

* **HIGH COURT OF DELHI: NEW DELHI**

+ **Writ Petition (Civil) No. 1762/2007**

% Judgment reserved on: July 09, 2009
Judgment delivered on: July 15, 2009

Union of India Petitioner

Through: Mr.P.K.Dey with
Mr.N.B.Joshi Advocats

Versus

Smt. Santosh Respondent

Through: Mr.A.K.Trivedi, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

A.K. PATHAK, J.

1. Vide order dated 8th August, 2006 passed in OA No.
165/2006 the Central Administrative Tribunal, Principal Bench,

New Delhi (for short hereinafter referred to as “Tribunal”) has directed the Petitioner to accord family pension to the Respondent from the due date along with all arrears within a period of two months. Being aggrieved by this order, Petitioner has filed this writ petition praying therein that the order passed by the Tribunal be quashed.

2. Respondent’s case as set up before the Tribunal is that her late husband Shri Chottey Lal was appointed as Khallasi with the Petitioner on casual basis. On completion of 120 days he was granted temporary status and regular pay scale. Thereafter, he was screened and declared medically fit in B-1 category. In the year 1990 he was considered for regularization, but before completion of process of regularization he unfortunately died on 22nd May, 1991 in a train accident while performing his duties. Claim of the Respondent for grant of family pension was illegally rejected by the Petitioner vide order dated 6th December, 2004 on the ground that Shri Chottey Lal was not a regular employee.

3. As per the Petitioner, Shri Chottey Lal was appointed as casual labour on 5th May, 1984 and after completion of 120 days he was engaged as substitute C & W Khallasi. Screening of Shri

Chottey Lal was to be held in the year 1993 along with others, but unfortunately he expired on 22nd May, 1991. At the time of his death, Shri Chottey Lal was a casual labour and his widow was not entitled to family pension.

4. Tribunal held that Respondent in para 4.2 of Original Application had specifically averred that Shri Chottey Lal, having been employed as a “substitute” had acquired temporary status after working for four months. This averment was not specifically controverted by the Petitioner in their reply. It was only stated that Shri Chottey Lal could not be screened along with others and none of his juniors were regularized till 22nd May, 1991. Under the Establishment Rules of Railways it was provided that a casual worker or a substitute who works for 120 days continuously without any break acquires status of a temporary servant. Petitioner had itself taken a plea of completion of 120 days on 31st July, 1988 and engagement of husband of the Respondent as substitute C & W Khallasi provisionally in the grade of Rs.750-940/- on 11th August, 1989, therefore, Late Shri Chottey Lal had acquired temporary status on expiry of four months. It was also observed by the Tribunal that casual worker

is never appointed or engaged on a definite pay scale. Tribunal, by placing reliance on **Prabhavati Devi Vs. Union of India & Others**, reported in **(1996) 7 Supreme Court Cases 27**, has held that Shri Chottey Lal had acquired temporary status and his widow was entitled to family pension.

5. Learned counsel for the Petitioner has vehemently contended that Shri Chottey Lal was initially appointed as casual labour and after completion of 120 days he was engaged as substitute C & W Khallasi pending screening provisionally in the grade of Rs.750-940 on 11th August, 1989. Since he was not screened for regular post till he died, he had not acquired temporary status as per the rules. He was a casual labour, therefore, his widow was not entitled to family pension. As per para 1501 of Railway Establishment Manual, “casual labour”, including “casual labour with temporary status”, would not fall within the ambit and scope of “temporary railway servant”, thus, Shri Chottey Lal was not entitled to rights and privileges as available to a temporary railway servant. Accordingly, Respondent being widow of a casual labour was not entitled to the benefit of family pension. He has placed reliance on **Union of**

India and Others Vs. Rabia Bikaner and Others reported in **(1997) 6 Supreme Court Cases 580.** It was further contented that Prabhavati Devi's case (Supra) was taken note of in this judgment by the Supreme Court but was distinguished and cannot be relied upon. Learned counsel has also placed reliance on a judgment titled **General Manager, North West Railway & Others Vs. Chanda Devi** reported in **(2008) 2 Supreme Court Cases 108.**

6. Learned counsel for the Respondent has vehemently contended that Shri Chotey Lal was initially appointed as casual labour, but after completion of 120 days he was appointed as substitute Khallasi in a regular pay scale and he continued to work on the said post till he died on 22nd May, 1991 i.e. for more than 1 year 9 months. Shri Chotey Lal being "substitute" became entitled to all the rights and privileges, as were admissible to a temporary railway servant, on completion of four months continuous service in view of para 1515 of Railway Establishment Manual. Accordingly, Respondent was entitled to the family pension.

7. We have considered the rival contentions of both the parties on the face of record and do not find any force in the contentions of learned counsel for the Petitioner. Para 1501 of Railway Establishment Manual defines a “temporary railway servant”. However, it does not deal with the category of “substitutes”. Definition of “substitutes” is contained in para 1512 of Railway Establishment Manual. Rights and privileges admissible to “substitutes” have been defined in para 1515 of Railway Establishment Manual which provides that “substitutes” should be afforded all the rights and privileges as may be admissible to a temporary railway servant from time to time, on completion of four months continuous service.

8. In its counter affidavit filed before the Tribunal, petitioner has admitted that Shri Chottey Lal was appointed as casual labour on 5th May, 1984 and after completion of 120 days he was engaged as substitute C & W Khallasi pending screening provisionally in the grade Rs.750-940 on 11th August 1989. It has also not been denied that he continued to work on the said post in that capacity till he died on 22nd May, 1991. It is clear from the above that Shri Chottey Lal continued to work for more than 1

year 9 months as substitute C & W Khallasi in the grade of Rs.750-940/-. We are of the opinion that Shri Chottey Lal thus became entitled to all the rights and privileges available to temporary railway servant in view of para 1515 of Railway Establishment Manual. We are also of the view that Late Shri Chottey Lal having been appointed as substitute C & W Khallasi in the regular grade of Rs.750-940/- on 11th August, 1989 and since he continued to work for more than one year and nine months in the said capacity till he died he cannot be termed as “casual labour” or “casual labour with temporary status”. In our view Tribunal has rightly observed that a casual worker is never engaged in a regular grade and/or pay scale. Since Shri Chottey Lal was appointed as “substitute” against a regular grade it cannot be said that he was working as casual labour and/or casual labour with temporary status.

9. In Prabhavati Devi's case (supra) Supreme Court has held that a casual worker in Railways acquiring the status of a “substitute” and after continuing as such for over a year and having acquired status of temporary railway servant his widow and children would become entitled to family pension. The

present case is squarely covered by the judgments of the Supreme Court. In our view, Tribunal has rightly directed the Petitioner to grant benefit of family pension to the Respondent from the due date along with all arrears within a period of two months following the dicta of Supreme Court.

10. Judgments relied upon by the learned counsel for the Petitioner are in different facts and are of no help to the Petitioner. In Rabia Bikaner's case (supra) it was held that a casual labourer in Railways, who died after putting in six months' service and before his appointment to a temporary post, his widow was not entitled to family pension. Similarly, in Chanda Devi's case (supra), it was held that widow of a casual labourer was not entitled to family pension. In these cases, rights and privileges which were amenable to a "substitute" have not been discussed. Prabhavati Devi's case (supra) was distinguished in Rabia Bikaner's case (supra) as it was in different context and facts.

11. In view of the above, we are of the opinion that Tribunal has rightly held that Shri Chottey Lal had acquired temporary status

and his widow was entitled to the benefit of family pension.
Accordingly, writ petition is dismissed.

A.K. PATHAK, J

MADAN B. LOKUR, J

July 15, 2009
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