

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

OP (CAT) .No. 104 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 335/2013 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 05-03-2015

PETITIONER(S) :

LAKSHMI AGED 54 YEARS
D/O.KUTTICHAMY POOSARI, TRACKMAN, SOUTHERN RAILWAY
QUILANDY, RESIDING AT VALLIKODE, KINAWALLOOR P.O.
PALAKKAD.

BY ADVS.SRI.M.R.HARIRAJ
SRI.P.A.KUMARAN
SMT.VINEETHA B.
SRI.K.RAJAGOPAL

RESPONDENT(S) /RESPONDENTS:-:

1. UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY
MADRAS - 3.

2. SENIOR DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, PALAKKAD - 678 001.

R1 & R2 BY ADV. SRI.TOJAN J.VATHIKULAM,SC,RAILWAYS
BY SRI.C.S.DIAS,SC, RAILWAYS

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 07-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 104 of 2015 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1. A TRUE COPY OF FINAL ORDER DATED 05.03.2015 IN OA 335 OF 2013 ON THE FILES OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXHIBIT P2. A TRUE COPY OF THE ORIGINAL APPLICATION IN O.A.335/2013 ON THE FILES OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXHIBIT P3. A TRUE COPY OF THE REPLY STATEMENT DATED AUGUST 2013 WITH ANNEXURES IN O.A.NO.335/2013 ON THE FILE OF THE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH.

EXHIBIT P4. A TRUE COPY OF THE REJOINDER DATED 26.02.2014 FILED BY THE PETITIONER IN O.A.NO.335/2013.

EXHIBIT P5. A TRUE COPY OF THE ADDITIONAL REPLY STATEMENT DATED 16.04.2014 IN O.A.NO.335/2013.

EXHIBIT P6. A TRUE COPY OF THE FINAL ORDER DATED 03.12.2009 IN O.A. 474 OF 2008 ON THE FILES OF THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH.

EXHIBIT P7. A TRUE COPY OF FINAL ORDER DATED 03.04.1998 IN I.D NO.1/1997 ON THE FILES OF THE INDUSTRIAL TRIBUNAL, PALAKKAD. (WRONGLY MARKED AS EXT. P6)

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

BABU MATHEW P JOSEPH, JJ.

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O.P. (CAT) No. 104 of 2015

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Dated, this the 7th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

Denial of the request made by the petitioner to go on voluntary retirement, so as to facilitate employment in favour of her son under the Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS in short) is the subject matter of challenge in this original petition.

2. The factual matrix revealed from the proceedings shows that the petitioner was engaged in the Railways as a casual labourer w.e.f 05.03.1975, but she was allegedly denied engagement from 21.06.1980. Since the requests made by the petitioner to re-employ her did not turn to be fruitful, further proceedings were pursued. An industrial dispute was raised, which ultimately came to be referred to the Industrial Tribunal, wherein it was numbered as I.D. No. 1/1997. After completing the evidence, an Award was passed by the Industrial Tribunal on 03.04.1998, holding that denial of employment was not correct or sustainable and hence the worker was ordered to be reinstated in the same position. A copy of the Award has been

produced as Ext. P6 along with I.A. No. 9101 of 2015. The Award was published in the Gazette dated 06.06.1998, which became effective on expiry of one month from the date of publication as stipulated under the relevant provisions of the Industrial Disputes Act/Rules.

3. Going by the Award, it is stated that the Industrial Tribunal has not mentioned anything with regard to the 'continuity of service' of the worker or that worker was having right to have obtained temporary status with effect from a prior date. It is stated that the Award passed by the Tribunal was subjected to challenge by the management by filing Original Petition No. 25548 of 1998 before this Court, wherein interference was declined and the Writ Petition was dismissed as per the judgment dated 09.06.2003. The management took up the matter by filing Writ Appeal No. 1772 of 2003, which also came to be dismissed on 25.02.2005. On finalization of the proceedings as above, the petitioner came to be reinstated in service on 04.10.2005 and subsequently, she was granted temporary status as well in the year 2006. Thereafter the petitioner approached the Central Administrative Tribunal by filing O.A. No. 187 of 2007, seeking to effect necessary entries in her service records, with respect to her

initial engagement from 05.03.1975 and also sought for back-wages.

4. The claim put up by the petitioner, except with regard to the 'back dating' of the initial engagement as from 05.03.1975, was rejected and an order was passed directing to show the date of initial engagement as '05.03.1975'. The date of re-engagement was also corrected as 07.07.1998 i.e. from the date on which Ext.P6 Award of the Industrial Tribunal came to be effective, after expiry of one month from the publication in the gazette. Since the petitioner did not get requisite extent of relief, the order passed in the O.A. was subjected to challenge by filing W.P.(C) No. 1069 of 2008. The said writ petition was allowed in part, modifying the impugned order to the effect that the petitioner was entitled to get back wages w.e.f. 25.04.2005 i.e. from the date of expiry of two months from the date of judgment in W.A. No. 1772 of 2003, which was ordered to be disbursed within the time as specified therein. Rest of the reliefs were declined.

5. In the meanwhile, 'LARSGESS Scheme' was declared by the Railways, enabling the workers who had a qualifying service of '20 years on the cut off date of 01.07.2011', to seek for voluntary retirement, enabling one of their dependents to get an appointment

in the Railways. Though, the petitioner preferred Annexure A2 application for voluntary retirement under LARSGESS Scheme, it was not considered. In the said circumstances, she approached the Central Administrative Tribunal by filing O.A. No. 1064 of 2012, which was disposed of on 23.11.2012 directing the 2nd respondent therein to consider the petitioner's application as specified therein. Pursuant to the said verdict, Annexure A2 application preferred by the petitioner was considered and rejected as per the order dated 04.02.2013. The said order was challenged by filing O.A. No. 335 of 2013, wherein interference was declined, which forms the subject matter of challenge in this original petition.

6. Heard the learned counsel for the petitioner and also the learned standing counsel for the respondent Railways.

7. On going through the pleadings and proceedings, the eligibility to have voluntary retirement and the consequential benefit under the Scheme, is '20 years' of service. It is also stated that ½ of the temporary service of the petitioner is liable to be counted as reckonable, for counting the qualifying service. The petitioner, though was initially engaged as casual worker in the year 1975, was granted temporary status only w.e.f. 01.02.2006 and there was no dispute in this regard. As per the relevant

Rules, only after completion of continued service of 120 days, 'temporary status' could be conferred. Such a situation has taken place in the case of the petitioner only on 01.02.2006. Even if Ext.P6 Award passed by the Tribunal is taken into account (directing the respondent to re-engage the petitioner, which came to be effective only on 07.07.1998), the maximum extent of relief that can be claimed by the petitioner is only from 07.07.1998. Still, the requisite extent of '20 years' service would not have been there, as on the cut off date i.e. as on 01.07.2011, so as to make her eligible for voluntary retirement under the LARSGESS Scheme and to have obtained appointment to her son.

In the above circumstances, this Court finds that the order passed by the Tribunal is well within the four walls of law, which does not call for any interference. The original petition fails and it is dismissed accordingly.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**BABU MATHEW P. JOSEPH,
(JUDGE)**

kmd