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(2023) 01 CAT CK 0002

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00736 Of 2018

C.V. Leslie & Ors — APPELLANT

Vs

Union Of India & Others — RESPONDENT

Date of Decision : 03-01-2023

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 13

Citation : (2023) 01 CAT CK 0002

Hon'ble Judges : K. Haripal, Member (J)

Bench : Single Bench

Advocate : V. Sajith Kumar, Thomas Mathew Nellimoottil

Final Decision : Dismissed

Judgement

K. Haripal, Member J

1. The applicants claim that they had commenced service as full time casual labourers in 1982. In the Annexure A-1 formulated by the Department on the direction of the Hon'ble Supreme Court, a scheme was framed for regularisation of casual labourers by conferring temporary status and equating them with Group 'D' employees. After issuance of Annexure A-1, when the respondents made attempts to disengage the applicants, they moved this Tribunal and by Annexure A-2 order dated 07.10.1997 in OA No.1563/95, the Tribunal directed the respondents to issue orders granting temporary status w.e.f. 29.11.1989. Accordingly, Annexure A-3 order was passed on 22.12.1997 conferring them temporary status with effect from 29.11.1989. Thereafter they were regularized as MTS and included in the statutory pension scheme. The grievance of the applicants is that despite Annexure A-2 & A-3, they have not been given consequential benefits w.e.f. 29.11.1989. They seek direction to implement Annexure A-3 by granting temporary status w.e.f 29.11.1989 extending all consequential benefits.

2. On behalf of the respondents, the 3rd Respondent has filed reply challenging

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the very maintainability of the application. According to him, in the light of the order of the Division Bench of this Tribunal in Annexure R-1 on MA No.802/2000 in OA No.1563/95 dated 10.08.2000, the Original Application is barred under the principles of res judicata. Similarly, the applicants have moved this Tribunal after a period of 21 years without showing genuine reasons for the delay. They rely on the decisions reported in S.S. Rathore v. State of MP {(1989) 4 SCC 582}, C. Jacob v. Director of Geology and Mining {(2008) 10 SCC 115} and contend that the application is barred by limitation. Relying on the decisions in A.P. Steel Re-rolling Mill Ltd v. State of Kerala & Others {2007(2) SCC 725} and S.S. Balu & Another v. State of Kerala & Others {2009(2) SCC 479}, he submitted that the benefit of the judgement cannot be extended automatically to a party if he approaches the Court after long delay. According to him, if such a relief is granted that would open a pandora's box of litigation.

3. Turning to the merits, it was pointed out, referring to Annexure A-3, that they were granted temporary status w.e.f. 29.11.1989 by order dated 22.12.1997. Therefore they would be entitled to get bonus, arrears of pay etc only after their continuous service for three years after conferring temporary status order issued on 22.12.1997. Thus they would be entitled to be treated on par with temporary Group 'D' employees only w.e.f. 01.01.2001. It is further stated that by Annexure R-4 their representations were considered and they have been brought under the purview of CCS(Pension) Rules 1972 'with all consequential benefits and also for counting of temporary service after regularisation for retirement benefits'. But the claim for grant of benefits w.e.f. 29.11.1989 cannot be considered as it was already considered and rejected by this Tribunal through Annexure R-1 order. Therefore he seeks to dismiss the original application.

4. Heard the learned counsel on both the sides. According to the learned counsel for the applicants, there is no substance in the contention that the application is barred by res judicata or limitation. They have continuing cause of action so that there is no bar under limitation. He also placed reliance on the decisions of Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation {MANU/SC/0669/2022}, Union of India & Ors. v. Tarsem Singh {(2008) 8 SCC 648}, M.R. Gupta v. Union of India and others {AIR 1996 SC 669} and Union of India & ors. v. Munni Devi and ors. {MANU/DE/0004/2020} of Delhi High Court. According to him one of the applicants has already retired and others are on the verge of retirement. Even though the Miscellaneous Application was dismissed, after that there has occurred fresh causes of action, that whenever their pay is disbursed they get fresh causes of action. From 1989 onwards they were waiting and such delay may not cause prejudice. On the other hand, relying on the decision in Hakkum Rajkhinvsara vs. Union of India & Ors. {1997 (4) SCC 285}, which has been quoted in the Annexure R-1 order, the learned Standing Counsel submitted that the application is badly barred by limitation. According to him, Annexure R-1 order has not been challenged. Referring to Annexure R-5, it was pointed out that prior to 22.12.1997 the applicants were not in regular service.

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5. In reply the learned counsel submitted that from Annexure A-2, it is clear that from 1990-91, the 1st applicant was in service, in 1991 the 2nd and 3rd applicants were in service and if there is any dispute, the respondents could produce documents and that if the relief as prayed for is not granted that would ultimately reflect on their quantum of pension.

6. It has come out that seeking the self same reliefs they had approached this Tribunal with a Miscellaneous Application in OA No.1563/1995, the Division Bench of this Tribunal considered the same and dismissed by Annexure R-1 order as it was time barred. There, dictum in Hakkum Rajkinsyara, quoted supra was relied on by the Tribunal; now long after 8 years of Annexure R-1 order, the very same reliefs have been sought in the form of a fresh Original Application, to overcome the delay noticed by this Tribunal. The present OA is virtually like old wine in new bottle. This order has not been challenged by the applicants. This order holds the feild. As long as the order stands unchallenged, the applicants are not justified in contending that they have fresh cause of action. That means the application is badly barred by limitation.

7. There is also substance in the contention that the principles of res judicata are applicable. This matter was already considered and rejected by this Tribunal.

8. On merits also, the applicants can claim benefits only from 01.01.2001, after completing three years of issuance of Annexure A-1 and doing regular service on temporary status.

9. The applicants were admittedly casual labourers who were granted temporary status on the strength of Annexure A-2 order passed by this Tribunal. Annexure A-3 indicates that by order dated 22.12.1997 they were given temporary status w.e.f 29.11.1989. There is substance in the argument of the learned Standing Counsel that even though temporary status was conferred with retrospective effect they are not justifed in claiming all benefits from 29.11.1989 and they could be treated on par with Group 'D' employees for granting such benefits only after three years of service in Group 'D' category w.e.f. 22.12.1997, the date of Annexure A-3 order. This contention is in conformity with clause 8 of Annexure A-1 scheme which was in vogue.

10. Under Rule 13 of CCS (Pension) Rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Applicants have no case that they had commenced actual service on 29.11.1989. That date reflects the date of conferring temporary status to persons similarly placed, approved by this Tribunal as well as the High Court. So long as there is no evidence that the applicants had worked on regular basis prior to Annexure A-3 order, their service as temporary status Group 'D can be reckoned only from 22.12.1997 and other benefits will enure to them only after three years therefrom. Even otherwise, the principle 'no work no pay' is applicable to the applicants.

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11. The applicants are not entitled to get any relief. The original application is dismissed. No costs.

Dated this the 3rd January, 2023

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