in the written statement that his services could not be regularized for want of a vacancy. The husband of the applicant expired in 2000 while this

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OA has been filed in January, 2014 and at this stage, it is not possible to accept the contention made on behalf of the applicant that the services of her husband had to be deemed to be regularized at the time of his death. The applicant had accepted the gratuity paid to her at the time of the death of her husband. As per the case law cited on behalf of the respondents, a work charged employee who has not been regularized, is not eligible for pension as per the rules and consequently in the event of his demise, his legal heirs cannot have a valid claim for family pension. Hence, there being no merit in the OA, the same is rejected. No costs.

**(RAJWANT SANDHU)
MEMBER(A)**

**(SANJEEV KAUSHIK)
MEMBER(J)**

Dated: September 15, 2014.

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