

SUPREME COURT OF INDIA

Indian Council of Agricultural Research and Another

Vs

Santosh

Appeal (Civil) 4499 of 2006 (Arising Out of Slp (C) No. 15643 of 2005)

(Arijit Pasayat and L. S. Panta, JJ)

16.10.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Rajasthan High Court at Jodhpur dismissing the writ petition filed by the present appellants questioning correctness of the order passed by the Central Administrative Tribunal, Jodhpur Bench (in short 'CAT').

The controversy lies within a very narrow compass.

Respondent filed O.A.No.291 of 2003 before the CAT making a grievance that family pension and other terminal benefits were being denied to her by the present appellant on the ground that her deceased husband was not holding permanent status in service. CAT held that though her deceased husband Durga Lal was not holding a permanent status in service, yet respondent was entitled to the family pension and other benefits by treating him to have been regularized on the date of his death.

The High Court dismissed the writ petition holding that since the respondent has been given compassionate appointment, there was no merit in the writ petition.

In support of the appeal, learned counsel submitted that there was a scheme in operation and late Durga Lal was not holding permanent status and was only a casual labourer who had acquired temporary status in view of the scheme. Placing reliance on a Constitution Bench decision of this Court in Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors. 2006 (4) SCC 1, it was held that CAT could not have directed regularization and in any event directed grant of family pension.

In response, learned counsel for the respondent submitted that the deceased late Durga Lal had worked for nearly 20 years and merely because there was no formal order granting him permanent status, it had to be deemed as if late Durga Lal was in regular service. CAT proceeded on the basis that the respondent's claim was acceptable with reference to certain circulars applicable to Railways employees and Full Bench decision of the Tribunal in Gita Rani Santra v. Union of India and Ors. (reported in 1997-2001 AT Full Bench judgment page 295) .

In order to appreciate rival submissions a few provisions need to be noted.

The scheme applicable to employees of appellant No.1 is very specific in its scope of operation. The scheme was issued by the Department of Personnel and Training and the scheme is called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" (in short the 'Scheme')". The said scheme is applicable with effect from 1.9.1993. Clause 4 reads as follows:

"4. Temporary status:

(i) Temporary status would be conferred on all casual labourers who are in employments on the date of issue of this OM and who have rendered a continuous service of at least one year which indicates any must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5-day week)

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular group 'D' posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for group 'D' posts".

Similarly, Clause 5 so far as relevant reads as follows:".....

(v) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularization".

Clause 6 makes the position clear that no benefits other than those specified earlier in the scheme shall be admissible to casual labourers with temporary status. The relevant clause reads as follows:

"No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers."

A bare reading of the provisions makes it clear that late Durga Lal was not entitled to any family pension. The direction given by CAT for regularization is contrary to what has been stated in Uma Devi's case (supra). At para 45 of the judgment it was noted as follows:

"45. While directing that appointments, temporary or casual, be regularised or made permanent. the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain 'not at arm's length' since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution".

Merely because compassionate appointment has been granted to the legal heir of late Durga Lal that does not in any way improve the situation so far as the respondent is concerned. That is an appointment given to a legal heir even if it is accepted to be a regular, subsequent to the death of Durga Lal and such appointment cannot alter the status of late Durga Lal in service. The impugned judgment of the High Court confirming that of the CAT cannot be sustained. Both the CAT's order and judgment of the High Court stand set aside. The appeal is allowed but without any order as to costs.