

Director General Office Of Dg ... vs Magi H Desai on 24 March, 2023

Author: M.R. Shah

Bench: C.T. Ravikumar, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1787 OF 2023

Director General,
Doordarshan Prasar Bharti Corporation of India & Anr. ..Appellants

Versus

Smt. Magi H Desai ..Respondent

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 17.02.2022 passed by the High Court of Gujarat at Ahmedabad in R/Special Civil Application No. 14592/2021, by which the Division Bench of the High Court has allowed the said writ petition preferred by the respondent herein and has directed that the services of the respondent herein – original writ petitioner rendered as contractual shall be liable to be counted as temporary service for the purpose of calculating the qualifying service for pensionary/retiral benefits, the Director General, Doordarshan Prasar Bharti Corporation of India and another have preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under:

That the respondent herein – original applicant was engaged as a General Assistant on contract/casual basis in the year 1985. The services of the respondent as General Assistant on contract/casual basis were thereafter extended from time to time, however, with break of few days. The original applicant thereafter filed Original Application No. 32/1987 before the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short, ‘the Tribunal’). The said OA was partly allowed vide order dated 30.08.1990 with a direction to the department – appellants herein to pay her the same salary and allowances that were being paid to other regular General Assistants/Clerks from October, 1990 with arrears.

2.1 That thereafter, pursuant to the decision of the Principal Bench of the Central Administrative Tribunal, New Delhi to regularise casual employees by way of framing of scheme, the services of the original applicant came to be regularised as Lower Division Clerk with effect from 31.03.1995 pursuant to the Scheme of Regularisation of Casual Staff Artists of Doordarshan, 1992/94. The original application was given the regular scale of Lower Division Clerk from the date of regularisation on the said post.

2.2 That thereafter the original applicant approached the Tribunal seeking consideration of her past service. The said OA came to be dismissed, which was the subject matter of writ petition before the High Court. The High Court was pleased to permit the original applicant to submit representation to the department. That thereafter the respondent – original applicant submitted representation dated 11.4.2014. Vide order dated 18.09.2014, the department rejected the representation of the respondent for giving her the benefit of casual/contractual services rendered by her from 1985 till 31.03.1995 for calculating the pensionary/service benefits.

2.3 That thereafter, the original applicant filed another OA No. 446/2014 before the Tribunal. By a detailed judgment and order dated 08.09.2021, the Tribunal dismissed the said OA by observing that the services rendered by the respondent as contractual/casual cannot be treated and/or considered as temporary service and therefore the services rendered as such shall not be counted for the purpose of retiral benefits/service benefits. The judgment and order passed by the Tribunal dismissing the OA was the subject matter of writ petition before the High Court. By the impugned judgment and order, the Division Bench of the High Court has observed that the services in temporary capacity will include the classes of temporary servants such as casual or even contractual. By observing so and relying upon Rule 13 of the Rules applicable, the High Court has allowed the writ petition and has directed that the services of the respondent – the writ petitioner rendered as contractual/casual shall be liable to be counted as temporary service for the purposes of calculating qualifying service in accordance with the rules and accordingly she shall be paid the pension on her retirement.

The impugned judgment and order passed by the High Court is the subject matter of the present appeal.

3. Shri Rajeev Sharma, learned Senior Advocate appearing on behalf of the appellants has vehemently submitted that admittedly since 1985 till her services were regularised on 31.03.1995, the respondent rendered the services as a casual/contractual employee. It is submitted that the services rendered as a casual/contractual employee cannot be said to be rendering services as a temporary employee and/or rendering a temporary service. It is submitted that therefore proviso to Rule 13 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the '1972 Rules') shall not be applicable and therefore the services rendered as such as casual/contractual employee cannot be counted for the purposes of pensionary benefits/service benefits. 3.1 It is

submitted that the High Court has therefore misinterpreted Rule 13 of the 1972 rules and has materially erred in observing and holding that the services in temporary capacity will include the classes of temporary service such as casual or even contractual. 3.2 Making above submissions, it is prayed to allow the present appeal.

4. The present appeal is vehemently opposed by Shri Hardik Vora, learned counsel appearing on behalf of the respondent. It is submitted that as such the respondent is claiming 50% of the services rendered as casual or contractual. It is submitted that in other departments, the schemes provide for 50% of the services rendered as casual be treated as services rendered as temporary service and therefore the same is to be counted for the purposes of pensionary benefits/service benefits. However, learned counsel appearing on behalf of the respondent is not in a position to point out any statutory provision under which the respondent is claiming 50% services rendered as a casual/contractual for the purposes of pensionary benefits/service benefits. However, it is submitted that as in the other departments, such a scheme is there and therefore the respondent is claiming the same benefit.

5. We have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted and it is an admitted position that for the period between 1985 till 31.03.1995 the respondent served as a casual/contractual employee and her services came to be regularised as per the Scheme w.e.f. 31.03.1995. As such, under the Scheme of Regularisation, there is no mention that the casual services shall be counted towards service benefits/pensionary benefits. Even as per the clarification issued by the DOPT in the year 2009, it was clarified that such appointee is not entitled to claim any benefit out of the services rendered by him/her on contractual basis before he/she was appointed on regular basis on a government post.

6. The respondent is governed by the Central Civil Services (Pension) Rules, 1972. Rules 13 & 14 of the 1972 Rules, which are relevant for deciding the controversy in the present case, read as under:

“13. Commencement of qualifying service - Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post :

Provided further that –

(a) in the case of a Government servant in a Group 'D'.....

(b) in the case of a Government servant not covered by clause (a),...

14. Conditions subject to which service qualifies:

(1) The service of a Government servant shall not qualify, unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "Service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.

(3) In the case of a Government servant belonging to a State Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify :

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.”

7. Rule 13 of the 1972 Rules provides for commencement of qualifying service. As per Rule 13, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. It further provides that such officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post. Therefore, the services rendered on a substantive post or services rendered as officiating or temporary service shall be treated as qualifying service. Service rendered as casual/contractual cannot be said to be officiating or temporary service. Even the services rendered as temporary service can be considered as qualifying service provided that the officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post. Service rendered as casual/contractual cannot be said to be service rendered on a substantive appointment.

8. Under the circumstances and on a fair reading and interpretation of Rule 13 of the 1972 Rules, the High Court has committed a very serious error in observing that the services in temporary capacity will include the classes of temporary service such as casual or even contractual. The High Court has materially erred in observing that the contractual service would be qualified as service in a temporary capacity. The question is not whether the services rendered by a contractual employee would be qualified as service in a temporary capacity. The question is, whether, in fact, such contractual employee rendered the services as temporary or not.

9. Now so far as the submission on behalf of the respondent that in other departments under the scheme the employees of such departments are entitled to their services rendered as casual/contractual counted for qualifying service for pensionary/service benefits is concerned,

merely because some other departments might have such schemes, the respondent shall not be entitled to the same benefit in absence of any scheme in the appellants' department/department in which the respondent rendered her services. The appellant – Doordarshan Prasar Bharti Corporation of India is an autonomous independent department/body. As observed hereinabove, neither the rule nor the regularisation scheme provide that services rendered as casual/contractual shall be treated as temporary service and/or the same shall be counted for the purposes of pensionary/service benefits.

10. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order passed by the Tribunal dismissing the Original Application is hereby restored. Present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

..... J.
[M.R. SHAH]

NEW DELHI;
MARCH 24, 2023.

..... J.
[C.T. RAVIKUMAR]