

(2013) 10 AHC CK 0166
In the Allahabad High Court
Case No : Original Application No. 98 of 2009

Parshuram Yadav

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2013) 4 LLJ 741 : (2014) 1 LLN 303

Hon'ble Judges : Navneet Kumar, J

Bench : Single Bench

Advocate : S. Srivastava, for the Appellant; S.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Navneet Kumar, J.—The present Original Application has been preferred by the applicant u/s 19 of the AT Act with the following reliefs:

- i) The Hon''ble Tribunal be pleased to quash the portion of impugned order dated 28.1.2009 as contained in Annexure No. A-1 regarding no facility of pension is available to the C.P. employees.
- ii) The Hon''ble Tribunal be pleased to issue an order or direction to the respondents to pay the full pension and other retiral benefits like gratuity, leave encashment etc. forthwith.

The brief facts of the case are that the applicant was initially appointed as Contingency Paid (C.P.) Chowkidar on 24.1.1980 and subsequently the Sub Post Office, Januara was abolished on 23.9.1986 and services of the applicant was terminated without any notice. The applicant preferred O.A. No. 40/1989 before this Tribunal and the Tribunal decided the O.A. by means of order dated 4.11.1991, wherein this Tribunal passed the following orders: Accordingly, we direct the respondents to absorb or re-appoint the applicant on the post of Chowkidar in some other post Office in division wherever a vacancy is available and the age bar will not stand in his way. Let it be done within a period of three

months from the date of communication of this order. In case the applicant makes representation for payment of wages, it will be open for the respondents to consider the back wages, in case they deem it proper.

2. In pursuance of the aforesaid direction, the respondents passed an order dated 16.12.1991 whereby the applicant was allowed to join on the vacant post of C.P. Chowkidar. Thereafter, the applicant made a representation for back wages and other consequential benefits and when nothing was heard, he has again filed O.A. No. 40 of 1993 which was dismissed by means of judgment and order dated 4.2.1993. The applicant superannuated on 31.1.2009 after completing age of superannuation of 60 years. The said order clearly provides that the applicant who was working as C.P. Chowkidar will superannuate on 31.1.2009 after completing 60 years of age. Before retirement, the applicant made a representation for grant of pensionary benefits and the respondents decided the applicants representation and passed an order dated 28.1.2009, rejecting the claim of the applicant. Feeling aggrieved by the said order, the applicant preferred the present O.A.

3. Learned counsel appearing on behalf of the respondents filed their reply and through reply, it was pointed out by the respondents that the applicant was initially appointed as C.P. Chowkidar and superannuated on 31.1.2009 and has also been paid all retiral dues which was due to be paid to contingencies paid employees and since he is claiming for payment of pensionary benefits, like pension, DCRG, leave encashment etc. which is payable to departmental Group D employees, since the applicant is not entitled for the said payments in terms of the scheme framed known as Casual Labourers (Grant of Temporary Status and Regularization) Scheme. Apart from this, the learned counsel for respondents has also taken the shelter of the Hon''ble Supreme Courts judgment and has also pointed out towards provision of the aforesaid scheme and pointed out the paragraph 8 of the said scheme and since the applicant was not a regular employee, as such, he is not entitled to get any pensionary benefits. As regard the filing of two OAs, O.A. No. 40 of 1989 as well as O.A. No. 40 of 1993 by the applicant is not disputed.

4. The learned counsel for the applicant has filed Rejoinder reply and through Rejoinder reply, mostly the averments made in the O.A. are reiterated.

5. The learned counsel for the applicant has also relied on certain decisions rendered by the Hon''ble Apex Court, Hon''ble High Court, and of this Tribunal, such as:

i) Union of India and others Vs. Shyam Lal Shukla,

ii) Jagrit Mazdoor Union (Regd.) and Others Vs. Mahanagar Telephone Nigam Ltd. and Another, (passed by Hon''ble Apex Court in Writ Petition No. 1119 of 1986 and other connection Writ Petitions,

iii) Order of Tribunal passed in O.A. No. 383 of 2013 in the case of Ram Narain v.

UOI and Others as well as order passed in O.A. No. 71 of 2012 in the case of Hari Shankar Singh v. UOI and Others.

6. Heard the learned counsel for parties and perused the records.

7. The question involved in the present O.A. is in regard to payment of retiral benefits, such as pension, DCRG, leave encashment to C.P. Chowkidars.

8. The Hon''ble Apex Court has passed a judgment on 29.11.1989 in a bunch of writ petitions and in pursuance of the said judgment, the respondents have framed a scheme known as Casual Labourers (Grant of Temporary Status and Regularization) Scheme. This scheme was formulated in pursuance of the direction of the Hon''ble Apex Court in consultation with the Ministry of Law, Finance and Personnel. As per the said scheme, the temporary status would be conferred on the casual labours in employment as on 29.11.1989 and who continue to be currently employed and have rendered service of at least one year during the year they must have been engaged for a period of 240 days. Certain paragraphs of the said scheme reads as under:

7. Conferment of Temporary status does not automatically imply that the casual labourers would be appointed as regular Group D employee within any fixed time frame. Appointment to Group D vacancies will continue to be done as per the extant recruitment rules, which stipulate preference to eligible ED Employees. Para 8 of the said scheme reads as under:

After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group D employees for the purpose of contribution to General Provident Fund. They would also further be eligible for the grant of Festival Advance/Floor Advance on the same conditions as are applicable to temporary Group D employee provided they furnish two sureties from permanent Govt. servants of this Department.

9. Apart from this, it is also mentioned in the said scheme that no recruitment from open market for Group D posts except compassionate appointment will be done till the casual labourers with the requisite qualification are available to fill the posts in question. The applicant was admittedly appointed as C.P. Chowkidar in 1980 and superannuated on 31.1.2009 and he superannuated only as a C.P. Chowkidar. The applicant was given the admissible retiral benefits which was due to be paid to a C.P. employee. The claim of the applicant is that pension which has been denied to him is based on a wrong footing. Since the applicant superannuated only as a C.P. Chowkidar and was not given temporary status on Group Dpost by any orders passed by the respondents.

10. Admittedly, the applicant was appointed as contingency paid Chowkidar and the said appointment was made in the year 1980. Subsequently, the applicant retired after attaining the age of superannuation on 31.1.2009 and he remained as temporary status Chowkidar at the time of his retirement. The applicant was given certain benefits. The claim of the applicant is that the pension which has

been denied to him by the respondents is based on wrong footings and as the applicant was given temporary status, therefore, the period of temporary status is required to be counted to full extend as qualifying service for the purpose of pension. The CCS (Pension) Rules provides the applicability of pension. It is also mentioned in the said rules that Save as otherwise provided in these rules, these rules shall apply to Government servants including civilian Govt. Servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishment, but shall not apply to:

- a) railway servants;
- b) persons in casual and daily rated employment;
- c) persons paid from contingencies;
- d) persons entitled to the benefit of a contributory provident fund;
- e) members of the All India Services;
- f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries;
- g) persons employed on contract except when the contract provides otherwise; and
- h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.

11. Learned counsel for the applicant failed to demonstrate any such order which may indicate that the applicant was granted temporary status. As such, the reliance placed by the learned counsel for applicant of the decision of coordinate bench in O.A. No. 917 of 2004 will not serve the fruitful purpose as the applicant was not given the temporary status Group D employee as such it cannot be said that the applicant is entitled for pension and there was no such findings in the provision under the scheme framed by the Govt. that without being granted the temporary status Group D employees are entitled for pensionary benefits at par with the regular Group D employees.

12. At the out set, it is to be mentioned that according to the pleadings of the applicant in the entire O.A., applicants claim appears to be based only for claim of pension and retiral dues which have been granted to the temporary status after completion of 3 years of service. No where in the entire O.A., it has been demonstrated by the applicant that he was ever granted temporary status or regularized whereas the respondents in their reply has categorically pointed out that till the date of applicants retirement, applicant remained as contingency paid Chowkidar and the applicant was not a regular Group D employee, as such he is not entitled to get pensionary benefits. This specific averments of the respondents was not denied by the applicant in his rejoinder reply as well. But it has been pointed out by the learned counsel for applicant that the applicant is

entitled for all retiral benefits and pension.

13. Bare perusal of applicability of pension under CCS (Pension) Rules clearly provides that persons paid from contingencies are not eligible for grant of pensionary benefits. Therefore, the applicant who has not attained the temporary status Group D, is not entitled for pension, as well as the applicant has also failed to prove that he was given temporary status Group D employee under the Casual Labourers (Grant of Temporary Status and Regularization) Scheme.

14. In pursuance of the direction of the Hon''ble Apex Court, the scheme known as Casual Labourers (Grant of Temporary Status and Regularization) Scheme was framed and the para 7 and 8 of the said scheme are absolutely clear.

15. The judgment relied upon by the learned counsel for applicant pertains to payment of pension and retiral benefits but in all those cases, the employee was given temporary status in terms of the scheme which was formulated by the Department of Post, Govt. of India vide communication dated 2.4.1991 issued by the Director General, Department of Posts, New Delhi in pursuance and in compliance of the orders of the Hon''ble Apex Court passed in W.P. No. 1276/1986. Rule 154(a) Post & Telegraphs Ministerial Manual Establishment Rule which is quoted herein below:

154. (a) Selected categories of whole time contingency paid staff, such as Sweepers, Bhisties, Chowkidars, Chobdars, Malis or Gardeners, Khalassis and such other categories as are expected to work side by side with regular employees or with employees in work charged establishment, should, for the present, be brought on to regular establishments of which they form adjuncts and should be treated as "regular" employees.

16. In the judgment of the Hon''ble High Court passed in W.P. No. 225 (SB) of 2008, the applicant was working on a temporary status Group D post and he was not allowed the pension as such, he has preferred the writ petition before the Hon''ble High Court and Hon''ble High Court directed for taking decision in regard to payment of pension.

17. In the instant case, it is absolutely clear that no such document is available on record which may prove the case of the applicant that he was ever given the temporary status Group D post by means of any order of the respondents. Considering the said scheme, the Hon''ble High Court has also passed certain orders wherein it is clearly observed by the Hon''ble High Court that the persons who have been granted temporary status Group D post are entitled for retiral benefits.

18. As observed above, the applicant failed to demonstrate any such order by virtue of which it can be demonstrated that the applicant was ever granted the temporary status.

19. The learned counsel for applicant has also placed reliance of order passed by this Tribunal in O.A. No. 383 of 2003 in which, the Tribunal allowed the O.A. and

directed the respondents to grant benefit to the applicant as admissible to Group D employees. In that case, the applicant was initially appointed as contingency paid Chowkidar and subsequently was granted temporary status vide order dated 22.9.1992 w.e.f. 29.11.1989. But in the present case, no such order is available on record as such it cannot be said that the applicant was granted temporary status, as such this decision is not applicable in the case of the applicant. Since the applicant failed to demonstrate and bring on record any such order which may indicate that the applicant was granted temporary status, I am not inclined to interfere in the present O.A. Accordingly, it is fit to be dismissed. Therefore, O.A. is dismissed. No order as to costs.