

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17086 of 2012

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1. The Union of India through The General Manager, East Central Railway, Hazipur
 2. The Divisional Railway Manager, N.E. Railway now East Central Railway, Samastipur
 3. The Divisional Railway Manager (Personnel), N.E. Railway now East Central Railway, Samastipur
 4. The Permanent Way Inspector, N.E. Railway now East Central Railway, Banmankhi, District - Purnea
 5. The Section Engineer (Railway), N.E. Railway now East Central Railway, Banmankhi, District - Purnea
 6. The Assistant Engineer (Railway), N.E. Railway now East Central Railway, Saharsa

.... Petitioners

Versus

1. Smt.Urmila Devi, Widow of Late Ram Autar, R/o Railway Colony, Mahabir Asthan, Ward No. 11, P.S. Banmankhi, District - Purnea
2. Smt. Sushila Devi, Second Widow of Late Ram Autar, R/o Railway Colony, Mahabir Asthan, Ward No. 11, P.S. Banmankhi, District - Purnea
3. Sri Bablu, Son of Late Ram Autar, R/o Railway Colony, Mahabir Asthan, Ward No. 11, P.S. Banmankhi, District - Purnea

.... Respondents

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Appearance :

For the Petitioners : Mr. Naresh Dikshit, Adv.
Mr. Vivek Anand Amritesh, Adv.
For the Respondents : Mr. Madhav Krishna, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

14 13-01-2015

Though the legal position was clear and the judgment of the Supreme Court was categorical on the issue pertaining to the right of the legal heirs of an employee who acquired the temporary status of a 'substitute', the petitioners herein have denied the respondents, the benefit of family pension almost for the

past two decades. The hardship that was caused to the respondents over the past two decades is not difficult to imagine.

Late Ram Autar was initially appointed as a casual Khalasi in the East Central Railway by the petitioners on 16.7.1968. Thereafter he acquired the status of 'temporary substitute' and was put in a regular pay-scale. He was also extended the benefit of revision of pay-scale through 4th pay revision, from 1.1.1986. He died on 25.12.1994 while in service, leaving behind him two widows, respondents 1 and 2, and a son, the respondent No.3.

The respondents approached the petitioners for release of death-cum-retirement benefits of late Ram Autar. However, the petitioners denied the same on the ground that the service of late Ram Autar was not pensionable. They approached the Tribunal once by filing O.A. No.624/2004 and in pursuance of the order passed therein, the petitioners passed a speaking order on 30th of August, 2006. Not satisfied with the same, the respondents filed O.A. No.84/2008 before the Patna Bench of the Central Administrative Tribunal.

After hearing both the parties and by following

the judgment of the Supreme Court in **Prabhawati Devi vs. Union of India (AIR 1996 S.C. 752)**, the Tribunal allowed the O.A. The same is challenged in this writ petition.

Heard Shri Naresh Dikshit and Shri Vivek Anand Amritesh, learned counsel for the petitioners, and Shri Madhav Krishna, learned counsel for the respondents.

The basic service particulars of the deceased employees have already been furnished. It is, no doubt, true that he was not a regular permanent employee of the Eastern Railways. However, it is not in dispute that he was conferred the status of 'temporary substitute' long before his death i.e. in 1986. Further, the record discloses that he was not only placed in the regular pay-scale, but also was extended the benefit of revision of pay-scale through 4th pay revision; with effect from 1.1.1986. It is axiomatic that he earned the increments in the pay-scale from time to time till he expired in 1994.

The question as to whether an employee, who is conferred status of "temporary substitute" is entitled to be paid pension; was dealt in detail in Prabhawati Devi's case (supra). Brief facts pertaining to that case were

mentioned in paragraph 4 thereof. They read as under:-

4. “The deceased kept working as a ‘substitute’ till 5.1.87 when he died. But, before his demise, he came to acquire certain rights and privileges under Rule 2318 of the Rules applicable to Railway Establishments. The said rule provides that substitutes shall be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time, on completion of 6 months’ continuous service. Indubitably, the deceased had worked beyond 6 months and that too continuously.

It is evident that, as in the instant case, there also the employee was conferred the status of “temporary substitute”. The facts of the present case squarely fit into those in the case decided by the Supreme Court.

Sub-rule-(3-b) of Rule-2311 of the Pension Rules conferred the benefit upon the dependants of such an employee to claim family pension.

The Supreme Court applied the Rule, holding:

Having become a temporary servant in this manner, he became entitled to family pension under sub-rule 3(b) of Rule 2311; whereunder it is provided that the widow/minor children of a temporary Railway servant, who dies while in service after a service of not less than 1 year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules. Further, in their case the amount of death gratuity admissible will be reduced by an amount equal to the employee's 2 months' pay on which the death gratuity is determined.....”

The same situation obtains in this case also. We are, indeed, shocked to note that the family was denied the pension for the past two decades on account of the persistent litigation initiated or brought about by the petitioners. The Tribunal has taken the correct view and we are not inclined to interfere with the order passed by it. Though it is a case for awarding exemplary costs, we do it conditionally.

The writ petition is accordingly dismissed. It is directed that in case the benefits as per the order of the Tribunal is not extended the respondents herein within six weeks from today, the appellant shall be under obligation to pay a further sum of Rs.1,00,000/- as compensation for the delay of two decades.

Furnish the copy of the order within one week.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

A.F.R./
K.C.jha/-

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