
(2013) 03 DEL CK 0188
In the Delhi High Court
Case No : Writ Petition (C) 7755 of 2011

Prem Chand

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0188

Hon'ble Judges : Pratibha Rani, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Arun Sukhija, for the Appellant; Sangeeta Tomar, Advocate for R-1, 2, 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The writ petitioner started working as a Chowkidar with the Post and Telegraph Department at its head post office Shamli, District Muzaffarnagar, UP on July 01, 1976 on casual daily rate basis and continued to work till he was conferred a temporary status on November 29, 1989 and the benefit was the petitioner receiving salary in the same pay-scale with allowances as was paid to regular employees, but without being a regular employee. On April 12, 1991 the Department of Posts introduced a scheme called "Casual Labourers (Temporary Status and Regularization) Scheme" which envisaged permanency to be accorded to casual employees having acquired temporary status.

2. Matter reached the Supreme Court when the said policy was not being implemented resulting in the Supreme Court directing regularization of the services of the employees as per the policy, which decision was accepted by the Department resulting in circular No. 45-95/87-SPB dated April 12, 1991 being issued.

3. In spite thereof, the Department did not regularize the services of many daily rated employees who had acquired a temporary status and had become eligible

to be made permanent employees.

4. As was the petitioner, these employees were working in Group "D" i.e. humble posts as Chowkidars, Khallasis, Peons etc. What would these poor people understand about nuances of a temporary employee, a quasi-permanent employee or a permanent employee? They were happy for the reason they would, with pride, wear the dress which the Government issued to them, and armed with the small power of the State, they would discharge their duties, earning annual increments. The fact that they earned increments and were subject to the disciplinary control made them rightly believe that they were permanent Government employees. But lightning struck, as it did to the petitioner, when they retired from service and pension was denied to them. Plea taken by the Post and Telegraph Department was that these employees were never confirmed or regularized.

5. Various Benches of the Central Administrative Tribunal, and we note only one, being the decision dated July 21, 2000, disposing of OA No. 518/1996 filed by one Ms. Chandra Devi Bhatt to whom family pension was denied when her husband died in harness, directed pension to be paid noting that the employees who had acquired temporary status or the widows of those who had died on acquiring temporary status were entitled to be treated as regularized in service in terms of the circular dated April 12, 1991 and pension to be paid. But, relief was limited to the grant of family pension or pension as the case may be.

6. Impugned decision dated July 16, 2011 has held OA No. 2223/2010 to be barred by limitation. The reason is that the writ petitioner i.e. the claimant before the Tribunal sought a declaration to be paid pension on the strength of his entitlement to be treated as a regular employee. The view taken by the Tribunal is that in effect the petitioner was predicating a claim which he ought to have predicted in the year 1991.

7. The view taken by the Tribunal is incorrect. The petitioner was not seeking any direction to be regularized. The pleadings in the Original Application would reveal that the petitioner pleaded that he has to be treated as a regular employee and therefore pension to be paid to him.

8. Right to salary and pension would require a claim to be treated as a recurring cause of action unless the reoccurrence of the cause is broken by a claim being made and the same being rejected. But where no claim is made, the question of it being rejected having not arisen, at any point of time the claim could be made and if found sustainable by a judicial Fora, pecuniary benefits can be restricted for a period preceding three years from the date when the person approached the Fora.

9. Accordingly, we allow the writ petition and set aside the impugned order dated July 16, 2011. OA No. 2223/2010 is restored for fresh adjudication.

10. Since parties through their counsel are present before us we direct that the

Original Application be listed before the Registrar of the Tribunal on April 09, 2013 on which date parties or their counsel shall appear before the Registrar of the Tribunal who shall list the Original Application before an appropriate Bench of the Tribunal for adjudication on merits. No costs.