IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.6.2015

Pronounced on :22.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

W.P.No.4621 of 2015

A. Natarajan ...Petitioner

vs.

1.Union of India represented
by the General Manager
Southern Railway
Park Town, Chennai-3.

2.The Divisional Railway Manager
Southern Railway
Chennai Division,
NGO Annexe, Park Town, Chennai-3.

3.The Senior Divisional Personnel Officer
Southern Railway, Chennai Division,
NGO Annexe, Park Town, Chennai-3.

4.The Registrar
The Central Administrative Tribunal
Madras Bench, Chennai-104. ...Respondents

Prayer: Writ petition is filed under section 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the order of the fourth respondent herein and made in O.A.No.704 of 2011, dated 20.3.2012 and to quash the same and further to direct the respondents 1 to 3 to reckon with the date of conferment of temporary status of the petitioner as 26.11.1965 with all the consequential service benefit including reckoning the service from 26.7.1965 to 25.12.1972 as qualifying service for pension and other retirement benefits that were extended to petitioners in W.P.No.2554 of 2002

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and W.P.No.1351 of 2004.

For Petitioner : Mr.L. Chandra Kumar

For respondents No.1 to 3 : Mr.V.G. Suresh Kumar

ORDER

(T.MATHIVANAN, J.)

Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has filed the present writ petition to issue a writ of certiorarified mandamus or any other appropriate writ or order in the nature of a writ calling for the records relating to the order of the fourth respondent herein and made in the Original Application in O.A.No.704 of 2011, dated 20.3.2012 and to quash the same and further to direct the respondents 1 to 3 to reckon the date of conferment of temporary status of the petitioner as 26.11.1965 with all the consequential service benefits including the reckoning of the service from 26.7.1965 to 25.12.1972 as qualifying service for pension and other retirement benefits.

> "2. If anyone likes to place any claim, introspection is absolutely essential to see as to whether any element of quality of being legitimate is in existence."

3. In the given case on hand, the grievance of the petitioner is that when the third respondent, viz., Senior Divisional Personnel Officer, Southern Railway, Chennai Division, had determined his retirement benefits for a qualifying service of 28.5 years he had just ignored the service rendered by him from 26.7.1965 to 25.12.1972 in different substitute categories.

4. It is revealed from the records that initially the petitioner was engaged on 26.7.1965 and was continued upto 19.2.1972 and after a gap for want of work, again he was engaged on 26.8.1972 as Sub Gangman and on continuous engagement, he was conferred with temporary status with effect from 26.12.1972. He was regularised as a Gangman and on availing promotions to various levels, he had retired from service on attaining the age of superannuation on 30.6.2001 as Senior Passenger Guard.

5. With the service rendered from 26.7.1965 till 25.12.1972 in different substitute categories was ignored, he had submitted an application on 30.10.2009 before the Pension Adalat.

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6. On 18.11.2009, the third respondent seems to have sent a reply to the petitioner with an advise, which is extracted as under:-

> "It is seen from your representation that you have not enclosed any record to the effect that you have rendered service as CL and therefore, you are advised to submit the CL card/any other document to substantiate your claim and only on receipt of the same necessary further action will be taken to verify your claim."

7. From the reply, dated 18.11.2009 given by the third respondent, it is explicit that the petitioner was engaged as a Sub Gangman on 26.8.1972 and retired on superannuation on 30.6.2001. On his retirement, retirement gratuity was calculated for the period from 26.12.1972 (on completion of four months service as substitute) to 30.6.2001 and accordingly, he was paid a sum of Rs.2,02,430/- in terms of Railway Pension Rules, 1993.

8. The records also reveal that the petitioner in pursuant to the reply of the third respondent, dated 18.11.2009 had submitted another application furnishing all the details before the Pension Adalat on 26.10.2010. That application was also negatived by the Pension Adalat.

9. In this connection, the third respondent had issued a proceedings in M/P3/500/I&II/AN/JUNE 2001, dated 16.11.2010, wherein it has been stated that on perusal of the xerox copy of the Casual Labour Service Card produced by the petitioner, it was found that he was paid the compensation of Rs.240/- on 5.4.1970 for the period of service rendered upto 25.11.1969 and thereafter, he had again been engaged on 2.12.1969 and worked upto December 1971 in various places with interruption.

10. The proceedings of the third respondent, dated 16.11.2010 discloses that the minimum continuous service for payment of gratuity under Gratuity Act is five years and that after the receipt of the compensation for casual labour service, the petitioner had served less than the period of three years. Therefore, the question of payment of Gratuity under the Gratuity Act did not arise in the case of petitioner.

11. Impugning this proceedings, dated 16.11.2010, the petitioner has approached the Central Administrative Tribunal, Madras Bench, with an Original Application in O.A.No.704 of 2011.

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12. This application was resisted by the respondents by filing their reply statement.

13. After hearing both sides, the Tribunal has proceeded to dismiss that application on 20.3.2012 on the ground that the petitioner had not made out a case for counting the period of substitute service from 26.7.1965 to 25.12.1972 as qualifying service for the purpose of pension.

14. Having been aggrieved by the order of the Tribunal, dated 20.3.2012, the petitioner stands before us with this writ petition.

15. From the Casual Labour Service Card produced by the petitioner before the Pension Adalat, it is revealed that the petitioner was initially engaged on 26.7.1965 and continued till 19.2.1972 in various categories as Mazdoor, Mali, Lascar, Store Lascar, and Special Mate in the Engineering Department in Chennai Division of Southern Railway.

16. It is also revealed that, after a gap of six months, on 26.8.1972, he was once again engaged as a Sub Gangman and on continuous service, he was conferred with temporary status with effect from 26.12.1972.

17. What the petitioner would claim is that his service from 26.7.1965 to 25.12.1972 has to be reckoned as his qualifying service so as to enable him to get his pension benefits as well as retirement benefits.

18. From paragraph No.2 of his affidavit filed in support of the writ petition, it is palpable that after 19.2.1972 he was stopped for want of work and thereafter, he wa engaged on 26.8.1972 as Sub-Gangman and subsequently, he was conferred with temporary status with effect from 26.12.1972. Therefore, even as per the statement given by the petitioner, there was a break in service from 19.2.1972 till 25.8.1972. But what the records would reveal is that for the period from 26.7.1965 to 25.11.1969, he was paid a sum of Rs.240/- as retrenchment compensation on 25.11.1969.

19. Admittedly, there was a break in service from 26.11.1969 to 1.12.1969. The records would further reveal that from 2.12.1969 to 12.8.1970, he was engaged as Special Store Mate. Thereafter, there was a break in service upto 30.8.1970. From 31.8.1970 to 2.6.1971 he was in continuous service and thereafter, there was a break in service from 3.6.1971 till the month of July 1971. From the month of July 1971 to 5.8.1971, he was in continuous

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service and thereafter, from 6.8.1971 to 29.10.1971, there was a break in service and thereafter, from 30.10.1971 to 19.2.1972, he was in continuous service in the aforesaid categories.

20. From the above details, we find that the period of service rendered by the petitioner continuously is lesser than five years and therefore, he is not entitled for gratuity for the said periods.

21. Chapter III of Railway Services (Pension) Rules 1993, en-compasses the rules 20 to 32.

22. Rule 20 contemplates the Commencement of qualifying service, which enacts as under:-

> "20. Commencement of qualifying service:- Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :
>
> Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post:
>
> Provided further that -
>
> (a) in the case of a railway servant in a Group ' D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose; and
>
> (b) in the case of a railway servant not covered by clause (a), service rendered before attaining the age of sixteen years shall not count except for compensation gratuity."

23. As per Rule 20, the qualifying service of a railway servant commences from the date, he takes charge of the post to which he is first appointed. The proviso to Rule 20 says that officiating or temporary service of a railway employee is followed without any interruption by substantive appointment in the same or another service or post.

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24. On coming to the instant case on hand, the petitioner was first appointed as a Substitute Gangman in the existing vacancy in the scale of pay of Rs.70-85 + Dearness allowance as admissible with effect from 26.8.1972. He was transferred to the Traffic Branch as a Substitute Porter in the year 1973. Thereafter, he was selected as a Train Clerk with effect from 5.8.1975. Further, he was promoted as Senior Train Clerk with effect from 23.10.1981. Then he was temporarily promoted as Guard in the scale of pay of Rs.330-530 on adhoc basis. Subsequently, he was selected for the post of Passenger Guard in the scale of pay of Rs.1350-2000 with effect from 6.10.1990 and eventually, he was retired as Senior Passenger Guard in the scale of pay of Rs.5500-9000. He had attained his superannuation on 30.6.2001. Therefore, the period of service from 26.8.1972 to 30.6.2001, i.e. 28.5 years was counted as his qualifying service.

25. While advancing his arguments, Mr.L.Chandra Kumar, learned counsel for the petitioner has drawn our attention to the order of the Division Bench of this Court, dated 11.10.2007 and made in the writ petitions in W.P.No.2554 of 2002 and 1351 of 2004 and submitted that though the petitioner herein and the petitioners in the above said writ petition were conferred with the temporary status in a similar manner, the act of the respondents in treating the case of the petitioner differently was in violation of Articles 14 and 16 of the Constitution of India.

26. He has also added that in view of the law settled in the order of the Division Bench of this Court in W.P.No.2554 of 2002 and W.P.No.1351 of 2004, there could be no distinction between casual labour worked in open line or under construction/project and therefore, the denial of temporary status on completion of 120 days with effect from the date of their initial engagement is in gross violation of Para 2001 of the Establishment Manual, and hence, he has urged this Court to set aside the impugned order of the Tribunal, dated 20.3.2012.

27. On perusal of the order of the Division Bench of this Court, dated 11.10.2007 and made in the writ petition in W.P.No.2554 of 2002 and 1351 of 2004, it is understood that the question involved in the above said writ petitions is, "whether the petitioners therein were open line casual labours or not and if they were found to be open line casual labours, then they would become entitled to count their past service before regularisation for pensionary purpose and other benefits."

28. This question was analysed in detail and answered by the Division Bench of this Court in Paragraph Nos.15 and 16 of the said order, dated 11.10.2007.

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29. In paragraph No.15, it is observed that, "as could be seen from the materials placed on record, the petitioners were transferred from one Unit/Division/Station to another, which could never happen in case of a project worker, who would be engaged only for a particular project and their employment will be over with the closure of the said project. But, in the case of the petitioners, they were engaged continuously before their regularisation in various Units/Divisions/Stations unlike the project labour."

30. In paragraph No.16, it has been observed that, "when at no point of time, the petitioners were treated as Casual labours working on a project and when there is no evidence produced on the part of the respondents to substantiate their stand that the petitioners were working only as Casual Labours on a project and when there are abundant materials placed on record by the petitioners that they, all- through, were working only in open line, it must be held that the petitioners are working only in open line and thus they are entitled to the relief sought for."

31. The above said order of the Division Bench of this Court, dated 11.10.2007 was challenged by the respondents therein before the Supreme Court of India in S.L.P.No.13015-13016 of 2008. While dismissing the S.L.P. on 26.9.2008 the Apex Court has observed that, "we find that the High Court after examining the records has recorded a finding of fact that respondents in question are open line casual labourers. We, therefore, find no ground to interfere under Article 136 of the Constitution of India."

32. In this connection, Mr.V.G. Suresh Kumar, learned counsel appearing for the respondents has argued that the Apex Court in K.G. Radhakrishna Panickar's case had already held that there was a distinction between the open line casual labour and Project Casual Labour and that the Project Casual Labour were not entitled to the benefits of open line Casual Labour and therefore, the impugned order passed by the Tribunal in this case was well within the amplitude of the law laid down by the Supreme Court.

33. He has also maintained that the petitioner herein was not similarly placed as that of the petitioners in W.P.No.2554 of 2002 and 1351 of 2004 as argued by Mr.L. Chandra Kumar.

34. He has also pointed out that the casual labour service card produced by the petitioner would disclose that he

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was working in doubling project in Nayudupet, whereas the petitioners in W.P.No.2554 of 2002 and 1351 of 2004 were working in the office of the Senior Divisional Signal and Telecommunication Engineer/Tambaram and therefore, he has adverted to that no comparison could be drawn between the petitioner herein and the petitioners in the above said writ petitions in W.P.No.2554 of 2002 and 1351 of 2004.

35. We have carefully gone through the decision in Union of India and others vs. K.G. Radhakrishna Panickar and others (1198) 5 SCC 111).

36. In this decision, while speaking on behalf of a three Judges Bench, His Lordship Hon'ble Mr. Justice S.C. Agrawal, has observed that, "in the present case, the benefit of counting of service prior to regular employment as qualifying service was not available to casual labour. The said benefit was granted to Open Line Casual Labour for the first time under order dated 14.10.1980 (Railway's Circular, dated 14.10.1980) since Open Line Casual Labour could be treated as temporary on completion of six months' period of continuous service which period was subsequently reduced to 120 days under para 2501(b)(i) of the Manual. As regards the Project Casual Labour this benefit of being treated as temporary became available only with effect from 1.1.1981 under the scheme which was accepted by the Supreme Court in Inder Pal Yadav's case. Before the acceptance of that scheme the benefit of temporary status was not available to Project Casual Labour under the scheme as approved by this Court in Inder Pal Yadav and on the basis of this new benefit Project Casual Labour became entitled to count half of the service rendered as Project Casual Labour on the basis of the order dated 14.10.1980 after being treated as temporary on the basis of the scheme as accepted in Inder Pal Yadav. It is therefore not possible to uphold the judgment of the Tribunal dated 8.2.1991 when it holds that service rendered as Project Casual Labour by employees who were absorbed on regular permanent/temporary posts prior to 1.1.1981 should be counted for the purpose of retiral benefits."

37. In the light of the observations made in the above cited decision, it is thus made clear that prior to regular employment, the benefit of counting service as qualifying service was not available to casual labour. But this benefit was granted to Open Line Casual Labour for the first time under Railway's Circular, dated 14.10.1980 since Open Line Casual Labour could be treated as temporary on completion of six months' period of continuous service which period was subsequently reduced to 120 days under para 2501(b)(i) of the Manual.

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38. Besides this, in view of the judicial pronouncement made by the Apex Court in Inder Pal Yadav and others vs. Union of India and others (1985 SCC (2) 648), the benefit of temporary status came to be available to the project casual labours with effect from 1.1.1981. Before the acceptance of the said scheme, the benefit of temporary status was not available to the project casual labour. This new benefit was conferred on Project Casual Labour under the Scheme as approved by the Apex Court in Inder Pal Yadav's case.

39. In so far as the petitioner herein is concerned, he was appointed as Substitute Gangman on 26.8.1972, i.e., prior to the scheme accepted by the Supreme Court in Inder Pal Yadav's case, which came into effect from 1.1.1981. Since the petitioner was appointed as Substitute Gangman prior to the introduction of that scheme, which came into effect from 1.1.1981, the petitioner is not entitled to that benefit.

40. To shed more clarity on this point, Mr.V.G. Suresh Kumar, learned counsel appearing for the respondents has argued that the service said to have been rendered by the petitioner from 26.7.1965 to 25.12.1972 was not continuous and it was also not substitute service.

41. He has also indicated that the petitioner was not engaged as a substitute in the construction unit of the respondents railway, but he was only engaged as a project casual labour in the construction unit.

42. Mr.V.G. Suresh Kumar has also invited our attention to Inder Pal Yadav's case and submitted that a new benefit was conferred on project casual labour and as approved by the Hon'ble Apex Court in Inder Pal Yadav's case, the project casual labour became entitled to get the benefit of being treated as temporary only from 1.1.1981. He has also made it clear that before the acceptance of that scheme by the Apex Court the benefit of temporary status was not available to the project casual labour. He has, therefore, urged before this Court that the comparison made by Mr.L.Chandra Kumar between the petitioner herein and the petitioners in W.P.No.2554 of 2002 and 1351 of 2004 could not be hold good.

43. In so far as the present case is concerned, from the submissions made by both the learned counsels as well as based on the records, we find that the petitioner was appointed in the year 1972 as a Substitute Gangman and on regularisation of his service as Substitute Gangman, his entire period of service

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from 1972 to 2001, i.e., till the date of retirement on superannuation was taken into account.

44. As per the provisions of Rule 20 of the Railway Services (Pension) Rules, 1993, the period between 25.7.1965 and 25.12.1972 cannot be taken as qualifying service and it was, therefore, not taken as qualifying service for the purpose of pensionary benefit.

45. We have also perused the casual labour card appended to the application submitted by the petitioner before the Pension Adalat, dated 26.10.2010. From where we understand that the petitioner had been working in the projects, namely, construction and doubling work for the following period with interruption.

Sl.No.	Period of Continuous Service	Period of Break in Service
1	From 26.7.1965 to 25.11.1969	From 26.11.1969 to 1.12.1969
2	From 2.12.1969 to 12.8.1970	From 13.8.1970 to 30.8.1970
3	From 31.8.1970 to 2.6.1971	From 3.6.1971 to July 1971
4	From July 1971 to 5.8.1971	From 6.8.1971 to 29.10.1971
5	From 30.10.1971 to 19.2.1972	--- -

46. As per Note (2) of Para 2001 of Indian Railway Establishment Manual, Vol. II (Annexure RII), the Doubling work shall be taken as a Project only. Note (2) of Para 2001 enacts as under:-

> "Note (2) - Project for this purpose should be taken as construction of new lines, major bridges, restoration of dismantled lines, and other major important open line works like doubling, widening of tunnels, Route Relay Interlocking, Railway Electrification etc., which were completed within a definite time limit. The General Manager/Heads of Department concerned, in consultation with the FA&CAO will decide whether a particular open line works is a 'Project' or not. If the through track renewals include replacement of lighter section of Rails by a heavier section or increasing density of sleepers or provision of additional depth of ballast etc. these should be treated as works leading to an improvement in the carrying capacity

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of The Railway and as such irrespective of any financial limit they should be treated as 'Project'. Casual renewals' or other 'Through Renewals' which don't lead to any improvement in the carrying capacity of a Railway Will, however, not fall within the definition of a 'Project'. Similarly signalling works like Route Relay Unlocking, Multiple aspect signalling, etc., and Electrical works like electrification, provision of additional sub stations etc., should be treated as projects."

47. From the above context, we find that the petitioner was working as a project casual labour during the above said period and the temporary status for the project casual labour was granted with effect from 1.1.1981 in terms of the decision of the Apex Court in Inder Pal Yadav's case, as cited supra.

48. Since the petitioner could not be conferred with temporary status as he was working as a project casual labour, his service as project casual labour could not be considered as qualifying service for the purpose of pensionary benefit.

49. Further, we find that the petitioner was absorbed as a substitute Gangman against the substitute vacancy in the year 1972 and subsequently, his service was regularised in the railways and therefore, the period from 26.8.1972 till the date of superannuation, i.e., 30.6.2001 was taken in full for calculating the qualifying service in terms of Rule 20 of Railway Services (Pension) Rules and hence, the project casual labour service for the period from 25.7.1965 to 25.12.1972 cannot be treated as qualifying service as contemplated under Rule 20 to the Railway Services (Pension)Rules, 1993.

50. Apart from this, sub rule 23 of Rule 3 of the Railway Services (Pension) Rules, 1993, the petitioner cannot be considered as railway servant during the period in question.

51. We have sincerely considered the submissions made by both the learned counsels based on the supportive documents filed along with this writ petition. We have also gone through the impugned order and other relevant materials placed before us.

52. Having regard to the related facts and circumstances of the case, we are of the considered view that the impugned order of the Tribunal, dated 20.3.2012 does not suffer with any infirmity or illegality. The impugned order also does not seem to be perverse and hence, we do not want to interfere with the said order. For the reasons afore stated, the writ petition filed by

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the petitioner is liable to be dismissed as there is no legitimacy in his claim.

Accordingly, the writ petition is dismissed confirming the order of the Tribunal, dated 20.3.2012 and made in O.A.NO.704 of 2011. However, there will be no order as to costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1.General Manager,
Union of India
Southern Railway
Park Town, Chennai-3.

2.The Divisional Railway Manager
Southern Railway
Chennai Division,
NGO Annexe, Park Town, Chennai-3.

3.The Senior Divisional Personnel Officer
Southern Railway, Chennai Division,
NGO Annexe, Park Town, Chennai-3.

4.The Registrar
The Central Administrative Tribunal
Madras Bench, Chennai-104.

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1 CC to Mr.L. Chandra Kumar, Advocate SR.No.

1 CC to Mr.V.G. Suresh Kumar, Advocate SR.No.

W.P. No.4621 of 2015

GR (CO)
PSI (07.09.2015)

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