

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7760 of 2015

The Union Of India and Ors

... .. Petitioner/s

Versus

Meena Devi @ Meena Kunwar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. K.N. Singh, ASG-1
Mr. Rakesh Kumar Sinha, CGC.
For the Respondent/s : Mr. Jayant Kumar Karn, Advocate
Mr. Hemant Kumar Karn, Advocate
Mr. Sujeet Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 08-12-2022

On 19.10.2022, the following order was passed:-

Core issue involved in the present petition is whether deceased employee who was appointed as a casual labourer and thereafter stepped into the status of temporary employee w.e.f. 23.10.1992 and died while he was in service on 15.11.2007 and his legal heir- Meena Devi @ Meena Kunwar is entitled to benefit of pension/ family pension or not? Rule 2 of Central Civil Services (Pension) Rules, 1972 reads as under:- "2. Application Save as otherwise provided in these rules, 2[these rules shall apply to Government servants appointed on or before the 31st day of December, 2003] including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on



pensionable establishments, but shall not apply to \$300 (a) railway servants; (b) persons in casual and daily-rated employments; (c) persons paid from contingencies; (d) persons entitled to the benefit of a Contributory Provident Fund; (e) members of the All India Services; persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries; (g) persons employed on contract except when the contract provides otherwise; and (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.” There is no exclusion of temporary employees in the aforementioned Rule, therefore, prima facie one has to draw inference that Pension Rules is applicable to such of those temporary employees also. On this point, learned counsel for the petitioner is hereby directed to ascertain as to whether is there any amendment to Rule 2- Application of the Central Civil Services (Pension) Rules, 1972 or not? Further he is hereby directed to ascertain as to whether Pension Rules published by Swami, Item No. 13 relates to Miscellaneous in which it is narrated that what are the benefits available to temporary employees. Is it factual aspect with reference to original records of the Government of India’s decision that whether temporary government servants are entitled to pension, retirement gratuity/ death gratuity, family pension on par with permanent government servants under Pension Rules, 1972 or not? Aforesaid instruction shall be obtained before the next date of hearing. Re-list this matter on 17.11.2022.

Thereafter, matter was further heard on 24.11.2022



and the following order was passed:-

Pursuant to the previous order read with query to the petitioner, supplementary affidavit dated 14.11.2022 is presented along with documents relating to scheme of Casual Labourers. Para 2 of Annexure- P/2 of the supplementary affidavit is relating to Casual Labourers (Grant of Temporary Status and Regularization) Scheme. Para 5 is relating to Benefits to Casual Labourers on completion of three years' service in temporary status, which reads as under:- "5. Benefits to casual labourers on completion of three years' service in temporary status.- In their judgment, dated 29-11-1989, the Hon'ble 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. 2. In compliance with the above- said directive of the Hon'ble 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 - (1) All kinds of leave admissible to temporary employees; (2) Holidays as admissible to regular employees; (3) 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 complete three years of service in that status while granting them pension and retirement benefits after their regularization; (underline supplied) (4) Central Government Employees' Insurance Scheme; (5) General Provident Fund; (6) Medical Aid; (7) Leave Travel Concession; (8) All advances admissible to temporary Group 'D' employees; (9) Bonus. 3. Further action may be taken accordingly and proper service record of such employees may also be maintained." Reading of the aforesaid scheme, Sub-clause 3 of Clause 2 of para 5 is crystal clear that temporary employee is entitled to pension and retirement benefits, if he has completed three years of service in the temporary status followed by regularization. Learned counsel for the petitioner pointed out that respondent is not entitled to regularization in the light of supplementary affidavit filed on behalf of petitioner dated 21st September, 2022 (Para 7, 10 and 11). It is evident that deceased- Vijay Kishore who died while working as a temporary status on 23.10.1992 whereas the regularization has been ordered to such of those persons who have entered into the temporary status in the year 1989 and that too only three persons were stated to have been regularized. On the other hand, learned counsel for the respondent relied on Item No. 30 of Swamy's Pension Compilation that if temporary employee who died in service, his legal heirs are entitled to family pension in the light of temporary Rules i.e. Central Civil Services (Temporary Service) Rules, 1965 read with Central Civil Services (Pension) Rules, 1972. Perusal of Central Civil Services (Pension) Rules, 1972 there is no



amendment incorporating that legal heirs of temporary employees are also entitled to family pension. Therefore, it is necessary to have authenticated document in respect of Item No. 30 of Swamy's Pension Compilation. In this regard, learned counsel for respondent is hereby directed to furnish authenticated document before the next date of hearing.

Re-list this matter on 08.12.2022.

Brief facts of the case are that respondent's husband was appointed as a Packer at Majharia Post Office on 08.12.1987. On 23.10.1991 he was directed to work as a Night Guard at Bara Chakia Post Office. He was granted temporary status from 23.10.1992 vide order dated 24.10.1995. He had suffered injury during the course of the duty at Barachakia, Post Office on 20/21.09.2004. Thereafter, he was transferred from Bara Chakia to Damodarpur S.O. He died on 15.11.2007 while holding the post of temporary status. In the year 2008 respondent submitted application for grant of family pension and other pensionery benefits and it was declined. In the result respondent filed O.A No. 164 of 2008 before the Central Administrative Tribunal and it was allowed on 28.03.2013.

Feeling aggrieved by the order of the Central Administrative Tribunal dated 20.03.2013, Union of India and ors. filed present CWJC No. 7760 of 2015.



Today learned counsel for the respondent furnished Temporary Service Rules and Central Civil Services (Temporary Service Rules, 1965), (for short Rules, 1965) he is relying on Rule 10(2) and relating to family pension and death gratuity Sub Rule 2 of Rule 10 reads as under:-

“(2) In the event of death of a temporary Govt. servant while in service, his family shall be eligible for family pension and death gratuity at the same scale and under the same provisions as are applicable to permanent Central Civilian Government servants under the Central Civil Services (Pension) Rules, 1972.”

On the other hand learned counsel for the petitioner's department resisted the aforesaid contention of the respondent with reference to Sub Rule (4) of Rule 1 Rules, 1965 which reads as under:-

“Rule 1. Short, title commencement and application.

Sub Rule (4)- *Nothing in these rules shall apply to:-*

- (a) railway servants;*
- (b) Government servants not in whole-time employment;*
- (c) Government Servants engaged on contracts;*
- (d) Government servants paid out of contingencies;*
- (e) persons employed in extra-temporary establishments or in work-charged establishments other than the persons*



employed temporarily and who have opted for pensionary benefits.

(f) non-departmental telegraphists and telegraphmen employed in the Posts and Telegraphs Department;

(g) such other categories of employees as may be specified by the Central Government by notification published in the Official gazette.

And it is further contended that applicability clause under the Central Civil Services(Pension), Rules 1972, deceased employee or legal heirs of the deceased temporary employee would not fit into the applicability clause of Rules,1972.

No doubt as and when Sub Rule 2 of Rule 10 incorporated on 22nd February, 1989 necessary amendment has not been carried out by the Government in so far as amending Rule 1(4) of Rules, 1965 and applicability clause of Rules, 1972 to the extent of extending family pension and gratuity to legal heir of a deceased temporary government servant vide Sub Rule 2 of Rule 10 of Rules, 1965.

The Supreme Court laid down the principles of Rule of harmonious construction in the case of CIT vs. Hindustan Bulk Carriers:-

1. The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them.



2. *The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile the differences. When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way so that effect is given to both the provisions as much as possible.*

3. *Courts must also keep in mind that interpretation that reduces one provision to a useless number or dead is not harmonious construction.*

To harmonize is not to destroy any statutory provision or to render it futile.

In the case of **Venkataramana Devaru v. State of Mysore (AIR 1958 SC 255)**, **Calcutta Gas Company Pvt. Limited v State of West Bengal (AIR) 1962 SC 1044**, **Commissioner of Sales Tax, MP v Radha Krishna(1979) 2 SCC 249** and **Sirsilk Ltd. V Govt. of Andhra Pradesh (AIR1964 SC 160)** wherein Courts have examined harmonious construction of provision of law and ultimately rule of beneficial construction is decided.

Rule of Beneficial Construction

Beneficent construction involved giving the widest meaning possible to the statutes. When there are two or more possible ways of interpreting a section or a word, the meaning which gives relief and protects the benefits which are purported to be given by the legislation, should be chosen. A beneficial statute has to be construed in its correct perspective so as to fructify the legislative intent. Although beneficial



legislation does receive liberal interpretation, the courts try to remain within the scheme. It is also true that once the provision envisages the conferment of benefit limited in point of time and subject to the fulfillment of certain conditions, their non-compliance will have the effect of nullifying the benefit. There should be due stress and emphasis to Directive Principles of State Policy and any international convention on the subject.

There is no set principle of construction that a beneficial legislation should always be retrospectively operated although such legislation is either expressly or by necessary intendment not made retrospective. Further, the rule of interpretation can only be resorted to without doing any violence to the language of the statute. In case of any exception when the implementation of the beneficent act is restricted the Court would construe it narrowly so as not to unduly expand the area or scope of exception. The liberal construction can only flow from the language of the act and there cannot be placing of unnatural interpretation on the words contained in the enactment. Also, beneficial construction does not permit rising of any presumption that protection of widest amplitude must be deemed to have been conferred on those for whose benefit the legislation may have been enacted.

Beneficial Construction of statutes have enormously played an important role in the development and beneficial interpretation of socio-economic legislations and have always encouraged the Indian legislators to make more laws in



favour of the backward class of people in India.

Comparison between the rule of Harmonious Construction and rule of Beneficial Construction.

Harmonious construction is only applied where there are a conflict between the meaning coming out of two different sections and the meaning in a situation of which section to apply? Whereas the rule of Beneficial Construction is applied in the case where any construction may do any benefit to the society or any group of people and are basically applied in the socio-economic legislations. Hence, there is no conflict between the meaning of any sections and meaning attributed to them. In the result, rule of harmonious construction and beneficial construction both play an importance in the interpretation of statutes and are two important rules of interpretation.

Apex Court in the case of ***Union of India vs. Prabahakran Vijay Kumar and ors.*** Reported in (2008) 9 SCC 527 in para 12 it is held as under:-

12. *It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. v. Workmen [AIR 1961 SC 647] (AIR para 7), Jeewanlal Ltd. v. Appellate Authority [(1984) 4 SCC 356 : 1984 SCC (L&S) 753 : AIR 1984 SC 1842] (AIR para*



11), Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd. [(1981) 2 SCC 238 : 1981 SCC (L&S) 316 : AIR 1981 SC 852] (AIR para 13), S.M. Nilajkar v. Telecom District Manager [(2003) 4 SCC 27 : 2003 SCC (L&S) 380] (SCC para 12).

In the light of these facts and circumstances, even though they are contradictory provision of law relating to applicability clause in so far as, Rules, 1965 and Rule 1972. At the same time in not carrying out necessary amendment by the Government the litigant should not be penalised. We have to take note of the intent of the Government in incorporating Sub Rule 2 of 10 of Rules 1965 and it is a social legislation. Therefore, we have to draw inference that beneficial legislation to a beneficiary is required to be extended with reference to various judicial pronouncements on the principle of beneficial legislation. In the result the impugned order of the Central Administrative Tribunal dated 20.03.2013 passed in O.A. No. 164 of 2008 is affirmed while rejecting the Government Department CWJC No. 7760 of 2015 (present writ petition).

Respondent is a legal heir and she is awaiting for certain monetary benefits for more than decade, therefore, the petitioner department is hereby directed to calculate monetary benefits in the light of Sub Rule 2 of 10 of Rules 1965 and the



same shall be extended to the respondent within a period of three months from the date of receipt of this order, along with interest at the rate of 8%p.a. from 01.03.2008, in the light of the fact that respondent's husband died on 15.11.1997 and in the light of Apex Court's decision in the case of **Vijay L. Mehrotra v. State of U.P., (2001) 9 SCC 687.**

(P. B. Bajanthri, J)

(Purnendu Singh, J)

minu/aditya

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	15.12.2022.
Transmission Date	N.A.

