

**Central Administrative Tribunal
Principal Bench**

OA No. 910/2018

**Reserved on: 02.05.2019
Pronounced on: 12.07.2019**

Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Birma Devi,
(Aged about 64 years),
W/o Late Shri Ram Chand,
R/o House No. M-70,
Lado Sarai, New Delhi.
2. Dhanno,
(Aged about 63 years),
W/o Late Shri Daya Chand,
R/o House No. F-257/3,
Lado Sarai, New Delhi.
3. Narayani,
(Aged about 63 years).
W/o Late Shri Jagmal,
R/o House No. 169,
Prajapati Mohalla,
Village Tughalakabad,
New Delhi – 44.
4. Silman,
(Aged about 63 years),
S/o Shri Chillappan,
R/o House No. 203,
Kanak Durga Colony,
R. K. Puram, Sector – 12,
New Delhi.
5. Sher Bahadur Ram
(Aged about 63 years),
S/o Late Shri Mangru Ram,
R/o I-206, J. J. Camp, Tigri.

...Applicants

(By Advocate: Mr. Annu Mehta)

Vs.

1. Union of India,
Through The Director General,
Archaeological Survey of India,
Govt. of India, 24, Tilak Marg,
New Delhi- 110001.
2. The Secretary,
Ministry of Culture,
Shastri Bhawan,
New Delhi – 110001.

...Respondents

(By Advocate: Mr. Duly Chand)

ORDER

Mohd. Jamshed, Member (A):-

The present O.A. has been filed by the applicants challenging the office order of the respondents dated 27.04.2017 (impugned order), refusing to grant them pension. The facts of the case as indicated in the O.A. are as under:-

2. The applicants were engaged as Beldars – Class-IV, employees, under the respondents in 1980. They have worked for the last 30 years with the respondents. The applicants were granted temporary status under Government Scheme dated 10.09.1993. The respondents

availed of their services continuously and without a break year after year. The applicants made representations to the respondents for regularisation of their services. However, the services of the applicants were not regularised by the respondents and all the applicants retired. Representations made by the applicants seeking pension were also rejected by the respondents. It is also submitted that the respondents failed to implement the Government Scheme dated 10.09.1993 and the provisions of pension under CCS (CCA) Rules indicating that CCS (CCA) Pension Rules are applicable where temporary status employees are regularised. It is also submitted by the applicants that whereas many other temporary status employees were confirmed and granted pension under CCS (CCA) Pension Rules, the applicants have been deprived of their pensionary benefits.

3. Aggrieved by this action on the part of the respondents, the applicants have sought only the following interim relief;

"In the abovementioned facts and circumstances and in the interest of justice the Hon'ble Court may be pleased to:-

Issue a writ in the nature of mandamus or any other writ order or direction to respondents to grant pension the applicants directing the respondents to extend/modify the scope of the scheme dated 10.09.1993 by its liberal interpretation and if

necessary, to frame a policy for providing social security to TS employees not regularised.

(b) Pass any other as court any deem fit and proper."

4. The respondents in their counter reply opposed the O.A. stating that as per O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993, the scheme for grant of temporary status to the casual employees was framed for those casual labourers who were in employment on the date of the issue of this O.M. and had rendered one year of continued service in Central Government Offices. As per this Government Scheme, on rendering three years of continuous service, after conferment of temporary status, the casual labourers were to be treated at par with temporary Group 'D' employees, for the purpose of contribution to the General Provident Fund (GPF). The applicants in this O.A. could not be regularised during the period of their temporary status, hence, question of grant of pensionary benefit does not arise. This is in view of the conditions laid down in the Government Scheme that out of every three vacancies in Group 'D' cadre, in respective offices, where the casual labourers have been working, two vacancies would be filled as per the extent recruitment rules and in accordance with the instructions issued by the Department of Personnel and Training

(DoP&T) from amongst casual workers with temporary status. However, regular Group 'D' staff, rendered surplus for any reason, will have prior claim for absorption against existing/future vacancies.

5. All the applicants were granted temporary status w.e.f. 10.09.1993 and retired during the period 2010 to 2014. Such retirement benefits could be granted only to those casual labourers who were subsequently regularised as per DoP&T Scheme dated 10.09.1993. The applicants could not be regularised in Group 'D' cadre in terms of this scheme and were thus not entitled for retiral benefits.

6. Heard, Ms. Annu Mehta, learned counsel for the applicants and Mr. Duly Chand, learned counsel for the respondents and perused the records.

7. Learned counsel for the applicants argued that the applicants in terms of DoP&T Circular were required to be given temporary status and thereafter regularised. The respondents have not acted upon that. It was also stated that some of the juniors to the applicants had been regularised but no documents could be produced regarding the same. Learned counsel for the applicants

also relied upon the Hon'ble Apex Court Judgment in **Yashwant Hari Katakkar Vs. Union of India & Ors.** (1996) 7 SCC 113 decided on 19.09.1994, which is in relation to pre mature retirement of the petitioner, after quasi-permanent service. The facts of the present O.A. are different from the facts of the aforesaid judgment of the Hon'ble Apex Court.

8. The learned counsel for the respondents argued that the DoP&T O.M. dated 10.09.1993, provides detailed instructions regarding absorption of temporary status employees in regular service. They have also relied upon the order in O.A. No. 221/2006 dated 07.06.2006, the operative part of the same, reads as under:-

"14. In view of the above settled position in law, if the facts of the present case are seen, applicant has merely stated that in 2004-2005 also, certain posts were filled up without considering the applicant but the position has been explained by respondents that the said posts were filled up from the casual labourer with temporary status only as per their seniority. No person junior to the applicant has been regularized, which fact has not been rebutted by the applicant nor has he made out any such averment in the O.A., therefore, it is clear that applicant has not been able to establish any violation of his right or any enforceable right in law. There is no provision for granting pension to a casual labourer. On the contrary, Rule 2 of the CCS (Pension) Rules makes it clear that these rules shall not apply to persons in casual and daily rated employment or persons paid from the contingencies, therefore, reliance placed on Rule 14 of the CCS (Pension) Rules is totally misplaced. Moreover, Hon'ble supreme Court has already reiterated that casual labourers are not holders of

any civil posts, as such they cannot claim parity with regular employees. It has also been held that merely because a person is allowed to continue for long time, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance. In view of above position, as explained by Hon'ble Supreme Court, reliance placed on judgment given by Tribunal is of no relevance. Since all the issues have already been finally decided in the judgment given by Hon'ble Supreme Court in the case of State of Karnataka Vs. Uma Devi and Ors. (supra), I find no merit in the O.A. The same is accordingly dismissed. No order as to costs."

9. They have also relied upon the Hon'ble Apex Court Judgment in the case of **State of Himachal Pradesh Vs. Suresh Kumar Verma and Anr.** 1996 (2) SCC 455, decided on 24.01.1996, that appointment of Daily Wagers cannot be considered for regular appointment. The applicants worked as casual labourers till 1993 and in terms of DoP&T Scheme of 10.09.1993, all the applicants were granted temporary status along with due benefits. These applicants remained as temporary status employees and retired from service during the period from 2010 to 2014.

10. It is a fact that the applicant have worked continuously with the respondents in different capacities, i.e., as casual labourers and, thereafter, with temporary status, without a break in their service. Vide DoP&T O.M. dated 10.09.1993, the government issued detailed

guidelines regarding grant of temporary status and regularisation of casual workers. As per this Government Scheme temporary status is to be conferred to all casual labourers who are in the employment on the date of issue of this O.M. and have been engaged for a period of at least 240 days. Relevant paras are as under;

"4. Temporary Status

(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits:-

(i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA

(ii) Benefits of increments at the same rate as applicable to a Group 'D' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 240 days, 206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.

(iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.

(iv) Maternity leave to lady casual labourers as admissible to regular Group 'D' employees will be allowed.

(v) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation.

(vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of their Department.

(vii) Until they are regularized, they would be entitled to Productivity Linked Bonus/ Ad-hoc bonus only at the rates as applicable to casual labourers."

11. It was further clarified in the O.M. that such casual labourers who acquire temporary status will not be brought to the permanent establishment unless they are selected through regular selection process for Group 'D' posts. The temporary status, however, entitles the casual labourers to their wages, DA, HRA, increments and leave entitlements. It is also indicated in the O.M. that after rendering three years of continuous service, casual labourers would be treated at par with temporary Group 'D' employees for certain benefits only. It is also indicated

that two out of three vacancies in Group 'D' cadre in respective offices where casual labourers are working would be filled up as per extent recruitment rules. As clarified by the respondents in the counter affidavit, the applicants retired before having acquired temporary status and, therefore, the question of grant of pensionary benefit to them does not arise.

12. It is a fact that casual labourers have been engaged in different departments on various terms and conditions but after issuance of the O.M. dated 10.09.1993 by the DoP&T, the services of the casual labourers have been governed in terms of this O.M. dated 10.09.1993 by granting them temporary status and depending upon the vacancies, they may also be regularized against Group 'D' posts. However, none of the applicants were regularized till their retirement. It has also been contested by the respondents that none of the juniors to the applicants have been regularized and granted post retiral benefits. Various other dues for which the applicants were entitled have already been paid to the applicants.

13. It is, thus, obvious that grant of regular status is only applicable to the temporary staff recruited against vacancies of Group 'D' staff, and that too, in the ratio

prescribed vide DoP&T O.M. dated 10.09.1993. All the applicants have already retired without having attained status of regular employees and, therefore, their claim for pensionary benefit cannot be entertained at this stage. It is a matter of record that they remained temporary status employees and, therefore, they are not entitled for the pensionary benefits.

14. In view of the above, I am of the view that there is no merit in the present O.A. and the same is accordingly dismissed. There shall be no order as to costs.

**(Mohd. Jamshed)
Member(A)**

/ankit/