

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO.060/00530/2018 Orders pronounced on: 08.02.2019
 (Orders reserved on: 30.01.2019)

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A).

Sunil Soni s/o
 Sh. Ram Sarup Soni,
 age 60 years,
 resident of House No. 26/20,
 Shorian Mohalla near Jallow Khanna,
 Kapurthala.

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Applicant

Versus

1. Union of India,
 through its Secretary,
 Ministry of Finance,
 Department of Revenue,
 North Block,
 New Delhi.
2. The Chief Commissioner of Income Tax,
 North West Region (NWR),
 Sector-17,
 Chandigarh.
3. The Commissioner of Income Tax,
 Jalandhar (Pb).

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Respondents

Present: Mr. D.R. Sharma, Counsel for the applicant.
 Mr. K.K.Thakur, counsel for respondents.

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

In this Original Application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has sought a declaration that he is entitled to regularization of his service on completion of 10 years of service as per O.M. dated 11.12.2006 and retiral dues w.e.f. 31.1.2018 as admissible to Group 'D' employees or alternatively to grant pensionary benefits w.e.f. 1.2.2018, by extending him benefit of decision of Allahabad Bench of this Tribunal in the case of **SHYAM LAL SHUKLA VS. UOI ETC.** O.A.No. 1626 of 2006 decided on 28.7.2009.

2. The facts are not largely in dispute. The applicant was engaged as a Waterman-cum-Angithi Burner on 21.9.1989 on daily wage basis, as per order of even date, Annexure A-1, through Employment Exchange. The Government of India, Department of Personnel & Training, framed a Scheme Casual Laborer, Grant of Temporary status (Regularization) Scheme, 1993 (Annexure A-2), providing that without reference to creation / availability of regular Group D posts, casual labourers would be conferred temporary status w.e.f. 1.9.1993, who were on service as on 10.9.1993 and have rendered 240 days (206 days in case of offices observing 5 days a week). The applicant had completed 240 days as on 1.9.1993 and as per Scheme, he was entitled to grant of temporary status w.e.f. indicated date. After great efforts, applicant was granted benefits of temporary status w.e.f. 1.9.1993. His case for regularization was forwarded to concerned quarters but to no avail. Meanwhile, on the basis of decision of Hon'ble Apex Court in the case of **SECRETARY, STATE OF KARNATAKA & OTHERS VS. UMA DEVI & OTHERS**, 2006(2) SCT 462, Govt. of India issued OM dated 11.12.2016 for grant of regularization to labourers / daily wagers who have completed 10 years of service as on 10.4.2006.

The respondents issued an order dated 2.7.2008 (Annexure A-1), containing list of individual / daily wagers who were to be granted regularization. In this list, numbers of juniors to applicant were included but name of applicant was not there and he was made to retire on 31.1.2018. His claim in short is that once his junior has been regularized, he is also entitled to regularization and consequential retiral dues. For this, reliance is placed on **HARI NANDAN PARSHAD VS. FCI**, 2014 (2) SCT, 1. It is also submitted that even if regularization is ignored, even then in such like cases, retiral dues have been allowed by Allahabad Bench of this Tribunal in the case of **SHYAM LAL SHUKLA VS. UOI ETC.** O.A. No. 1626 of 2005 decided on 28.7.2009. The CWP filed by department was dismissed on **23.12.2011** and then even Hon'ble Apex Court upheld such decision on **6.8.2012**. The case of the applicant is also covered by a decision of this Tribunal in O.A.No. 426/HP/2013 titled **PAINU RAM VS. UOI ETC.**, as upheld by Hon'ble H.P. High Court.

3. The respondents have opposed the O.A. on the ground of it being barred by law of limitation and secondly, that applicant was over aged at the time of his initial entry in service and illiterate also, as such he is neither entitled to regularization nor retiral dues. It is claimed that since applicant did not fulfill the conditions laid down in relied upon decisions and instructions for regularization as such his claim could not be allowed.

4. We have heard learned counsel for the parties at length and examined the material on file minutely with the able assistance of learned counsel for the parties.

5. Learned counsel for the applicant vehemently argued that the issue raised by the applicant in this case already stands settled

in the case of Shyam Lal Shukla (supra) and Painu Ram (supra) and as such the applicant is entitled to regularization and retiral dues, denial of which is illegal and arbitrary. However, on the other hand the respondents oppose it on the ground that applicant was not eligible for regularization as per his age and qualification and as such O.A. merits dismissal.

6. We have considered the submissions made by both the sides and have perused the material on the file.

7. We find that indeed the applicant was found eligible and entitled for grant of temporary status which was allowed to him from due date. The only dispute is about his regularization. The respondents admit about engagement of applicant as per letter issued in 1989 as daily wager but claim that at that time, his date of birth was 15.1.1958 and as such he was over age, as per birth certificate provided by him. Secondly, in the proforma sent by Employment Exchange, his qualification was not mentioned meaning thereby he was not literate. Even his Employment Exchange Card bears no qualification. However, the applicant submits that his claim is fully covered by an earlier decision of this Tribunal in O.A.No.426-HP-2013 - **PAINU RAM VS UNION OF INDIA ETC.** decided on 31.1.2014 as upheld by Hon'ble High Court on 23.7.2018 and decision by Allahabad Bench of this Tribunal in O.A.No.1626 of 2005 - **SHYAM LAL SHUKLA VS. UOI ETC.** decided on 28.7.2009, as upheld by Hon'ble High Court and Apex Court of the country.

8. We have no hesitation in agreeing with the plea taken by the learned counsel for the applicant that even if claim of applicant for regularization is ignored, even then qua grant of benefit of retiral dues, the issue stands clinched by a Bench of this Tribunal in

O.A.No. 426-HP-2013 decided on 31.1.2014 in the matter of **PAINU RAM VS. UNION OF INDIA & OTHERS** as upheld by Hon'ble H.P. High Court in CWP No. 2299 of 2014 titled **SSPO VS. SHRI PAINU RAM**, decided on 23.7.2018. For the facility of easy reference the relevant paras are reproduced below:-

"6. Learned Tribunal after relying upon the relevant portion of letter dated 30.11.1992 so issued by the respondent-Department, as also directions issued by Hon'ble Supreme Court in Jagriti Mazdoor Union (supra) and the order passed by learned Central Administrative Tribunal, Allahabad Bench, in OA No. 1626 of 2005, titled as Shyam Lal Shukla vs. Union of India & Ors. dated 28.07.2009, which stood confirmed by Allahabad High Court, held that in view of the applicant having been already conferred with temporary status and his having three years of service as such, in terms of communication dated 30.11.1992, he was entitled for the same benefits which were admissible to a regular Group 'D' employee.

7. Feeling aggrieved, the Department has filed this petition.

8. We have heard learned Counsel for the parties and also gone through the orders passed by learned Tribunal as well as record of the case.

9. During the course of arguments, learned Assistant Solicitor General of India could not dispute that the persons, similarly situated as the present respondent, have already been held to be entitled for benefits which were accruable to regular Group 'D' employees, by various Benches of the learned Central Administrative Tribunal and one such order passed by the Allahabad bench of the learned Tribunal has been upheld by the Allahabad High Court. We have also been informed at the bar that the judgment passed by the Hon'ble High Court of Allahabad has attained finality.

10. The factum of the respondent having been conferred temporary status w.e.f. 29.11.1989 in group 'D' is not in dispute. The relevant portion of the letter dated 30.11.1992, which stands relied upon by the learned Tribunal while granting the relief to the present respondent is quoted herein-below:-

"3. In compliance with the above said directive of the Hon'ble Supreme Court it has been decided that the casual labourers of this Department conferred with temporary status as per the scheme circulated in the above said circular No. 45-95/87-SPB-I dated 12.04.1991 be treated at par with temporary Group 'D' employees with effect from the date they complete three years of service in the newly acquired temporary status as per the above said scheme. From date thy will be entitled to benefit admissible to temporary Group 'D' employees such as:

1. All kinds of leave admissible to temporary employees.
2. Holidays as admissible to regular employees.
3. Counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary temporary employees who are given temporary status and who complete 3 years of service in that status while granting them pension and retirement benefits after their regulations.
4. Central Government Employees Insurance Scheme/
5. GPF.
6. Medical Aid.
7. LTC.

8. All advances admissible to temporary Group 'D' employees.
 9. Bonus."

11. The relevant part of the judgment of Hon'ble Supreme Court in Jagriti Mazdoor Union (Regd) (supra), which has been relied upon by the learned Tribunal is quoted herein-below:-

"After rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Grade 'D' employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group 'D' employees on regular basis."

12. In view of the contents of communication dated 30.11.1992 as also the directions passed by the Hon'ble Supreme Court of India in Jagriti Mazdoor Union' case (supra), we do not find any infirmity with the directions issued by the learned Tribunal in favour of the present respondent. Said directions are strictly in consonance with the judgment passed by Hon'ble Supreme Court in Jagriti Mazdoor Union's case (supra), as also the contents of communication dated 30.11.1992. In our considered view, after the conferment of the temporary status upon the present respondent, he was entitled for benefits which are accruable to a regular Group 'D' employee after completion of three years of service on temporary basis. In view of the judgment of Hon'ble Supreme Court as also the orders passed by various Benches of learned Central Administrative Tribunal, it cannot be said that the relief granted by learned Central Administrative Tribunal in favour of the present respondent is not sustainable in law, especially in view of contents of letter dated 30.11.1992.

13. Accordingly, we do not find any infirmity with the order passed by the learned Central Administrative Tribunal. The same is upheld and this writ petition being devoid of merits is dismissed.

The petition stands disposed of in above terms, so also pending miscellaneous application(s), if any."

9. It is not in dispute that in terms of the directions issued by Hon'ble Supreme Court in the case of **JAGRITI MAZDOOR UNION (REGD.)VS. MAHANAGAR TELEPHONE NIGAM LIMITED**, 1990 Supp. SCC 113, and the order passed by Central Administrative Tribunal, Allahabad Bench, in O.A No. 1626 of 2005, titled as **SHYAM LAL SHUKLA VS. UNION OF INDIA & ORS.** dated 28.07.2009, as upheld by Hon'ble High Court, it has been held that one having been already conferred with temporary status and his having three years of service as such, was entitled for the same benefits which were admissible to a regular Group 'D' employee.

10. In the wake of aforesaid discussion, the claim of applicant for grant of retiral dues is found to be squarely covered by the indicated decisions. The applicant is held entitled to same benefits

as are admissible to regular Group "D" employees in the same terms as allowed in the case of Shyam Lal Shukla (supra). Needful be done within a period of two months from the date of receipt of copy of this order. No costs.

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

**(P. GOPINATH)
MEMBER (A)**

PLACE: CHANDIGARH
DATED: 08.02.2019

HC*