
(2014) 03 MAD CK 0147

In the Madras High Court

Case No : W.P. No. 2110 of 2014 and M.P. No. 1 of 2014

Union of India

APPELLANT

Vs

K. Punniyakoti and Others

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 300A

Citation : (2014) 2 CTC 777

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram Sathyanarayanan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This Writ Petition is filed by the Ministry of Atomic Energy, Government of India as well as Indira Gandhi Centre for Atomic Research, Department of Atomic Energy, Kalpakkam, challenging the order made in O.A. No. 1496 of 2011 dated 30.8.2013 passed by the Central Administrative Tribunal, Madras Bench. The said O.A. No. 1496 of 2011 was filed by the Respondents 1 to 16 praying for a direction to extend the benefit of pension under old Pension Scheme, Central Civil Service (Pension) Rules, 1972, as they were granted temporary status with effect from 31.12.1999 on condition that 50% of their service rendered under temporary status would be counted for the purpose of retirement benefits, after their superannuation and after rendering three years of continuous service after conferment of temporary status, the Casual Laborers would be treated on par with temporary Group "D" employees for the purpose of contribution to the General Provident Fund. The said O.A. was allowed by the Central Administrative Tribunal, by following the Judgment of the Principal Bench of the Tribunal made in O.A. No. 2332 of 2010 dated 2.12.2011. The Petitioners being aggrieved, have filed this Writ Petition.

2. The contentions of the Petitioners as per the Affidavit filed in support of the Writ Petition are that Indira Gandhi Centre for Atomic Research (hereinafter

called "IGCAR") located in Kalpakkam, Tamil Nadu is a constituent unit of Department of Atomic Energy, Government of India, which is directly under the control of Prime Minister of India. IGCAR is engaged in broad based multidisciplinary programme of scientific research and advanced engineering directed towards the second stage of Indian Nuclear Power Generation Programme, i.e., development of Fast Breeder Reactor Technology. The service conditions and other retirement benefits of employees of Department of Atomic Energy are governed by Rules as applicable to the other Central Government employees. Hence, the Orders issued by the Department of Personnel and Training, Government of India, relating to Service matter/benefits are applicable to the 2nd Petitioner.

3. The employees of IGCAR, who joined service prior to 1.1.2004 are governed by the General Provident Fund (for short "GPF") and such of those employees, who opt for GPF are entitled for pensionary benefits as per Central Civil Service (Pension) Rules, 1972 [for short CCS (Pension) Rules, 1972]. IGCAR had engaged 50 Casual Labourers for cleaning and assisting Technicians and Scientists carrying out the task in various laboratories of IGCAR. They were paid daily rates of pay on need basis. The Government of India has formulated a Casual Labourers (Grant of Temporary Status and Regularisation) Scheme in the year 1993 by the order of Department of Personnel and Training, through O.M. No. 51016/2/90 Esst.(C) dated 10.9.1993. The said Scheme came into effect from 1.9.1993. As per the said Scheme, temporary status would be conferred on all Casual Labourers employed as on the date of the Order and have rendered one year continuous service in Central Government offices, other than the Department of Telecom, Post and Railways. The temporary employees would not be brought on to the permanent establishment, unless they are selected through regular selection process for Group "D" post.

4. Out of 50 Casual Labourers, 34 Casual Labourers were regularised and brought on to the permanent establishment prior to 1.1.2004 against the vacant posts. The private respondents numbering 16, who were granted temporary status could not be appointed to the posts under permanent establishment and, they could be accommodated only in the year 2005, when regular vacancies arose. As per the scheme and Para 5(iv) of IGCAR office Order dated 13.1.2000, 50% of service rendered under temporary status would be counted for the purpose of retirement benefits, after their regularisation. Before their absorption in permanent establishment, new Pension Scheme came into force for Central Government Employees with effect from 1.1.2004. Accordingly, the persons who joined in service on or after 1.1.2004 are governed by new Pension Scheme.

5. The contention of Petitioners are that after introduction of new Pension Scheme, the earlier Order granting 50% of service on temporary basis will have no effect, as no deduction towards GPF from Casual Labourers shall be effected from 1.1.2004 and, the subscription so deducted towards GPF from their salary shall be refunded. Pointing out this fact, the Petitioners opposed the prayer made

by the private Respondents before the Central Administrative Tribunal. The Order passed by the Principal Bench in the Original Application cannot be relied upon as the Tribunal failed to consider all relevant facts, while deciding the said O.A.

6. The learned Counsel appearing for the Petitioners reiterated the averments made in the Affidavit filed in support of the Writ Petition and prayed for setting aside the Order of the Central Administrative Tribunal, as the private Respondents were appointed on regular basis after 1.1.2004, i.e., after introduction of new Pension Scheme.

7. The learned Counsel appearing for the private Respondents on the other hand submitted that the private Respondents' initial date of appointment in whatever capacity should be taken as the date of appointment in IGCAR and they were also granted temporary status from 31.12.1999 with a specific direction to count 50% of the temporary service for the purpose of pension and other benefits and due to want of vacancies in Group "D" post, their absorption in permanent Group "D" post was delayed and new Pension Scheme, which came into effect from 1.1.2004, cannot be applied to persons who, were already in service either as Casual Labourer or on temporary basis. The new Pension Scheme only states that persons appointed on or after 1.1.2004 are governed under new Pension Scheme. The private Respondents having been appointed long ago as Casual Labourers and were granted temporary status from 31.12.1999, cannot be treated as fresh appointees appointed on or after 1.1.2004 and therefore, the Central Administrative Tribunal was justified in allowing the O.A. by following the Order passed by the Principal Bench made in O.A. No. 2332 of 2010 dated 2.12.2011.

8. We have considered the rival submissions of the learned Counsel and perused the materials available on record.

9. The only issue arises for consideration in this Writ Petition is as to whether new Pension Scheme, which came into force from 1.1.2004, is applicable to persons, who were already in employment either on daily wages or as temporary employees and whether, they are entitled to get pension under CCS (Pension) Rules, 1972 on being absorbed in permanent establishment after 1.1.2004.

10. It is not in dispute that the private Respondents, the Respondents 1 to 16 herein were appointed as Casual Labourers on daily wage basis for cleaning and assisting the Technicians and Scientists carrying out the task in various Laboratories of IGCAR. Government of India has introduced a scheme called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993", with effect from 1.9.1993. According to the said scheme, the Casual Labourers employed as on the date of the order, that was as on 1.9.1993, who have rendered one year of continuous service in IGCAR are bound to be conferred temporary employee status and, they are to be regularly selected under Group "D", after selection for permanent absorption.

11. It is not in dispute that 50 Casual Labourers were engaged by IGCAR on

daily wage basis and by an Office Order No. 6/2010 dated 13.1.2000, all the 50 Casual Labourers, including the Respondents 1 to 16 herein were conferred temporary status. Out of the said 50 Temporary Staff, 34 were regularised and brought on permanent establishment prior to 1.1.2004 against vacant posts existed then. Due to want of vacancy in permanent establishment, the Respondents 1 to 16 herein could not be brought under permanent establishment and only in the year 2005, they were absorbed in regular establishment as Group "D" employees.

12. It is also not in dispute that under the scheme above referred, which came into effect from 1.9.1993, 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits, after their absorption in regular post. The same is made clear in Para 5(iv) of IGCAR's Office Order dated 13.1.2000. Para 5(iv) reads as follows:

5(iv) 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after their regularisation.

Thus, it was assured to the Respondents 1 to 16 that at the time of conferring temporary status, they will be brought under Pension Scheme on their regularisation and 50% of their service under temporary status would be counted for retirement benefits.

13. Thus, it is to be noted at this juncture that Respondents 1 to 16 having been granted temporary status from 13.1.2000, they are entitled to get more than 27 years of temporary status service as qualifying service for pension purpose, prior to absorption in the year 2005 in permanent establishment, viz., Group "D" post. The said more than 27 years of service cannot be wiped out or cannot be denied merely because new Pension Scheme was introduced by the Government of India from 1.1.2004. It is inequitable on the part of the Petitioners to contend that Respondents 1 to 16 having been absorbed in permanent establishment after the new Pension Scheme introduced, which came into force with effect from 1.1.2004, they are not entitled to get retirement benefits under GPF Rules/CCS (Pension) Rules, 1972.

14. Payment of pension to Central Government employees are governed under Central Civil Services (Pension) Rules, 1972, which came into force from 1.6.1972. As per Government of India's decisions issued in O.M. No. 38/58/06-P & PW (A) dated 11.10.2006, it was clarified that the employees, who were put on induction training, after their appointment, prior to 1.1.2004 and are paid salary from the date, would be covered under CCS (Pension) Rules, 1972.

15. Rule 14 of CCS (Pension) Rules, 1972 stipulate conditions, subject to which qualifying service for pension can be computed. Under Rule 14(2) it is stated that employees paid from contingencies are employed in types of work requiring services of whole-time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit, brought on to regular establishment, and 50% of their services shall be counted for the

purpose of pension, subject to the following conditions:

- (a) Service paid from contingencies should have been in a job involving whole-time employment (and no part-time for a portion of the day).
- (b) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g., Malis, Chowkidars, Khalasis, etc.
- (c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.
- (d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.
- (e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January, 1961, for which authentic records of service may be available.

[G.I., M.F., O.M. No. F. 12(1)-E. V/68, dated the 14th May, 1968]

Thus, it is clear that persons appointed as contingent staff either on temporary basis or on daily wage basis, who served not as a part-timer and received salary every month, are entitled to count 50% of their service for pension on their regularisation/absorption in regular establishment. The new Pension Scheme, which is called Contribution Pension Scheme, came into force from 1.1.2004 and the same is applicable to all new entrants of Central Government service as per the Scheme, and the Respondents 1 to 16 cannot be treated as new entrants in the Central Government service/IGCAR.

16. The word "new entrant" has got a definite meaning, "a person, who enters recently". A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 1.1.2004, cannot be termed as "new entrant" into service. The new Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 1.1.2004.

17. Similar issue was considered by one of us (N.P.V., J.) in W.P. Nos. 26933 & 26934 of 2007, Order dated 23.4.2008. In the said case, the order of the Government of Tamil Nadu dated 6.8.2004 introducing new Pension Scheme with effect from 1.4.2003 came up for consideration and it was held that persons appointed/recruited after 1.4.2003 are not governed under the Tamil Nadu Pension Rules, 1978 and the persons appointed prior to the said date even in consolidated salary, or whose appointments as Secondary Grade Teachers were approved subsequently with time scale pay after passing Child Psychology Training, whose earlier services were ordered to be counted by the Division Bench of this Court. In the said case the Teachers were not paid salary before

passing of Child Psychology Training, and they were ordered to be treated under the Tamil Nadu Pension Rules, 1978 as their initial appointment was prior to 1.4.2003, and the said order was implemented.

18. In W.P. (MD) No. 14369 of 2010 one of us (N.P.V., J.) considered similar issue, wherein the Petitioner was appointed as Noon-Meal Organiser on consolidated pay from 23.8.1988 to 16.7.2004 and he was appointed in regular service as B.T. Assistant from 17.7.2004 and retired as B.T. Assistant on 31.5.2008. The claim of the Petitioner therein was that new Pension Scheme came into force in the State of Tamil Nadu from 1.4.2003 insofar as the State Government employees are concerned, cannot be applied to him. The contention of the State was that 50% service of the Petitioner rendered from 23.8.1988 to 16.7.2004 cannot be counted as he was absorbed in regular service only on 17.7.2004. The said contention was negatived and, it was held that the initial appointment being 23.8.1988, though consolidated salary was paid upto 16.7.2004, the Petitioner was brought in regular service from 17.7.2004 without any break in service, he was entitled to be treated under Tamil Nadu Pension Rules, 1978 and 50% of the earlier service as Noon-Meal Organiser is to be counted along with regular service as B.T. Assistant for Pension purpose under Rule 11(2) of the Tamil Nadu Pension Rules, 1978. No Appeal was preferred against the said order and the said order was also implemented.

19. Number of similar cases were considered in respect of the State Government employee under the Tamil Nadu Pension Rules, 1978, wherein also Rule 11(2) of the Tamil Nadu Pension Rules, 1978 provides counting of 50% of the contingency service on similar terms and conditions as enumerated under the above Rule 14(2) of CCS (Pension) Rules, 1972. In the said case Plot Watcher of Forest Department, appointed on daily wage basis from 1.9.1982, without interruption was absorbed in regular service from 24.8.2005 and he retired on 31.7.2011. Applying Rule 11(2) of Tamil Nadu Pension Rules, 1978, 50% of the service from 1.9.1982 till 23.8.2005 was ordered to be counted along with the regular service from 24.8.2005 till 31.7.2011 and ordered sanction of eligible pension and other benefits. In the said case also, regularisation was granted after the new Pension Scheme was introduced with effect from 1.4.2003 by the State Government. The said Order was made in W.P. No. 8205 of 2011 dated 19.4.2011, which was confirmed in W.A. No. 27 of 2012 dated 13.2.2012 as well as in SLP No. 16119 of 2012 dated 10.5.2012 and in W.P. No. 14987 of 2012 dated 14.6.2012.

20. At this juncture it is relevant to point out that persons appointed similar to Respondents 1 to 16 on daily wage basis, who were given temporary status by virtue of the Scheme viz., Casual Labourers (Grant of Temporary Status and Regulation) Scheme, 1993, numbering 34, were given the benefit of counting 50% of their temporary status service while calculating Pensionary service and they are entitled to get higher pension by adding 50% of their service. 50 Casual Employees appointed by the Second Petitioner being a class, there cannot be any classification within the said 50 Casual Employees, subsequently made as

temporary employees and absorbed as Group "D" employees.

21. Similar issue regarding fixing of Pension by adding dearness pay by giving cut-off date was held arbitrary and violative of Articles 14 & 16 of the Constitution of India by the Supreme Court in the decision reported in Kallakkurichi Taluk Retired Official Association, Tamilnadu and Others etc. etc Vs. State of Tamilnadu and Others etc. etc, . The discriminatory treatment meted out to retired persons while granting Pension was not approved by the Honourable Supreme Court in the decision reported in D.S. Nakara and Others Vs. Union of India (UOI), .

22. The right of Government servants to receive Pension is not a bounty, and it is a statutory right conferred under the Pension Rules applicable from the date when the Government servant was appointed, either on daily wage/temporary/permanent basis. Permanent absorption having been ordered considering the temporary service rendered earlier, under any stretch of imagination the persons who, were already in employment prior to 1.1.2004 cannot be treated as "fresh appointees" for the purpose of applying new Pension Scheme, which came into force from 1.1.2004.

23. The Hon"ble Supreme Court in the decision reported in State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, , held that the right to receive Pension, Gratuity or Leave Encashment can be treated as right to property in terms of Article 300A of the Constitution of India. If a person eligible to get Pensionary benefit on retirement, if denied by giving narrow interpretation of Rules, it will definitely be in violation of Article 300A of the Constitution of India.

24. Considering the overall aspects in the matter as well as the undisputed fact that the Respondents 1 to 16 have been appointed as Casual Labourers and subsequently conferred temporary status from 31.12.1999, merely because they have been absorbed permanently in the year 2005 in Group "D" service, they cannot be denied of their statutory right. The Tribunal has approached the issue in a proper perspective and we confirm the said findings of the Tribunal. In the result, the Writ Petition is dismissed. No costs. Consequently, M.P. No. 1 of 2014 is closed.