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Sharda Devi Vs. Union of India and ors.

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Court : Delhi

Decided On : Apr-25-2013

Judge : Pradeep Nandrajog

Appellant : Sharda Devi

Respondent : Union of India and ors.

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: April 25, 2013 + WP (C)3018/2012 SHARDA DEVI Represented by: .....Petitioner Mr.K.K.Sharma, Advocate versus UNION OF INDIA & ORS. ..... Respondents Represented by: Mr.Ashish Nishchal, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE V.KAMESWAR RAO PRADEEP NANDRAJOG, J.

(oral) CM No.6512/2013 (delay in refiling) Allowed. Delay in refiling the writ petition is condoned. WP (C)3018/2012 1. A Letter received by the Supreme Court came to be registered as W.P.(C) No.1276/1986. The letter brought out that daily rated employees/casual workers were appointed by the various Ministries, attached and subordinate offices of the Government of India and for years together a fixed daily wage was paid which was less than even half the amount which was being paid to regular employees performing same job. It was pointed out to the Supreme Court that no holidays were given; no medical facilities were given; the women were denied maternity benefits.

2. Various directions were passed by the Supreme Court resulting in a Casual Labourers (Grant of Temporary Status in Regularization) Scheme 1989 being framed as per which it was notified that casual employees would be paid salary in the minimum of the applicable scale without any increments and upon acquiring temporary status would be entitled to weekly off; maternity leave etc. and additionally would be entitled to grant of increments each year. But the scheme did not envisage payment of any gratuity or pension unless the employee who acquired temporary status was regularized.

3. Husband of the writ petitioner, Late Ram Richpal, was employed as a casual chowkidar on February 01, 1978 by the Director General of Posts and Telegraph i.e. the Ministry of Communication and was accorded temporary status on November 29, 1989. He died in harness on December 25, 2006 and by then had put in 28 years service out of which 18 years service was as Temporary Status Group D Employee. Petitioner made a request for family pension to be paid which was denied.

4. OA No.3463/2010 filed by the petitioner has been dismissed by the Tribunal on April 19, 2011. Review sought was declined on June 02, 2011.

5. The petitioner places reliance upon a decision pronounced by a Bench of the Central Administrative Tribunal at Chandigarh as per which irrespective of casual employees acquiring temporary status being regularized, directions issued were that pension should be paid. The decision is reported as 2004 (1) (CAT) All India Service Law Reporter 204 Badri & Ors. Vs. U.T.Chandigarh & Ors.

6. The decision relied upon was pronounced when the Constitution Bench of the Supreme Court had not rendered its opinion in the decision reported as AIR 200.SC 180.Secretary State of Karnataka Vs. Uma Devi and thus would have no persuasive value as of today.

7. However, on facts we find that the petitioner would have a case.

8. The facts are that one Bakshi, also appointed as a casual chowkidar, but on November 28, 1983, i.e. after 5 years and 9 months of petitioners husband being

appointed as a casual chowkidar, was conferred temporary status on August 03, 1989, and as per order passed on March 14, 1996, was granted benefit of regularization with retrospective effect i.e. August 03, 1989 the date on which he acquired temporary status. The respondents are unable to explain as to why petitioners husband who was appointed as a casual chowkidar on February 01, 1978 was granted temporary status on November 29, 1989 i.e. after 3 months of Bakshi being accorded temporary status in spite of Bakshi having joined more than 5 years after petitioners husband. Further, if by the year 1996 enough vacancies existed entitling Bakshi to be regularized, we find it strange that till when he died in the year 2006 petitioners husband was not regularized.

9. We note that as per the policy those who had acquired temporary status were entitled to be regularized against regular vacancies as and when they arose. In a somewhat similar circumstance, in the decision pronounced by the Supreme Court which is reported as 1996 (7) SCC 11.Yashwant Hari Katakkar Vs. UOI & Ors. the Supreme Court opined that it would be unbelievable that a temporary status employee could not be made permanent even after serving for 18 years. Pension was directed to be paid.

10. If Bakshi, who had joined as a casual chowkidar more than 5 years after petitioners husband, was regularized in service we see no reason why petitioners husband was not so regularized.

11. As per the policy, upon regularization, temporary service rendered has to be counted for purposes of pensionary benefits.

12. The writ petition is allowed. The respondents are directed to sanction family pension to the petitioner and pay the same with effect from the date her husband died in service as also such other benefits to which she would be entitled to with reference to the pensionable service rendered by her husband.

13. Arrears would be paid within 12 weeks failing which the same shall bear interest @ 9% per annum reckoned from 2 months from today till when payment is made.

14. No costs. (PRADEEP NANDRAJOG) JUDGE (V.KAMESWAR RAO) JUDGE APRIL 29 2013 mamta

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