
(2009) 09 DEL CK 0138

In the Delhi High Court

Case No : Writ Petition (Civil) No. 7512 of 2004

Smt. Ram Dei

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 2
Constitution of India, 1950 — Article 14, 16

Citation : (2009) 09 DEL CK 0138

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : Hem C. Vashisht, for the Appellant; Richa Kapoor and Tanuja Rawat, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Petitioner was appointed as a Mali on muster roll on 26th July, 1977. Subsequently, she was accorded temporary status with effect from 1st September, 1993, in terms of DOP&T scheme dated 10th October, 1993. Petitioner served as casual labourer with temporary status till she superannuated on 31st May, 2001. Petitioner could not be regularized for want of regular vacancy. Accordingly, her claim for pension was rejected by the Respondent.

2. Feeling aggrieved by this action of Respondent, Petitioner preferred O.A. No. 119/2003 before the Central Administrative Tribunal, Principal Bench, New Delhi (for short hereinafter called as "Tribunal") on the ground that she having worked with the Respondents for almost 23 years i.e. initially on muster roll and later on as casual labourer with temporary status, could not have been deprived of her legitimate dues in the form of retiral benefits like pension etc. She alleged that the Respondent had regularized some similarly situated persons ignoring the Petitioner, thus violating Articles 14 and 16 of the Constitution of India; Petitioner was deemed to have been regularized as increments were granted to her from time to time. She was even asked to complete the pension papers. It is further

alleged that on humanitarian grounds also Petitioner was entitled to pension.

3. Respondent opposed the OA on the ground that though Petitioner was accorded temporary status with effect from 1st September, 1993 in terms of DOP&T scheme dated 10th October, 1993, she could not be regularized for want of vacancy till she attained age of superannuation. She being casual labourer with temporary status, was not entitled to pension under the Central Civil Services (Pension) Rules, 1972 (for short hereinafter called as "Pension Rules"). It was further contended that no junior to the Petitioner was regularized, thus, she was not discriminated.

4. Tribunal held that as per the DOP&T scheme of 1993 a casual labourer acquiring temporary status was entitled to wages at the minimum of pay scale for corresponding regular Group D staff. Such casual labourer was not only entitled to benefit of increments but was also entitled to maternity leave as per the aforesaid scheme; further, 50% of the service rendered by said casual labourer was also to be counted for the purpose of retirement benefits but only after the regularization. After completing three years service on conferment of temporary status, a casual labourer was to be treated at par with a Group D employee and was also entitled to festival advance. In terms of para 6 of the aforesaid scheme a casual labourer with temporary status was not entitled to any other benefit, at par with a Group D employees. Pension to a Government servant was regulated by the Pension Rules. Pension Rules were not applicable to the persons in casual employment and/or in daily rated employment in view of Rule 2 of the said pension Rules. Since Petitioner remained a casual labourer with temporary status till her superannuation, she was not holder of a substantive post, thus was not entitled to pension.

5. Aggrieved by the impugned order dated 19th September, 2003 passed by the Tribunal, Petitioner has approached this Court by way of present writ petition providing therein that order of the Tribunal be set aside and Respondent be directed to regularize the service of Petitioner on the post of Mali. It was further prayed that the notice dated 14th December, 2000 whereby Petitioner was retired from service with effect from 31st May, 2001 be also quashed.

6. We have heard learned Counsel for the parties and perused the material placed on record. We do not find any reason to interfere with the impugned order. In our view conclusions drawn by the Tribunal are correct, in the facts of this case and law applicable thereto. Initially, Petitioner was appointed as a casual labourer. Later on, she was accorded temporary status in view of the DOP&T scheme dated 10th October, 1993. Petitioner could not be regularized till she attained the age of sixty years, for want of vacancy. Petitioner was not regularized against a substantive post. As per the aforesaid scheme the casual labourers with temporary status were entitled to certain benefits at par with regular Group D employees, which were specifically mentioned in the scheme and which we have spelt out in the preceding paras. Petitioner was given such benefits while she was working as a casual labourer. As per the aforesaid

scheme, Petitioner was not entitled to any other benefit at par with the regular employees.

7. In case of a casual labourer, Pension Rules will not be attracted. If that is so, then Petitioner would not be entitled to the pension, as she had not acquired a status of a regular employee. Thus, in our view, Tribunal has rightly held that Petitioner was not entitled to pensionary benefits.

8. Petitioner has placed reliance on Kesar Chand v. State of Punjab reported in Vol. XCIV (1988) 2 PLR 223. We have perused this judgment and are of the view that same is of no help to the Petitioner, having been rendered in different facts. In the said case Petitioner joined office of the Sub Divisional Officer as a work-charged employee and later on was regularized and had acquired status of a public servant. In these facts, it was held that the services of work-charged employee, having been regularized, he would be entitled to pension. That apart, Pension Rules were not under scrutiny in the said case. In our view, Kesar Chand's case is not applicable to the present case.

9. Only on compassion, no order can be passed for grant of pension to the Petitioner dehors the Pension Rules. This may cause hardship to the Petitioner but it is a necessary sequel to the application of Pension Rules.

10. In the light of above discussion, we are of the view that Tribunal rightly concluded that Petitioner was not entitled to the pensionary benefits.

11. Dismissed.