(2017) 1 AIRJharR 319 : (2017) 153 FLR 519 : (2017) 1 JBCJ 230 : (2017) 1 JCR 722

JHARKHAND HIGH COURT

Case No: Writ Petition (S) No. 5831 of 2015

Kuresha Bibi	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision: Dec. 8, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2017) 1 AIRJharR 319 : (2017) 153 FLR 519 : (2017) 1 JBCJ 230 : (2017) 1 JCR 722

Hon'ble Judges: Mr. H.C. Mishra and Mr. Dr. S.N. Pathak, JJ.

Bench: Division Bench

Advocate: Mr. Rajeev Ranjan Tiwary, Advocate, for the Petitioner; Mr. Mahesh Tewari and Mr. Abhishek Kumar Dubey, Advocates, for the Union of India

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

1. Heard learned counsel for the petitioner and learned counsel for the Union of India.

2. Petitioner is aggrieved by the order dated 25.8.2014 passed by the Central Administrative Tribunal, Circuit Bench, Ranchi, in O.A. No.164 of 2012(R), whereby the O.A. filed by the petitioner, who is widow of Late Nazruddin Mian, a deceased employee of the Railways, for direction upon the respondent Railways to grant her family pension as per the Family Pension Rules, 1964, from the date of death of her husband, has been dismissed by the Central Administrative Tribunal.

3. The facts of the case lie in a short compass. The deceased husband of the petitioner, namely, Nazruddin Mian was appointed as CPC (Contingency Paid Casual) Khalasi under I.O.W., Madhupur, under Eastern Railway, on daily basis. After serving uninterruptedly for about 18 years, Md. Nazruddin Mian died on 01.07.1993, without being absorbed against any regular vacancy. After the death of the deceased employee,

the petitioner being the widow, filed representation before Railways claiming that she was entitled to the family pension as her husband had rendered service for more than eighteen years in the Railways, but her representation dated 5.09.2011 was kept pending by the Railways. Thereafter, the petitioner moved before the Central Administrative Tribunal, Circuit Bench, Ranchi in O.A. No.164 of 2012(R).

4. According to the respondent''s case as per the written statement filed before the Tribunal, the husband of the petitioner while working as CPC Khalasi, died on 1.07.1993 before his absorption against a regular post. The benefits applicable to CPC Khalasi, like provident fund and gratuity etc., were paid to the legal heir of the deceased employee on 30.09.1993 as per the relevant Rules, but the other retirement benefits could not be extended as the Rules did not permit the same. According to the respondent''s case as per the Railway Boards Letter No.F[P] 65 PN-1/21 dated 21st October, 1965, casual labourers could be brought into pensionable establishment only against regular post. Since the deceased employee had died before being absorbed against a regular post, the deceased was not entitled to pension and hence there was no question of family pension to the wife of the deceased.

5. The Tribunal found that as per the Railways Board Circular dated 21st October 1965, the husband of the applicant was yet to be absorbed in Railway and was a contingent paid casual labour, the pension Rules were not attracted. The Tribunal also found that the husband of the petitioner had died in the year 1993 and thereafter, the petitioner had filed the O.A. claiming family pension in the year 2012, which was again a stale claim. The Tribunal accordingly, rejected the original application filed by the petitioner by the impugned order dated 25th August 2014.

6. Learned counsel for the petitioner has submitted that admittedly according to the Railway''s case, the husband of the petitioner had worked for more than 18 years as CPC Khalasi, and as such, in view of the length of his service, according to Chapter XXV of the Indian Railway Establishment Manual, the husband of the petitioner had to be deemed to have acquired the temporary status prior to his death.

7. In support of his contention, learned counsel for the petitioner has relied upon the decision of the Hon''ble Supreme Court of India in **L.Robert D''Souza v. Executive Engineer, Southern Railway and Anr., reported in (1982) 1 SCC 645.** The appellant, in the said case, had joined the service of Railways as Gangman and in course of his service he was transferred to several places. When he was working as Lascar, in the year 1974, his services were terminated. The said termination was challenged by the aforesaid applicant and in that case, the Supreme Court of India had taken note of Rule 2501 in Chapter XXV of the Indian Railway Establishment Manual, which reads as follows:-

"2501. Definition (a) ''Casual labour'' refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions

applicable to permanent and temporary staff do not apply to such labour.

(b) The casual labour on railways should be employed only in the following types of cases, namely:

(i) Staff paid from contingencies except those retained for more than six months continuously. Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment.

(ii) ---------- .

(iii) Seasonal labour who are sanctioned for specific works of less than six months'' duration. If such labour is shifted from one work to another of the same type, e.g., relaying and the total continuous period of such work at any one time is more than six months'' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.''

Taking into consideration the Rule that the causal labour is not liable to be transferred, but the said appellant had been transferred on innumerable occasions, the Apex Court held that since the said appellant had worked continuously for twenty years in the construction unit, he acquired the status of temporary railway servant, and accordingly, termination of his service in the manner it was done, could not be sustained.

8. Learned counsel for the petitioner also placed reliance upon the decision of the Supreme Court of India in **Union of India and Ors. v. Basant Lal and Ors., reported in (1992) 2 SCC 679**, wherein where also, the services of the respondents had been terminated by an oral order. Those Railway employees moved before the Central Administrative Tribunal, which held that since the applicants had completed more than 120 days of continuous service, they were to be deemed to have acquired temporary status, and accordingly the termination of services without giving them a notice was in violation of the provisions of Rule 2304 of the Indian Railway Establishment Manual and was not sustainable in law. The order passed by the Central Administrative Tribunal was upheld up by the Apex Court, as in that case, it was admitted by the Railway that the casual labourers, who had worked continuously for more than 120 days in open line and who had worked for more than 360 days on projects, acquire temporary status and they shall be entitled to the rights and privileges admissible to temporary Railway servants as laid down in Chapter XXIII of the Indian Railway Establishment Manual.

9. Learned counsel has also placed reliance upon an unreported decision of a Division Bench of this Court in WP(S) No.1602 of 2009 (Union of India v. Sumitra Devi and Ors.), decided on 3.08.2016, wherein where, the Railways had challenged the Judgment of the

Central Administrative Tribunal, whereby, the respondent No.1 in the said case was allowed the benefit of the family pension upon the death of her deceased husband, who had rendered continuous service over six years, working as a substitute employee in the Railways. This Court, placed reliance upon the decision of the Apex Court in **Prabhavati Devi v. Union Of India, reported in (1996) 7 SCC 27**, wherein it was held that if an employee acquiring the status of a "substitute", works continuously for over a year, his widow and children were entitled to family pension after his death. This Court upheld the decision of the Central Administrative Tribunal, and the writ application was dismissed.

10. Placing reliance on these decisions, learned counsel for the petitioner submitted that in view of the admitted fact that the husband of the petitioner had also rendered about 18 years of continuous service as CPC Khalasi, the husband of the petitioner shall be deemed to have acquired the regular status in Railway service and accordingly, upon the death of her husband, the petitioner shall be entitled to the family pension in accordance with the Family Pension Rules, 1964. Learned counsel accordingly, submitted that the impugned order dated 25.8.2014 passed by the Central Administrative Tribunal, Circuit Bench, Ranchi, in O.A. No.164 of 2012(R), cannot be sustained in the eyes of law, and it is a fit case in which the petitioner be allowed the family pension with effect from the date of death of her husband.

11. Learned counsel for the Union of India representing the Railways, on the other hand, has opposed the prayer and has submitted that in all the Judgments referred to by the learned counsel for the petitioner, the Railway employees in those cases, were either deemed to had acquired the temporary status or the employee was already working as substitute, but in the present case, the employee was working only as a CPC Khalasi on daily wage basis. He was not even getting the regular pay scale and his services were never regularised by the Railways prior to his death and accordingly, the deceased employee was not eligible to the benefits of the pension scheme. Hence, there is no question of entitlement of family pension to the petitioner, who is the wife of the deceased employee.

12. In support of his contention, learned counsel for the Union of India has placed reliance upon the decision of the Supreme Court of India in **Union of India & Ors. v. Rabia Bikaner etc., reported in AIR 1997 SC 2843**, wherein where the Apex Court taking note of its decision in Prabhavati Devi"s case (supra) has held that no retiral benefit was available to the widow of the casual labour, who had not been regularised till his death. In the said case, it has been discussed that as per the Rules, every casual labour employed in the railway administration for six months is entitled to temporary status. Thereafter they are to be empanelled and after empanelment they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On their appointment, they are also required to put in minimum service of one year in the temporary post and then only his widow would be eligible to the family pension under the Family Pension Scheme, 1964. Referring to Prabhavati Devi"s case

(supra), it was found that the husband of Prabhavati Devi had worked as casual labour and had obtained the status of substitute, as defined in Rule 2315 of the Railway Establishment Manual. He was working in a regular establishment on a regular scale of pay and allowances. He was also screened and was also appointed to the temporary status, but instead of being given appointment to a temporary post, he was treated as substitute and appointed to the vacancy when the regular candidates went on leave. Since he died while working in a regular post, his widow became eligible to claim the benefits of the pension scheme. But in case of Rabia Bikaner etc., since their husbands had not acquired the temporary status, nor they were working as substitute, and they died before being regularised in service, their widows were not found to be entitled to family pension. Placing reliance on this decision, learned counsel for the Union of India submitted that the case of the petitioner is fully covered by the decision of the Apex Court in Rabia Bikaner''s Case (supra) and fit to be dismissed.

13. Having heard learned counsels for both the sides and upon going through the record, we find that the petitioner has not brought on record any order to show that the husband of the petitioner had acquired any temporary status in the Railways, or that he was working as substitute. The impugned order clearly shows that the deceased husband of the petitioner was only a casual worker working on daily wage basis. He died without being absorbed in the Railway service and he had never acquired the temporary employee status in the Railways, nor he was a substitute in the Railway. Though learned counsel for the petitioner has heavily relied upon the decision of the Apex Court in L.Robert D''Souza''s case (supra), submitting that in view of Rule 2501 of the Railway Establishment Manual, the husband of the petitioner would be deemed to have acquired the temporary status, but we find nothing in the record to show that the husband of the petitioner was ever empanelled and after empanelment he was screened by the competent authority for being appointed against any temporary post. On his appointment on a temporary post, he was also required to put in minimum service of one year in the temporary post and then only the petitioner would have become eligible to the family pension under the Family Pension Scheme, 1964. In absence of any document to establish these facts, we are unable to accept the contention of the learned counsel for the petitioner that in view of Rule 2501 of the Railway Establishment Manual, the husband of the petitioner shall be deemed to have acquired the temporary status, thus, entitling the petitioner to family pension. In the facts of this case, we find that the case of the petitioner is fully covered by the decision of the Apex Court in Rabia Bikaner''s Case (supra), and since the petitioner''s husband had died while working on daily wages basis only, as CPC Khalasi, the petitioner is not entitled to get the benefits of the Family Pension Scheme, 1964.

14. We also agree with the finding given by the Central Administrative Tribunal that the husband of the petitioner had died in the year 1993 itself and the petitioner approached the Central Administration Tribunal in the year 2012 and as such, her claim was stale one. We do not find any illegality and/or irregularity in the impugned order dated 25th

August, 2014 passed by the Central Administrative Tribunal, Circuit Bench, Ranchi, in O.A. No.164 of 2012(R).

15. There is no merit in this writ application and the same is accordingly, dismissed.