

(2012) 05 AHC CK 0240

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 5757 of 2007

Union of India and Others

APPELLANT

Vs

Smt. Chandra Prabha Jain and
Others

RESPONDENT

Date of Decision: May 1, 2012

Citation: (2012) 8 ADJ 287 : (2013) 1 AWC 563 : (2012) 134 FLR 1041

Hon'ble Judges: Rakesh Tiwari, J; Het Singh Yadav, J

Bench: Division Bench

Advocate: Harish Chandra Dubey, for the Appellant;

Final Decision: Dismissed

Judgement

1. Heard counsel for the petitioner and perused the record. This petition is directed against judgment and order dated August, 2006 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application No. 1331 of 1999, Bhanu Prakash Jain v. Union of India and others, by which the respondents were directed to give pensionary/terminal benefits to applicant No. 1 (widow of the deceased original applicant), if such benefits were made admissible to any of the junior to him and in order to do so treat the applicant as regularised one.

2. It appears from record that Bhanu Prakash Jain approached the Tribunal by filing O.A. No. 1331 of 1999, alleging that he was initially appointed as contingent paid Chowkidar in the year 1969 in Firozabad Head Post Office. Later on the post was redesignated as C.P. Farrash. He continued working as C.P. Farrash but was neither regularised nor conferred a temporary status.

3. Pursuant to certain directions issued by the Apex Court, postal department had framed a scheme whereunder casual employees working on 29.11.1989 were conferred a temporary status. Bhanu Prakash Jain was also conferred temporary status w.e.f. 10.1.1993 vide memo dated 4.1.1992 though juniors to him were conferred temporary status w.e.f. 29.11.1989 vide office memo dated 20.11.1991. He

complained against discriminatory attitude of the authorities in this regard. He retired from service on 14.7.1999 after attaining superannuation at the age of 60 years. Though provident fund was released vide order dated 6.8.1999 to him, but as the rest of the claims admissible under the rules were not paid, he prayed before the Tribunal for a direction to the respondents to provide pensionary/terminal benefits to him as after conferment of temporary status, a casual labour completing three years is to be treated at par with temporary status Group "D" employees of the department.

4. During pendency of the aforesaid O.A. Applicant-Bhanu Prakash Jain expired and his heirs and legal representatives were substituted.

5. Claim of the applicant before the Tribunal was opposed by the department (petitioner in this petition), inter alia that since he had not completed requisite period after having been conferred temporary status, hence he was not entitled to pensionary benefits. According to the department, conferment of temporary status does not amount to a regular appointment and services of the applicant were never regularised.

6. After hearing the parties and on perusal of the record, the Tribunal has held thus:

There is no dispute on the point that the original applicant served the respondents for over a period of 30 years. There is no successful denial of the fact that his juniors were accorded temporary status on 29.11.1989 and he was given that status w.e.f. 10.1.1993. Even after 10.1.1993, he served with new status for more than six years. The original applicant has said in so many words that regularisation was the matter which rested in the hands of respondents and he being illiterate, had no control over the same nor the means to know about all this.

What I consider just, in the facts and circumstances of the case, is to ask the respondents to grant pensionary benefits/terminal benefits to the eligible applicants, if such benefits were given to any casual labourer, junior to the original applicant in that category and for doing the same to treat the original applicant as regularised one.

So this O.A. Is finally disposed of with a direction to the respondents to give pensionary/terminal benefits to applicant No. 1 (widow of the deceased original applicant), if such benefits were made admissible to any of the junior to the applicant (late Sri Jain) and in order to do so shall treat him as regularised one. This exercise shall be completed within a period of four months from the date a certified copy of this order is placed before them.

7. Learned counsel for the petitioner has assailed the order impugned on the ground that as per the subsequent circulars which he has not annexed with the present petition, an employee having attained the status of temporary employee, is entitled to all the service benefits including pensionary benefits on completion of

three years of service with temporary status but only after regularisation of his services. According to him, services of late Bhanu Prakash Jain, having not been regularised, he was not entitled for the relief granted by the Tribunal.

8. The submission so made by the counsel for petitioner is against his own document i.e. copy of the circular dated 30.11.1992 issued by the Chief Post Mater General, U.P. appended as Annexure 5 to the writ petition, relevant extract of which reads thus:

Sub: Regularisation of Casual Labourers Vide this office circular letter No. 45-95/87-SPB I dated 12.4.1991 a scheme for giving temporary status to casual labourers fulfilling certain conditions was circulated.

2. In their judgment dated 29.11.1989, the Hon. Supreme Court have held that after rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Group "D" employees of the department of Posts and would thereby be entitled to such benefits as are admissible to Group "D" employees on regular basis.

3. In compliance with the above said directives of the Hon. Supreme Court it has been decided that the Casual Labourers of this department conferred with temporary status as per the scheme circulated in the above said circular No. 45/95/87-SPB-I dated 12.4.1991 be treated at par with temporary Group "D" employees with effect from the date they complete three years of service in the newly acquired temporary status as per the above said scheme. From that date they will be entitled to benefits admissible to temporary Group "D" employees such as:

All kinds of leave admissible to temporary employees, Holidays as admissible to regular employees, 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 completed three years of service in that status while granting them pension and retirement benefits after their regularisation.....

9. From the aforesaid circular, it is ample clear that in compliance of directions issued by the Apex Court, policy decision was taken by the department that those casual labourers who have been conferred with temporary status, are to be treated at part with temporary group "D" employees on completion of three years of service and terminal benefits would be admissible to them as admissible to temporary employees appointed on regular basis. It is not in dispute that applicant before the Tribunal was granted temporary status w.e.f. 10.1.1993 and he retired from service on 14.7.1999, after completing more than three years of service as required for the purpose.

10. So far as subsequent circulars referred to by the counsel for petitioner but not annexed with the petition, are concerned, suffice it to say that any departmental

circular or executive instruction which is not in consonance with the directive issued by the Apex Court, is a nullity.

11. Considering the facts and circumstances of the case, we are of the considered view that conclusions drawn by the Tribunal in the impugned judgment and order, do not suffer from any illegality and infirmity, warranting interference in extra ordinary powers under Art. 226 of the Constitution. For all the reasons stated above, the writ petition fails and is accordingly dismissed, upholding the judgment and order passed by the Tribunal. No order as to costs.