(2015) 04 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No. 11679 of 2011 (S-CAT)

Senior Superintendent of Post Offices and Others — APPELLANT

Vs

Anthony Steven — RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 04 KAR CK 0030

Hon'ble Judges : Raghvendra S. Chauhan, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : C. Shashikantha, for the Appellant; Basavaraj Veerabhadra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Raghvendra S. Chauhan, J.—The petitioners are aggrieved by the order dated 2-12-2010, passed by the Central Administrative Tribunal, Bengaluru Bench, Bengaluru, in O.S. No. 494/2009. By the impugned order, the learned Tribunal has allowed the Original Application filed by the respondent, Mr. Anthony Steven, and has directed the petitioners to treat the respondent as entitled to the pensionary benefits under old Pensionary Rules, 1972 from the date when he was granted the casual labour temporary status, to discontinue recovery of contribution under the new scheme, and to refund the recovery so far, if any, towards pension.

2. The brief facts of the case are that Mr. Anthony Steven entered into the service of Postal Department as a contingent night watchman Madiwala S.O. a/w Jayanagar H.O. vide ASP i/c Bangalore South Sub-Division II Order No. B2/Cont-Emp/Dlgs/88-89 dated 8-9-1988 read with SSPOs, Bangalore South Division, Bangalore-560041 memo No. A2/10 dated 18-7-1988, w.e.f. 11-7-1998. The contention of the petitioner Department is that the casual labours were hired and after fulfilling some conditions, they were given temporary Group D status. Thereafter, fulfilling of some further conditions, including condition for work in temporary status of three years, they were given permanent Group D Status.

According to Mr. Anthony Steven, since he had joined the Department on 29-11-1989, he was entitled to be given a temporary status after completing his three years, i.e. on 29-11-1992; three years after that, he would have become entitled to permanent status in Group D. He was conferred with permanent status with effect from 29-11-1989 by order dated 26-7-1994. By the said order, he was given certain benefits which include pension and retirement benefits after regularisation. His service in Group D was regularised on 17-4-2006. However, because of the pathetic inefficiency of the Department, he was not given permanent status till 26-4-2006.

3. Since the benefits of increments while working as a temporary status Group D employee were denied to him, he filed an Original Application, namely O.A. No. 221/2008 before the learned Central Administrative Tribunal, Bengaluru. By order dated 7-11-2008, the learned Tribunal directed the petitioners to fix his pay and allowances.

4. For the purpose of this case it is pertinent to note that initially all the employees were covered under the CCS (Pension) Rules, 1972. Under the said Rules, while the employees contributed towards the Central Provident Fund, the Central Government also contributed the same amount towards the fund. This Scheme was equally applicable to those who were granted temporary status by the Department. However, on 14-1-2004, the Department floated a new pension scheme and asked the employees to pay monthly installment towards pension contribution. Since the old pension Rules, 1972 were beneficial to the respondent, since he was already covered under those Rules, he filed a representation on 5-10-2009 praying that he should be covered under the CCS (Pension) Rules, 1972 and not under the New Pensionary Rules. Since the said representation fell on deaf ears, Mr. Anthony Steven filed O.A. No. 494/2009 before the learned Tribunal. By order dated 2-12-2010, the learned Tribunal allowed the Original Application as aforementioned. Hence, this petition by the petitioner - Department.

5. Mr. C. Shashikantha, the learned counsel for the petitioners, has vehemently raised the contention that in fact the respondent was hired in the temporary status Group D as a casual labour Group D. Thus, he became a permanent employee only on 17-4-2006. Moreover, according to New Pensionary Rules, which were promulgated in 2004 by Office Memorandum No. F.No. 1(7)(2)/2003/ TA/19 dated 14-1-2004, the new pension scheme is applicable to entrants to Central Government service who joined the service on or after 1-1-2004. Since the respondent had joined the Government service on 17-4-2006, obviously, he was covered by the new pensionary Rules. Thus, he could not claim the benefit of CCS (Pension) Rules, 1972. Therefore, according the learned counsel, the learned Tribunal has erred in granting benefit of the pensionary benefits under CCS (Pension) Rules, 1972.

6. Secondly, since the respondent was covered by the New Pensionary Rules, therefore, the contribution made by the Central Government under the old Rules

were duly recovered from him. Therefore, the Government was entitled to the said amount from the respondent. Hence, the learned Tribunal erred in directing to discontinue the recovery towards contribution under the old scheme. Moreover, the learned Tribunal was unjustified in directing to refund the money so recovered, if any, towards pension from the respondent.

7. On the other hand, Mr. Basavaraj Veerabhadra, the learned counsel for the respondent, has contended that according to the Department itself, as per the scheme circulated in the Circular No. 45-95/87-SPB.I dated 12-4-1991, an employee who has completed three years of service would be treated at par with temporary Group D employees from the date they have completed three years of service in the newly acquired temporary status; they would also be entitled to benefits admissible to temporary Group D employees such as General Provident Fund, counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees who are given temporary status and who complete three years of service in that status while granting them pension and retirement benefits after their regularisation. It is under this scheme that the respondent was asked to contribute towards General Provident Fund. It is under this scheme, he is entitled for counting of his service for pension and terminal benefits. Thus, for all practical purposes, the respondent was treated as casual labour at par with temporary Group D employee.

8. Secondly, the issue whether such persons would be considered under the old pensionary scheme or the new one is no more res integra as the same issue had arisen before the learned Central Administrative Tribunal, Jaipur Bench, the learned Central Administrative Tribunal, Mumbai and even in the case of Union of India v. Ajay Kumar and others before the Hon''ble Delhi High Court (in WP (C) No. 14247/2006, WP (C) No. 8491/2006, WP (C) Nos. 17528-30/2006 and WP (C) No. 4806/20067 decided on 4-7-2008). The scheme in these cases were similar to the present scheme. After taking a holistic view of the decisions of the learned Central Administrative Tribunal, Jaipur Bench, the learned Central Administrative Tribunal, Mumbai Bench and decision of the Hon''ble Rajasthan High Court, Their Lordships of Delhi High Court were of the opinion that those employees who has been granted temporary status prior to coming into the force the New Pensionary Rules, those employees were given the benefit of General Provident Fund under the old pensionary Rules, those employees who had been given the benefit of having their period of temporary service counted for the pensionary benefit, they were certainly entitled to be covered by the CCS (Pension) Rules, 1972. They would not be covered by the new pension scheme of 2004. According to the learned counsel, these decisions of the learned Central Administrative Tribunal, Jaipur Bench and learned Central Administrative Tribunal, Mumbai, are even followed by the learned Tribunal while passing the impugned order. Therefore, the learned counsel has supported the impugned order.

9. Heard the learned counsel for the parties, perused the impugned order, and examined the records submitted by the parties.

10. Admittedly, the respondent had entered the service of the petitioner Department in 1989; he was conferred with the temporary status by order dated 26-7-1994 with effect from 29-11-1989. Moreover, according to the scheme prevalent then, a scheme circulated by Circular No. 45-95/87-SPB.I dated 12-4-1991, he was to be treated at par with the Group D employees from the date that he had completed three years of service in the newly temporary status. Moreover, he was entitled to all the benefits admissible to Group D employees. As mentioned above, he would be entitled to count his service for the purpose of retiral benefits as in the case of temporary employees appointed on regular basis. Moreover, he would be entitled to the General Provident Fund. Thus, while bestowing temporary status upon him, he was granted certain benefits. At that relevant time, he was covered by the CCS (Pension) Rules, 1972.

11. The issue whether such employees are covered under the CCS (pension) Rules, 1972 or under the new pension Scheme is well settled issue as the same issue has been raised not only before different Benches of Central Administrative Tribunal, but has been decided by Their Lordships of Hon''ble Delhi High Court in the case of Ajay Kumar (supra). In the said case, Their Lordships have noticed the fact as under:

"A perusal of the Scheme extracted above, particularly para 5(vi) thereof, will go to show that it not only entitles the temporary status employees with certain monetary benefits but it also elevates status of temporary employees. Reading of para 5(vi) would go to show that after an employee is conferred with temporary status, and continuously renders 3 years of service after conferment of temporary status his status further elevates at par with temporary Group D employees for the purpose of contribution to GPF Scheme as part of earlier pension scheme. Thus, an employee who has rendered particularly 3 years of service, he attains the status of temporary government employee. Meaning thereby that he holds a civil post under the Government of India, though as a temporary employee and from this very scheme itself, it is also clear that if the service of such temporary status employees are to be dispensed with then one month''s notice is required to be served on the casual employees with temporary status which is pari-passu with the provisions existing in the CCS (Temporary Service) Rules, applicable to the temporary government servants. Further para 5(v) of the Scheme also shows that 50% of the service rendered as temporary status is also to be counted for the purpose of retiral benefits. In a way, after a person is conferred with temporary status, he becomes entitled to certain benefits with regard to the counting of service for the purpose of retiral benefits, obviously under the old Scheme. However, if he has rendered further 3 years of service with temporary status, he is further elevated as a temporary employee and he gains in status. So, such employees like applicants would be covered under the old Scheme of the Government of India and not under the new

Scheme of Pension introduced by letter dated 7.1.2004. Letter dated 26.4.2004 shows that only casual employees are not to be asked to pay contribution towards GPF but it does not apply to those employees who have attained the status of temporary employees though by virtue of Scheme of 1.9.1993. Thus, the interpretation of the Scheme of 7.1.2004 and as amplified by letter dated 26.4.2004 does not govern the employees who have been conferred with temporary status and by virtue of clause (vi), they have further attained the status of temporary Group D employees. Thus, we find that there is sufficient merit in the O.A. and the respondents cannot invoke the instructions dated 26.4.2004 against these applicants. Though the title of the letter dated 26.4.2004 shows that there is modification of the scheme of grant of temporary status but by this letter, the Government cannot modify Scheme to the detriment of the employees who have already earned the vested right under the old rules and those vested right cannot be taken away by retrospective operation of the Scheme by issuance of administrative instructions by the DOPT. It is well settled that the administrative instructions which have the effect of modifying the original scheme cannot be allowed to stand. Hence we are of the considered view that these instructions as contained in the letter dated 26.4.2004 are not applicable in the case of the applicants. The applicants are entitled to contribute towards the GPF Scheme, part of the Old Pension Scheme, as envisaged under the Original Scheme of 1.9.1993." 12. The same principle would have to govern the present case. Therefore, the learned Tribunal was legally justified in allowing the application filed by the respondent and in passing the directions mentioned herein above.

13. For the reasons stated above, this Court does not find any merit in the present petition. Hence, it is hereby dismissed.