

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.886/2015

The Union of India, through General Manager, Central Railway, Mumbai CST,
Mumbai 400 001 and another

...Versus...

Satyabhamabai Dashrath Raghunath

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms Tanna, Advocate for petitioners
Shri Anil Bambal, Advocate for respondent

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATE : 26.08.2015

Heard.

By this petition, the petitioners challenge the order of the Central Administrative Tribunal, dated 22.7.2014, allowing the original application filed by the respondent and directing the petitioners to release the admissible family pension to the respondent, within a period of three months from the date of receipt of the order.

The husband of the respondent was appointed as a casual labourer on 30.3.1978 and he was brought on temporary roll on 19.8.1985. The services of the husband of the respondent were regularized in Group-D category in the year 1992. Since the husband of the respondent had worked with the petitioners for a period from 1978 to 4.7.2000, the widow of the respondent

filed the original application before the Central Administrative Tribunal, seeking the pensionary benefits.

The petitioners filed the reply and denied the claim of the respondent. According to the petitioners, the husband of the respondent was brought on temporary roll only on 19.8.1985 and his services were regularized on 23.11.1992. According to the petitioners, since the husband of the respondent retired on 4.7.2000, he had put in only 8 years and two months service, which was less than 10 years and hence, the respondent was not entitled to pension.

The Tribunal considered the material on record and on an appreciation of the same, allowed the original application by the impugned order, dated 22.7.2014. The Tribunal held that the respondent was entitled to family pension. While holding so, the Tribunal held that 50 % of the services rendered by the husband of the respondent from 1.1.1983 was required to be counted for reckoning the period for grant of temporary benefits. The Tribunal also considered some judgments of the Tribunals and the decisions of the Andhra Pradesh and Delhi High Courts to grant the relief in favour of the respondent.

It is submitted on behalf of the petitioners that the Tribunal ought not have considered the Railway Board Circular/Letter dated 31.10.2012 that was tendered by the respondent at the time of hearing. It is stated that an opportunity was required to be granted to the petitioners to defend the case and to point that the circulars were inapplicable to the issue involved in this case. It is submitted that the respondent was not claiming any disability pension and hence Circular, dated

31.10.2012 could not have been applied. It is submitted that the case of the respondent did not fall under any of the provisions of the Disability Act. It is submitted that the judgments of the Delhi and Andhra Pradesh High Courts could not have been applied to the case in hand and reliance could not have been placed by the Tribunal on Rule 31 of the Railway Services (Pension) Rules, 1993.

On the other hand, it is submitted on behalf of the respondent that the issue involved in this case was also involved in Writ Petition Nos.3812/2014 and 4513/2014 and this court has, by the judgments dated 6.7.2015 and 24.6.2015 respectively, dismissed the writ petitions filed by the petitioners and has held that 50% of the services rendered by the employees as casual labourer could have been considered for reckoning the period for grant of pensionary benefits. It is submitted that it is held by this Court in the judgment, dated 24.6.2015 in Writ Petition No.4513/2014 that the entire services of the employees as Monthly Rated Casual Labourer could have been considered for grant of pensionary benefits. It is stated that the issue involved in this case stands answered by the said judgments against the petitioners. It is further stated that the Tribunal has not placed reliance on Circular, dated 31.12.2010, while granting the relief to the respondent and the petitioners cannot be heard to say that the Tribunal ought not have referred to the circular in the judgment.

It is stated that it is admitted by the petitioners that the husband of the respondent stood retired on 4.7.2000. It is submitted that the only ground for opposing the prayer in the

original application was that the husband of the respondent had not completed 10 years of qualifying service.

On hearing the learned Counsel for the parties and on a perusal of the order of the Central Administrative Tribunal, it appears that the Tribunal was justified in allowing the original application filed by the respondent. The Tribunal rightly allowed the original application by considering the judgments of the Delhi and the Andhra Pradesh High Courts and Rule 31 of the Railway Services (Pension) Rules, 1993. The Tribunal held that paragraph No.20 of Master Circular No.54 of 1994 clearly laid down that half of the period of service of a casual labourer should be considered while computing the period for entitlement of pensionary benefits after attainment of a temporary status on completion of 120 days continuous service. In view of paragraph no.20 of Master Circular No.54 of 1994 and in view of the provisions of Rule 31 of the Railway Services (Pension) Rules, the Tribunal held that 50% of the services of the husband of the respondent as a labourer was required to be considered while reckoning the period of qualifying service for pension. The Tribunal rightly held that the husband of the respondent had completed more than 10 years of service with the petitioners and the respondent was entitled to family pension. A similar issue was considered by this Court in Writ Petition No.4513/2014 and it was held by this Court while dismissing the petition filed by the petitioners that Rule 31 of the Rules of 1993 and Master Circular No.54 of 1994 provide that 50% of services rendered by an employee of a casual labourer could be considered for reckoning the qualifying service. The learned Counsel for the petitioners

ought to have fairly stated that the question involved in this case stands answered against the petitioners by the judgment dated 24.6.2015. The submission made on behalf of the petitioners that the Tribunal erred in considering the Railway Board Circular/Letter dated 31.12.2010 without giving an opportunity to the petitioners is misconceived and is liable to be rejected. Though the Tribunal has made a reference to the Railway Board Letter/Circular dated 31.10.2012, the same has not been relied on for granting the relief in favour of the respondent. The Tribunal has granted the relief to the respondent by considering Rule 31 of the Rules of 1993, Master Circular No.54 of 1994 and the judgments of the Delhi and the Andhra Pradesh High Court to grant relief in favour of the respondent.

For the reasons recorded hereinabove and also for the reasons recorded in the judgment dated 24.6.2015, we dismiss the writ petition with costs.

JUDGE

JUDGE

Gulande &
Wadkar