

Union Of India And Ors Vs Shankar Sah

Court: Patna High Court

Date of Decision: Aug. 28, 2020

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: Rajesh Kumar Verma

Final Decision: Dismissed

Judgement

Heard the parties.

Petitioners have prayed for following relief:-

“That the present writ application is being filed on behalf of petitioners for quashing the order dated 15.12.2017 passed in O.A. No. 050/00162/2017

(Shankar Sah Vs. The Union of India & Ors.) passed by the Central Administrative Tribunal, Patna Bench, whereby and whereunder the CAT,

Patna Bench has held that the benefit of PPF and Old Pension Scheme would be applicable to all prior to 01.01.2004 even if they have been

regularized on or after 01.01.2004, consequently disposed of the application with direction upon the respondents to grant to the present applicant the

benefit of the decision referred to herein above.

Briefly stated the facts of the case is that respondent was initially appointed as Extra Departmental Packer at Central Jail Post Office, Bhagalpur. in

account with Bhagalpur Head post office on 01.05.1974., and after getting promotion in postman cadre he joined in the department on 11.05.2005 as

regular employee and retired on 31.12.2015 and his total length of service in the departmental cadre of postman was counted as 10 years 7 months

and 16 days. His pension was fixed under New Pension Scheme which was made effective from 01.01.2004.

It was submitted before the Tribunal that respondent was promoted as Group-D employee on 26.04.2005 but same was against the vacancy

of 2003 as such his service ought to have been counted from 2003 itself and respondent is entitled for pensionary benefit under Old Pension Scheme.

Issue before the Tribunal was whether the applicant who was regularized after 01.01.2004 would be governed by Old Pension Scheme or New

Pension Scheme which was made effective from 01.01.2004.

Respondent has entered in service in postal department as extra departmental employee on 01.05.1974 in Bhagalpur, Postal Division. Extra

departmental employees form a separate cadre and are governed by separate service conditions and recruitment rules. They are not the regular

employees of the postal department. They are brought in the regular cadre of postal department by way of promotion for which 25 % of the Group-

Ã¢â¬ÏDÃ¢â¬Ï/postman vacancies are filled up by promotion from extra departmental staff cadre, which is conducted by the departmental promotion

committee. In order to qualify for such promotion extra departmental employee has to serve the department for a specified period.

New pension scheme which was made effective from 01.01.2004 is applicable to the central government employees, who entered into the service of

the central government after 01.04.2004. Respondent entered into the service of central government on 01.05.1974 although not as a regular employee

but as extra departmental employee and thereafter was promoted in the regular establishment on 11.05.2005 after his name was recommended by the

D.P.C. in its meeting on 26.04.2005 against 2003 vacancies as such his entry in central government cannot be said to be after 01.01.2004. Many

benefits for which regular central government employees are entitled are extended to extra departmental employees as well. However, qualifying

service for grant of pension will be service rendered as regular Group-Ã¢â¬ÏDÃ¢â¬Ï/postman employee as service rendered as Extra Departmental

employee is not pensionable.

A Division Bench of this court in C.W.J.C No.17204 of 2015 (Union of India & Ors. Vs. Mukti Prasad Yadav) since reported in PLJR 2016(2) 480

while considering the issue of New Pension Scheme vis a vis Old Pension Scheme with respect to employees who are not serving as regular

employees in the department in para no. 4 has held as following:

Ã¢â¬Ï4. The Tribunal, noticing the Full Bench judgment as well as the judgment of the Karnataka High Court in this regard in favour of the employees,

held that they would be covered by the Old Pension Scheme. To us, the problem is simple. The new Pension Scheme would apply to persons coming

in Government Service after 01.01.2004. The applicants before the Tribunal were first casual labourers, but with effect from 1989 they acquired the

temporary status or the status of a temporary employee of the Government in the Department of Posts. After three years of such continuous service,

they were entitled to certain benefits, which a permanent Group-D employee gets. They were receiving the same, pending confirmation in service as a

permanent employee. Towards pensionary benefits, G.P.F. deductions were made. Then came cut-off date as 01.01.2004. In the meantime, the

vacancies having occurred in the year 2011, they were substantially appointed as permanent employees. They were regularized as permanent

employees. To us, the answer would be evident from the fact that they were already in service prior to 01.01.2004, though in a temporary status. To

us, it appears that the meaning of the Scheme, which puts the cut-off date as 01.01.2004 is that all those persons, who have come in service after

01.01.2004 would be covered by the New Pension Scheme. As noted and stated above, the applicants before the Tribunal, the respondents herein,

were already in service, though in temporary status prior to the cut-off date. To them, this cut-off date would not apply, and consequently they would

be deemed to be in service on 01.01.2004 having been confirmed as permanent employees in Group-D with effect from 2011. Thus, we find no error

in this judgment and order of the Tribunal.

The Central Administrative Tribunal on the basis of several judgments pronounced by Tribunal as well as High Court and relying upon different

circulars issued by the central government has held that respondent is entitled for benefit under the old pension scheme.

After hearing counsel for the parties and perusing the judgment and order passed by the Central Administrative Tribunal, this Court does not find any

error or infirmity in the order passed by the Central Administrative Tribunal, Patna Bench Patna, requiring any interference of this court in its writ

jurisdiction and accordingly writ petition is dismissed.