

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/170/2018

**Reserved on: 19.12.2018
Order pronounced on: 27.12.2018**

Between:

S. Padmavathi, Widow of late S. Rami Reddy,
T. No. 1184, Gr. C, Aged 34 years, Occ: Casual worker,
R/o. D. No. 5-19-26/287, Thunglam,
RH Colony, Chukkavanipalem,
BHPV, Visakhapatnam – 530 012.

...Applicant

And

1. The Chief of Naval Staff,
Naval Headquarters, North Block,
New Delhi – 110 011.
2. The Chief of Naval Staff,
Integrated Headquarter (Navy),
North Block, New Delhi – 110 011.
3. The Flag Officer Commanding in Chief,
Eastern Naval Command, Visakhapatnam.
4. Base Victualling Officer,
Base Victualling Yard,
Naval Base, Visakhapatnam – 530 009.

...Respondents

Counsel for the Applicant	...	Mrs. Anita Swain
Counsel for the Respondents	...	Mr.B. Laxman, Advocate for Mr. A. Vijaya Bhaskar Babu, Addl. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed for grant of family pension and terminal benefits due to the applicant on the demise of her husband who worked for the respondents.

3. The applicant's husband was working in the respondents organisation as labourer since 23.3.1992. He was given temporary status on 20.11.2001 for having worked for 206 days continuously as per DOPT, OM dt 10.9.1993. Unfortunately, the applicant's husband died on 5.3.2005 in a road accident leaving behind the applicant, minor son aged 3 years and the parents of the deceased employee. Juniors to the applicant's husband were regularised in the claim of the applicant. The applicant has made a representation on 19.3.2005, for grant of terminal benefits and employment on compassionate grounds. In response she was engaged as a nerrick rated labourer but not granted the reliefs sought and hence the OA.

4. The contentions of the applicant are that the respondents have regularised 60 out of the 86 casual labourers appointed in 1998 and the remaining were not regularised because of the Uma Devi Judgment. This Tribunal in OA 1341 of 2011 has directed the respondents to regularise the services of the remaining casual labourers on par with those who were already regularised. As a result the juniors to the applicant's husband were regularised, and as such her husband should also have been regularized at the relevant point of time, in which case, her claim for family pension is fully justified is the contention of the applicant. The applicant's husband has put in overall 12 years of service of which a span of 7 full years was with temporary status and that as per Apex Court Judgment, even a person with 3 years of continuous service as a temporary Group D employee shall be treated on par with regular employees and given the benefits for revised pay scale from time to time of regular Group D employees. The applicant has also cited the observation of the Hon'ble Supreme Court in *Piara Singh and Malathi Kar* Case in support of her contentions. Besides, the applicant's husband being a

temporary status employee, family pension has to be granted as per rule 10 (2) of the Central Civil Services. The representation of the applicant is yet to be disposed of.

5. Respondents confirm that as per DOPT memo dt 10.9.1993 eighty six labourers were granted temporary status. However, since the applicants husband was not granted the benefit, he moved this Tribunal with 2 others and as per directions of the Tribunal the applicants husband was also granted temporary status along with 2 others w.e.f 3.10.2001. Thereafter 60 of the 86 temporary status casual labourers who have put in 3 years of continuous service were regularised as per DOPT memo 10.9.1993 based on seniority. Applicant figured at serial No. 84 in the seniority list. However, the services of the applicant's husband and of some others could not be regularised because of Uma Devi judgment of Hon'ble Supreme Court delivered in 2006, wherein it was held that casual labourers cannot be regularised by short circuiting recruitment rules. Hence the applicant's husband services could not be regularised. Further as per DOPT Memo F. No 14014/02/2012-Estt (D) dt. 16.1.2013, a Govt. servant is one who is appointed on a regular basis and not one working on daily wage or casual or apprentice or adhoc or contract or re-employment basis. CCS (Pension) Rules, 1972 do not provide for pension to persons in casual and daily rated employment. Therefore, the applicant's husband not being a Govt. servant the applicant is not eligible for family pension and other terminal benefits. The representation of the applicant was replied to on 16.1.2015 informing that the terminal benefits cannot be sanctioned as her deceased husband was not a Govt. servant.

6. Heard the learned counsel and perused the documents on record. The learned counsel presented their arguments in wavelength with the written submissions made by them.

7A. As seen from the documents submitted, the applicant's husband was granted temporary status w.e.f. 3.10.2001 as per respondents letter no CE/2003/4/ty/status dt. 20.11.2001. As per the same DOPT memo dt 10.9.93, respondents stated in their reply statement that they regularised 60 of 86 labourers vide there letters dt 18.9.2001 and 2.1.2006. The applicant's husband was due to be regularised in 2004 as per DOPT memo dt. 10.9.1993. The respondents did not act at the appropriate time and unfortunately the applicant's husband died on 5.3.2005. When similarly placed temporary status casual labourers numbering 21, approached this tribunal in different OAs viz 1351,1342 etc in 2011, their claim for regularization was allowed and they were regularised vide Integrated Headquarters of MOD letter dt 24.7.2014. Applicant's junior Sri S Ganeswara Rao also filed O.A No. 1348 of 2011 and got relief. The *Uma Devi* Judgment, on which the respondents bank, was pronounced in 2006 whereas the applicant's husband was eligible in 2004 itself for being regularised. Therefore the said ratio cannot be applied to the case in question. As per this Tribunal order dated 1-11-2013 in similar O.A 1357/2011while dealing with a similar plea, this Hon'ble Tribunal observed that

“ Thus irrespective of the judgement of the Hon'ble Supreme court in *Umadevi*'s case, the respondent have regularized the service of 9 temporary status labourers and earlier they have regularized the service of 51 labourer who are similarly placed . Therefore , we see absolutely no justification in not regularizing the service of the applicant, who was similarly placed”.

B. The learned counsel for the respondents did cite the Hon'ble Supreme Court judgment in *Madhyamik Shiksha Parishad, U.P vs Anil Kumar and Ors* in AIR 1994 SC 1638 to support the respondents' contention. However, in the cited case the employee was not continuously working but in the present case applicant's husband was continuously working for the respondents organisation. One another case quoted by the learned counsel is that of *A.Umarani vs Registrar, Cooperative Societies and ors (2004 (7) SCC 112)* where in the issue dealt was in regard to appointments made contravening mandatory provisions. This is also not relevant as the respondents have regularised the services of the casual labour in accordance with DOPT instructions vide memo dated 10.9.1993. Even otherwise the judgment was tendered after the applicant was found eligible as per the norms of the respondents organisation. Therefore the said citation is not relevant. Had the respondents acted in time, the applicant's husband would have been regularised in 2004. It is also not out of place to state that since the applicant's husband died and sadly he is not there to approach a court , would not mean that his legal right has vanished in thin air. They are permanent and exist irrespective of the body with soul not being a party to represent in person. In fact, Honourable Supreme Court in the case of *Meneka Gandhi (7-Bench)* had held that reasonableness and arbitrariness are part of Article 14 of the Constitution of India. The application of the *Maneka Gandhi Judgment* is to the extent that the respondents have not been reasonable in not regularising the applicants husband when similar others were regularized. A flavour of arbitrariness is conspicuous in their decision in denying the benefit of regularisation to the applicants husband.

C. Going a step forward, it is seen that the Honorable Supreme Court in Jagrit Mazdoor Union (Regd.) & ... vs Mahanagar Telephone Nigam Ltd. & ... on 29 November, 1989 reported in 1989 SCR Supl(2) 329, 1990 SCC Suppl. 113, held that

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".

This observation of the Honorable Supreme Court squarely covers the case in question.

D. Recently the Principal Bench of this Tribunal in OA No.1842/2016 on 9.10.2017 in Smt. Shashi vs Union of India held that:

"I hold that the husband of the applicant, who had acquired temporary group D status and had rendered more than 3 years service after that, was entitled to all the benefits available to Group 'D' employee on regular basis." The respondents are directed to process the claim of the applicant by treating the deceased employee as a regular employee as per relevant statutory rules, as per law"

E. The courts and Tribunal repeatedly held that it is the respondent's duty to regularize the service of the applicants on completion of three years of service on being conferred the temporary status. In a similar case, Honourable Chandigarh bench of this Tribunal, in Mrs. Devanti vs Union Of India And Ors. on 30 June, 1999 has held that

“ The respondents had failed to regularise his services in due time and he had died. It was held, taking into consideration the case of *Malati kar v. Union of India*, 1992(21) ATC 583 and Supreme Court judgment in the case of State of Haryana v. Piara Singh, 1992(4) SCC 118 that an employee cannot be expected to pursue with the authorities for regularisation of his services. If the Railways, which are expected to be model employers, do not act according to rules, no blame can be put on a poor casual labourer. It was held that if a person continuously works

as a casual worker for a number of years, he ought to have been regularised and failure to so regularise him is really a failure of the department and the department cannot be allowed to take advantage of its own failure”.

F. Admittedly, non regularization of the services of the spouse of the applicant was purely attributable to the nonfeasance on the part of the respondents which is a clear mistake on their part. The law laid down by the Apex Court in this regard is as under:-

(a) *A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287*

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

(b) *Rekha Mukherjee v. Ashis Kumar Das, (2005) 3 SCC 427 :*

36. The respondents herein cannot take advantage of their own mistake.

G. The applicant’s husband has thus been penalised for the folly committed by the respondents. Out of the 86 casual labourers engaged by the respondents, services of all but 81 have already been regularised and the rest 5, including the spouse of the applicant, could not be regularized on account of their demise before regularization or for not seeking relief from an appropriate court. As can be seen, from the facts above, the applicants husband was eligible to be regularised in 2004 but for the inaction of the respondents and incidentally colleagues/junior of the applicant’s husband have been regularised and thereby ushering in an element of discrimination by not extending the same benefit to the applicant’s husband. The respondents cannot be discriminative in applying the yardstick of the OM dt 10.9.1993. As per

Hon'ble Supreme Court observation in G.C.Ghosh vs Union of India reported in 1992 (19) ATC 94 where in it was held as under:

"In the light of the command of Articles 14 and 16 of the Constitution of India the same treatment is required to be accorded to the petitioners regardless of the fact that they are serving the Eastern Railway unless it is shown that there is some distinguishing feature, for according a different treatment"

H. Therefore one should not be forced to go to the court for seeking a benefit which was extended to similarly placed persons. There is cornucopia of other judgments of the Hon'ble Supreme Court wherein it was observed about the need to extend the judgment tendered in a case to all others who did not approach the courts as under:

AmritLal Berry vs Collector Of Central Excise, (1975) 4 SCC 714 :

"We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

Inder Pal YadavVs. Union of India, 1985 (2) SCC 648:

"...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

V CPC report, para 126.5 – Extending judicial decision in matters of a general nature to all similarly placed employees:

We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by

the Full Bench of Central Administrative Tribunal, Bangalore in the case of **C.S. Elias Ahmed & Ors Vs. UOI & Ors, (OA 451 and 541 of 1991)**, wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh V. UOI [(1992) 19 ATC 94 (SC)], dt.20.07.1998; K.I. Shepherd V. UOI [(JT 1987 (3) SC 600)]; AbidHussain V. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee.”

In a latter case of ***Uttaranchal Forest Rangers' Assn (Direct Recruit) Vs. State of UP, (2006) 10 SCC 346***, the Apex Court has referred to the decision in the case of State of Karnataka Vs. C. Lalitha, 2006 (2) SCC 747, as under:

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.”

I. Besides, this Tribunal extending a similar benefit in OAs 1351,1342 etc of 2011 is all the more reason for the balance of convenience and interest of justice tilting in favour of the applicant, since it is a coordinate bench decision has to be adhered to as per the observation of the Hon’ble Supreme Court in ***Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644***, where in it was held as under:-

12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has

overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.

J We are in full agreement with the decision of this Bench of the Tribunal in OA No. 1351, 1342, etc of 2011 and other relevant OAs cited above. Hence the action of the respondents is against rules and doctrine of precedents too. Therefore, the applicant has made out a case which succeeds. It is declared that the applicant is entitled to the grant of family pension and terminal benefits. Hence the respondents are directed to process the claim of the applicant by treating the deceased employee as a regular employee as per relevant statutory rules and as per law and consider to take action as under:

- i) To release family pension, gratuity and other terminal benefits due to the applicant from the date of demise of the applicant's husband.

- ii) In regard to gratuity it shall be with 8.5 % of Bank rate of interest on term deposits commencing from 90 days after the date it is due, as per the gratuity act.
- iii) Time allowed to implement this order is 3 months from the date of receipt of this order

K. OA is allowed with the above directions. No order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 27th day of December, 2018

evr