

(2015) 11 KAR CK 0082

In the Karnataka High Court

Case No : Writ Petition No. 24254/2015 (S-CAT)

Union of India and Others

APPELLANT

Vs

B.V. Chandramma

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0082

Hon'ble Judges : Mohan M. Shantana Goudar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : B. Pramod, Central Government Counsel, for the Appellant; M. Raghavendrachar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mohan M. Shantana Goudar, J,

1. The order dated 21.3.2014 in Original Application No. 204/2013 and the order dated 31.3.2015 in Review Application No. 170/00003/15 passed by the Central Administrative Tribunal ("CAT" for short), Bangalore Bench are called in question in this writ petition by the Union of India.

2. The records reveal that the respondent was appointed on 17.10.1983 as a sweeper (contingent staff) for 5 1/2 hours per day. The respondent continued as contingent staff and worked as a sweeper for 5 1/2 hours per day till 1.1.1998. In the meanwhile, the Casual Labourers (Grant of Temporary Status and Regularization) Scheme was framed and announced by the petitioners. The respondent was given the benefit of the said Scheme w.e.f. 1.1.1998 and consequently she was appointed as temporary status casual Labourer on par with the Group-D employee. The said Scheme was announced by the petitioners for the purpose of grant of pay and other benefits to the temporary employees. The service of the respondent was dispensed w.e.f. 30.4.2012. Subsequently, the respondent claimed pension as a regular Group-D employee. Such request of the respondent was rejected vide order Annexure-A6 dated 9.1.2013. According to

the petitioners, the respondent was not entitled to pension as per Central Civil Services (Pension) Rules, 1972 and Central Civil Services (Leave) Rules, 1972 on par with the Group-D on cessation of service. The said order dated 9.1.2013 was questioned before the CAT in O.A. No. 204/2013 which came to be disposed of on 21.3.2014 by concluding as under:

"2. The learned Counsel for the respondents submits that against the order of the Hon''ble High Court, an SLP No. 1135 of 2014 had been filed. Therefore, we dispose of this O.A with the direction that according to the decision of the Hon''ble Apex Court in the said SLP, the rights which may or may not accrue may be determined. If the SLP is dismissed, the same benefit as provided in the earlier order of this Tribunal and upheld by the Hon''ble High Court of Karnataka shall be extended to him also.

3. O.A is disposed of. No order as to costs."

Since the order dated 21.3.2014 was made subject to the result of the SLP No. 1135/2014 which was then pending before the Apex Court, the petitioners herein moved Review Application No. 170/00003/15 before the CAT, Bangalore Bench after dismissal of SLP No. 1135/2014. The said Review Petition also came to be dismissed by the order at Annexure-A1 dated 31.3.2015 in view of dismissal of SLP No. 1135/2014.

Both the orders at Annexures-A and A1 dated 21.3.2014 and 31.3.2015 are called in question in this writ petition.

3. The only question to be decided in this writ petition is as to whether respondent being the temporary status casual labourer on par with the Group-D employee, whose services were never regularized by the petitioners, is entitled for pensionary benefits or not?

4. Learned advocate for the petitioners relying upon the Judgment of this Court in the case of Chandrashekarachar.vs. Chief Post Master General and others in Writ Petition No. 20669-70/2003 (S-CAT) decided on 21.9.2004 as well as the order dated 28.10.2013 in the case of Union of India and K. Annoji Rao in Writ Petition No. 18452/2010, submits that the respondent is not eligible for pension inasmuch as her services were never confirmed as Group-D employee. He further submits that the earlier judgments rendered by the Division Benches of this Court in the case of Union of India vs. Rajeshwari in Writ Petition No. 7258/2012 disposed of on 11th July 2013 and in the case of Union of India vs. P. Sathyanarayana disposed of on 4.6.2015 in Writ Petition No. 16947/2012, cannot be made as precedent to decide this matter inasmuch as the respective Division Benches in those matters have categorically concluded that the said Judgments shall not be cited as authority in future and both the Judgments shall not be treated as precedent. According to the learned advocate for the petitioners, the respondent is not entitled for pension under Central Civil Services (Pension Rules), 1972 which specifies that the person in casual and daily rated employment is not entitled for pensionary benefits.

Per contra, Sri Raghavendrachar, learned advocate appearing on behalf of the respondent relying upon the Judgments in the case of Rajeshwari and Satyanarayana (both mentioned supra) passed by the Division Benches of this Court submits that the judgment in the case of Rajeshwari is confirmed by the Apex Court in SLP No. 1135/2014 on 8.7.2014 and therefore the order passed by this Court in the case of Rajeshwari governs this appeal.

5. It is no doubt true that the judgment of this Court in the case of Rajeshwari (W.P. No. 7258/2012) mentioned supra is confirmed by the Apex Court in SLP No. 1135/2014. The Division Bench of this Court in the case of Rajeshwari had concluded as under:

"7. We find these are odd cases and if it is a fact that the person had worked as casual labour from the year 1987 onwards and the Tribunal under the circumstances had directed grant of pension and if had directed on and after the date of conferring temporary status casual employee on par with Group-D employee and therefore even pension which temporary status "D" Group employee would have got on being confirmed should have been extended, we do not think we should interfere with such orders to the detriment of the respondent and having regard to the peculiar facts and circumstances of this case, therefore, we do not go into the question of eligibility under the rule and do not wish to disturb the order passed by the Tribunal and dismiss this writ petition.

8. We make it clear that this is not ruling given by the court for the purpose of laying down any law, but as an exceptional case having regard to the hardship faced by the respondent, we do not propose to interfere with the order of the Tribunal."

(emphasis supplied)

6. Similar conclusion was reached by another Division Bench of this Court in the case of Satyanarayana (W.P. No. 16947/2012) mentioned supra by observing thus:

"5. The Division Bench of this Court by upholding the order of the Tribunal in the above referred case made it clear that this is not ruling given by the Court for the purpose of laying down any law, but as an exceptional case having regard to the hardship faced by the employee, they do not interfere with the order of the Tribunal.

6. Though the said order is not a binding precedent, as the facts are identical and even in this case also the respondent has served for more than 22 years after acquiring the temporary status in Group-D cadre, in our view, he is also entitled to the said benefit. We also make it clear this order is passed keeping in mind the facts of this case and the exceptional circumstances that exists and therefore this judgment shall not be cited as an authority in future. In that view of the matter, we do not see any merit in this writ petition.

Accordingly, this writ petition is dismissed."

(emphasis supplied)

7. From the aforementioned observations of two Division Benches of this Court, it is clear that the Division Benches have not gone into the question of entitlement under the Rules. However they have taken sympathetic view in the matter in favour of the temporary status employee without adverting to the relevant rules. It is also further made clear in the said judgments of two Division Benches relied upon by the respondent that those judgments are not binding precedent and they do not lay down any law, but are rendered in exceptional cases having regard to the hardship faced by the employee. It is also further clarified in the case of Satyanarayana (W.P. No. 16947/2012) that the Judgment passed in the said case shall not be cited as an authority in future. Thus the Judgments of both the Division Benches in the case of Rajeshwari and Satyanarayana cited supra have no binding effect and they cannot be treated as precedent. If it is so, the Tribunal should not have relied upon the dictum laid down by the Division Benches in those judgments to come to the conclusion against the petitioners. It is no doubt true that the Apex Court has dismissed the SLP filed by the Union of India against the Judgment in the case of Rajeshwari. Since the Division Bench in the case of Rajeshwari has concluded that the said judgment was made under exceptional circumstances and that the same does not lay down any law and hence it should not be treated as a precedent, the respondent cannot take benefit of the dismissal of the SLP by the Apex Court.

8. Before proceeding further, it is relevant to note in brief about the Scheme under which the respondent's services were treated as temporary status casual labourer on par with the Group-D employee. The said Scheme is called Casual Labourers (Grant of Temporary Status and Regularization) Scheme ("Scheme" for short). The relevant portions of the Scheme read thus:

"2. Such casual workers engaged for full working hours, viz, 8 hours including 1/2 hour's lunch time will be paid at daily rates on the basis of the minimum of the pay scale for a regular Group "D" official including DA, HRA and CCA.

6. 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefit after regularization as a regular Group "D" official.

7. Conferment of Temporary Status does not automatically imply that the casual labourers would be appointed as a regular Group "D" employees 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.

8. 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/Flood Advance on the same conditions as are applicable to temporary Group "D" employees, provided they furnish two sureties from permanent Government servants of this

Department.

10. Temporary status does not debar dispensing with the service of a casual labourer after following the due procedure.

16. The conferment of temporary status has no relation to availability of sanctioned regular Group "D" posts."

From Clause-8 of the aforementioned Scheme, it is clear that after rendering three years" continuous service after conferment of temporary status, the casual labourers would be treated on par with the temporary Group-D employees for the purpose of contribution to General Provident Fund. They would also be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to the temporary Group-D employees subject to certain conditions. Clause-6 of the Scheme discloses that in case if the temporary status employees are regularized as regular Group-D employees, 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits. Clause-10 of the Scheme makes it clear that temporary status does not debar from dispensing with the service of a casual labourer after following the due procedure, which means that their services may be terminated at any point of time after following the due procedure. Clause-16 of the Scheme amply makes it clear that the conferment of temporary status has no relation to availability of sanctioned regular Group-D posts. The entire reading of the Scheme makes it clear that the temporary employee has no right to claim regularization as Group-D employee. The temporary status employee may be regularized or may not be regularized depending on the facts of each case. The conferment of temporary status has no relation to availability of sanctioned regular Group-D post. Even if the regular Group-D posts are available, the temporary status employee cannot claim the benefit of regularization. No doubt Clause-8 of the Scheme deals with entitlement of casual labourers who have been conferred with temporary status and who have completed three years" of qualifying service. Quite apparently, the benefit to which Casual employees would be entitled to on completion of three years" of service after conferment of temporary status do not include the right to claim pensionary benefits or leave salary entitlement. Even the Executive Instructions issued by the Government vide Office Memorandum No. 66-9/91-SPB-I dated 30.11.1992 also do not include the right to claim the benefits of leave encashment or pensionary benefits provided under Central Civil Services (Leave) Rules, 1972 and Central Civil Services (Pension) Rules, 1972. It is relevant to note that under Central Civil Services (Pension) Rules, 1972 also the temporary status casual labourers are not entitled for pension. Above all, paragraph-16 of the Scheme quite significantly declares that the conferment of temporary status has no relation to availability of sanctioned Group-D posts. Paragraph-16 of the Scheme if read together with the administrative instructions contained in O.M. No. 66-9/91-SPB-I dated 30.11.1992, it would not leave any doubt in our mind that the regularization of services of casual labourer who has been conferred with the

temporary status under the Scheme depends upon several exigencies and imponderables. It is not as if a casual labourer who has been conferred with temporary status under the Scheme, on completion of three years" of service with that status, would automatically and without any overt act from the side of the employer would become a regular Group-D employee. Therefore it would be totally unsafe for this Court to accede to the request of the respondent that since she had put in number of years of service after she was conferred with the temporary status, she should be regarded as regular Group-D employee and on that basis, the pensionary benefits should be given to her. Admittedly, till the date of her leaving the job i.e., till 30.4.2012, her services were not regularized in Group-D post in terms of the Scheme. In the absence of regularization, the respondent is not entitled to the relief claimed by her.

9. In this regard, it is relevant to note certain observations made by the Apex Court in the case of General Manager, North West Railway and Others Vs. Chanda Devi, wherein the Apex Court was considering similar prayer made by the temporary status casual labourer of Department of Railways. In the said matter, the Ministry of Railways had passed an order, on principles that casual labourer employed on projects may be treated as temporary on completion of 360 days of continuous employment. The material contained in the said order issued by the Ministry of Railways is almost on par with the Casual Labourer (Grant of Temporary Status and Regularization) Scheme which is in question. After considering the matter in detail, the Apex Court in the said case has concluded thus:

"32. What was protected by conferring temporary status upon a casual employee was his service and by reason thereof the Pension Rules were not made applicable. A workman had not been and could not have been given a status to which he was not entitled to."

From the aforementioned conclusion, it is clear that the Scheme in question protects the employee by conferring temporary status upon casual employee who was in service and by reasons thereof, the pension rules are not made applicable. The workman cannot be given a status to which he/she was not entitled to. In view of the same, we do not find any ground to sustain the order passed by the CAT inasmuch as the same is opposed to law.

10. Aforementioned conclusion of us, is supported by judgments of two Division Benches of this Court, viz.,

"a) Union of India and others v. K. Annoji Rao in W.P No. 18452/2010 disposed of on 28.10.2013.

b) Chandrashekarachar v. Chief Post Master General and Others in W.P. No. 20669-20669/2003 disposed of on 21.09.2004."

In view of the above, the impugned order is liable to be quashed. Accordingly, the same stands quashed. Writ Petition is allowed.