

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On: 12th November, 2010
Judgment Delivered On: 19th November, 2010

+ **W.P.(C) 4901/2008**

UOI & ANR. Petitioners
Through: Ms.Geetanjali Mohan, Advocate
with Mr.Ketan Madan, Advocate

versus

JAYWANTI DEVI Respondent
Through: Mr.A.K.Trivedi, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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

PRADEEP NANDRAJOG, J.

1. The husband of the respondent was engaged as a casual labourer by the Indian Railways on 15.3.1977 and was accorded the status of a temporary employee, date of the order is uncertain since neither party has filed a copy of the order in question. On 10.1.1986 an order was passed recording that respondent's husband was decasualized and as learned counsel for the parties conceded, the said order was to be followed by an order appointing husband of the respondent to a group D post on regular basis. Admittedly, no such order appointing husband of the respondent to a group D post has been issued.

2. Husband of the respondent died on 5.7.1989. Respondent sought appointment on compassionate basis and was granted appointment as a Khalasi under compassionate

quota. She was happy till somebody told her that she would be entitled to pension on account of her husband having died in service. On 17.8.2006 she served a legal notice requiring pension to be paid to her. The notice was not responded to. She filed OA No.1192/2006 in which a direction was issued that her representation be decided with a speaking order. The department passed a speaking order on 28.3.2007 in which claim was rejected on the basis of para 2005 of chapter XX of Indian Railway Establishment Manual Volume 2 by recording that casual labour was not eligible to reckon half the period of service rendered as qualifying service till the person was absorbed on regular basis. It was informed to the respondent that her husband was not absorbed on regular basis.

3. Paragraph 2005 of Chapter XX of IREM, Volume 2 reads as under:

“2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be) – (a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XX III of this Manual. The rights and privileges admissible to such labour also include the benefit of D&A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-à-vis other regular/temporary employees. This is however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous

employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for group D Posts in the manner laid down from time to time. Subject to such orders as the Railway Board may issue from time to time, and subject to such exceptions and conditions like appointment on compassionate ground, quotas for handicapped and ex-serviceman etc. as may be specified in these orders they will have a prior claim over others to recruitment on a regular basis and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual labour before attaining the age of 28 years should be allowed relaxation of the maximum age limit prescribed for group 'D' posts to the extent of their total service which may be either continuous or in broken periods.

(c) No temporary posts shall be created to accommodate such casual labour, who acquire temporary status, for the conferment of attendant benefits like regular scale of pay, increment etc. After absorption in regular employment, half of the service rendered after attaining temporary status by such persons before regular absorption against a regular/temporary/permanent post, will qualify for pensionary benefits, subject to the conditions prescribed in Railway Board's letter No.E(NG)II/78/CL/12 dated 14.10.1980. (Letter No.E(NG)II/85/CL/6 dated 28.11.86 in the case of Project casual labour).

(d) Casual labour who have acquired temporary status and have put in three years continuous service should be treated at par with temporary railway servants for purpose of festival advance/Flood

Advance on the same conditions as ARE applicable to temporary railway servants for grant of such advance provided they furnish two sureties from permanent railway employees.

(e) Casual labour engaged on works, who attain temporary status on completion of 120 days continuous employment on the same type of work, should be treated as temporary employees for the purpose of hospital leave in terms of Rule 554-R-I (1985 Edition).

A casual labour who has attained temporary status and has been paid regular scale of pay, when re-engaged, after having been discharged earlier on completion of work or for non-availability of further productive work, may be started on the pay last down by him. (This shall be effective from 2nd October 1980)."

4. Suffice would it be to note that the said paragraph does not state either negatively or positively whether an employee who has attained temporary status would or would not be entitled to pension.

5. Proceeding ahead with the narration of facts, the respondent filed OA No.1689/2007 praying that the order rejecting her claim for pension be quashed and pension be paid to her. She urged that the automatic consequence of her husband being decasualized was her husband's regular appointment to a group D post. Alternatively it was pleaded that as per Railway Board Circular dated 3.7.2002 decasualized labour if not screened for regular appointment due to delay caused by the department would entitle benefits to the family of the employee if he died before a regular appointment order to a regular post was issued. Thus, the respondent pleaded that admittedly her husband being decasualized, date not known, he died in harness on 5.7.1989 and assuming there was no order appointing him on a regular

basis to a group D post, she would be entitled to pension in terms of the Railway Board Circular dated 3.7.2002.

6. The Railways pleaded that appointment to a group D post upon decasualization was not an absolute right and was contingent upon availability of a regular group D post within the 5% quota allotted to the benefit of casual workers who had attained the status of temporary employee. It was urged that due to non-availability of a regular vacancy within the 5% quota allocable to casual employees, husband of the respondent was not regularized and that having died on 5.7.1989, the question of his claim being kept alive does not arise.

7. In response, the respondent referred to the instance of one Ms.Santosh Kumari whose husband had died before his entitlement could be screened for regular appointment and giving her husband the benefit of a deemed screening, she was sanctioned family pension.

8. Vide impugned order dated 6.2.2008 the Tribunal has directed the petitioner to reconsider the matter and pass a fresh order with reference to the Railway Board's circular dated 3.7.2002, which reads as under:-

“Sub:- Matter relating to Casual Labour who die before Issue of panel screening.

The work relating to decasualization of casual labour has already been accomplished on Northern Railway. However, cases are being received from the divisions for clarifications with regard to payment of settlement dues to the CL., who had been screened, but had expired before the issue of panel of screening.

As the screening for decasualization of casual labour was to be conducted against the posts specifically sanctioned for the purpose, normally there not have been any occasion for delay between the date of screening and regularization of the panel of screening. However, if the result of screening has

been delayed on account of administrative reasons and not on account of any shortcoming on the part of the casual labour, then the administrative delay should not come in the way of payment of settlement dues to the family of the deceased. Accordingly, it has been decided that in such cases where the panel has been delayed on account of the administrative reasons, the name of the deceased casual labour should be borne on the panel along with others at the appropriate place and a mention should be made in the remarks column that the employee has since expired. The settlement dues to the family of deceased employee should be paid as if the deceased employee to have been regularized on the date of his death.

It is pertinent to mention here that the above instructions would hold good for those casual labour, who have been engaged with the approval of the competent authority. However, for the casual labour engaged after 3.1.81 without the approval of the G.M., their cases would need the approval of the HQs office before their names are borne on the panels.

These instructions issue with the approval of the C.P.O.”

9. Qua the reasoning of the Tribunal it may be noted that the Tribunal has not dealt with the stand of the petitioner that the availability of a regular vacancy in a group D post allocable to the 5% quota for casual workers was the qua non for grant of regular appointment and in the absence of such post being available, notwithstanding husband of the respondent being decasualized and accorded a temporary status, he was not brought on record of the department as a permanent/regular employee.

10. However, we need not go into the said issue and notwithstanding neither counsel not drawing our attention to the correct legal position with reference to the rule applicable and a judicial pronouncement, we grant relief to the respondent noting the decision of the Supreme Court in CA

No.10492/1991 decided on 16.1.1995 Prabhawati Devi Vs. UOI & Ors.

11. Appellant Prabhawati Devi before the Supreme Court was the widow of Late Bipin Kumar Rai who had acquired the status of a temporary railway servant being initially taken in the railway establishment as a casual worker and with effect from 27.4.1983 granted the status of a 'substitute' employee. He died with the status of a 'substitute' on 5.1.1987. Rule 2318 of the Indian Railway Establishment Manual provides that substitutes would be afforded all the rights and privileges admissible to temporary railway servant. The Supreme Court noted Rule 2311(3)(b) which entitle the family of a railway servant acquiring *temporary* status to be paid pension on rendering not less than one year continuous service. The pension payable was as per para 801 of the Manual of Railway Pension Rules.

12. Since neither party was at variance that husband of the respondent was accorded temporary status on 10.1.1986 and he worked for more than one continuous years till he died, in view of the decision of the Supreme Court aforementioned, we dispose of the writ petitioner with a direction that the claim of the respondent for pension would be considered in light of the decision of the Supreme Court in Prabhawati Devi's case and in light of Rule 2311(3)(b) of the Indian Railway Establishment Manual read with para 801 of the Manual of Railway Pension Rules.

13. Qua respondent's reliance upon the case of Ms.Santosh Kumari, suffice would it be to state that the facts which led to Santosh Kumar being paid pension was her husband being removed as a casual labourer and being directed to be reinstated by the Central Administrative Tribunal and in the interregnum persons junior to him being

regularized upon screening. Before Santosh Kumari's husband, Sh.Amin Chand could be screened and regularized, he died. In the second round of litigation fought by his wife for grant of pension, the Tribunal directed that but for the illegal order removing Amin Chand from service as a casual employee, he would have been screened and appointed on a regular basis evidenced by persons junior to him being regularly appointed. Since it impacted entitlement of Santosh Kumari to be paid family pension, the Tribunal issued the direction in question.

14. Obviously, Santosh Kumari's case stands on a different factual foundation and the respondent cannot claim parity with Santosh Kumari.

15. Be that as it may, the writ petition stand disposed of issuing a mandamus in terms of para 12 above. Needful would be done within 12 weeks from today.

16. No costs.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

November 19, 2010
mm