

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.36630 of 2016

and

WMP No.31487 of 2016

- 1.Union of India
Represented by its General Manager
Southern Railways
Park Town, Chennai - 3
 - 2.The Divisional Personnel Officer
Office of the Divisional Railways Manager
Southern Railways, Madurai - 625 016
 - 3.The Divisional Finance Manager
Office of the Divisional Railways Manager
Southern Railways, Madurai - 625 016
- Petitioners

vs.

- 1.The Registrar
Central Administrative Tribunal
Madras Bench, Chennai 600 104

- 2.S.Muthuiyar
- 3.S.Alagar
- 4.V.Athvani
- 5.M.Muthusamy
- 6.S.Antony Cruz
- 7.V.Ponnan
- 8.M.Nagalakshmi
- 9.M.Palaniswamy
- 10.V.Kaliyappan
- 11.T.Duraisamy

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12.R.Palaniappan
13.K.Semban
14.V.Soosaimanickam
15.M.Jeyakumar
16.K.Palanikumar
17.S.Paul Grace
18.Aruldoss
19.A.Lambert
20.N.P.Pitchai
21.A.Muthusamy
22.C.D.Henry Williams
23.K.Manoharan
24.M.Govindaraj
25.A.Manickam
26.B.Muthu
27.S.Raghuraman
28.P.Pitchai
29.P.Chinandy
30.P.Muthu
31.V.Ramar
32.U.M.Palani
33.R.Seetharaman
34.A.Siluvaimuthu
35.R.Durairaj

..... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the order dated 19.04.2016 passed in Original Applications in OA/310/00137/2015, OA/310/00276/2015, OA/310/00335/2015, OA/310/00349/2015, OA/310/00355/2015, OA/310/00387 & 390/2015, OA/310/00464 to 468/2015, OA/310/00138/2015, OA/310/00329 to 331/2015, OA/310/00506/2015, OA/310/00189/2015, OA/310/00209 & 210/2015, OA/310/00235/2015, OA/310/00243/2015, OA/310/00337 to 339/2015, OA/310/00357 to 360/2015, OA/310/00363/2015, OA/310/00389/2015, OA/310/00397/2015, OA/310/00418 & 419/2015 and OA/310/00508/2015 on the file of the Central Administrative Tribunal, Chennai and quash the same.

For Petitioners : Mr.M.L.Ramesh

For Respondents : Mr.A.Abdul Ajees, for R2 to R35

ORDER

(delivered by S.MANIKUMAR, J)

Challenge in this writ petition is to a common order made in Original Applications in OA/310/00137/2015, OA/310/00276/2015, OA/310/00335/2015, OA/310/00349/2015, OA/310/00355/2015, OA/310/00387 & 390/2015, OA/310/00464 to 468/2015, OA/310/00138/2015, OA/310/00329 to 331/2015, OA/310/00506/2015,

OA/310/00189/2015, OA/310/00209 & 210/2015, OA/310/00235/2015, OA/310/00243/2015, OA/310/00337 to 339/2015, OA/310/00357 to 360/2015, OA/310/00363/2015, OA/310/00389/2015, OA/310/00397/2015, OA/310/00418 & 419/2015 and OA/310/00508/2015, by which, the Central Administrative Tribunal, Madras Bench, directed the writ petitioners, to revise the retirement benefits of the respondents 2 to 35, taking into account their entire period of service in temporary status and 50% of the service, rendered as casual labourers, as qualifying service, and to pass appropriate orders, within a period of six weeks from the date of receipt of a copy of its order.

2. Facts leading to the writ petition are that, the applicants in the Original Applications/respondents 2 to 35 herein, were employees of the 1st petitioner, Southern Railways, and they retired on superannuation or voluntary retirement. Before the Tribunal, the respondents have contended that they entered the service as casual labourers on various dates and subsequently been granted temporary status and thereafter, regularised. On attaining the age of superannuation or voluntary retirement, they retired from service and granted pensionary benefits. They are aggrieved over the action of the writ petitioners, in taking into account of only 50% of the period rendered by them as temporary employees and also not taking into account of their service rendered as casual labourers. Challenging the method of calculation of their service for payment of pension, applications have been filed before the Tribunal.

3. The petitioners further submitted that they have filed a detailed reply in all the applications, contending inter alia that the entire period of service rendered by the respondents, as casual labourers cannot be added, but after conferment of temporary status, 50% of the same would be added to regular service, for the purpose of calculation of pensionary benefits, as per the Master Circular 54 of 1994. The writ petitioners have further submitted that the claim filed after a long period of time, is barred by limitation. Contention has been made that in any case, the pension period at the maximum could be counted only for 33 years.

4. Before the Tribunal, the writ petitioners relied on a decision of the Hon'ble Apex Court in GM, North West Railway & Ors. vs. Chanda Devi in CA No.5833/2007 decided on 12.12.2007 and the decision of the Andhra Pradesh High Court in WP No.10837/2001 decided on 23.6.2003 (Ramanamma's case) and contended that the respondents are not entitled to count 100% of the service rendered in temporary status and 50% of service as

casual labourers. Writ petitioners have also relied on the Master Circular No.54 of 1994 and accordingly, prayed for dismissal of the Original Application.

5. Per contra, the respondents have placed reliance on a decision of the Delhi High Court order dated 10.11.2014 in WP(C) 7618/2014, wherein, Rule 20 of the Railway Services (Pension) Rules has been taken note of. Rule 20 of the said Rules is reproduced here 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 eighteen years shall not count, except for compensation gratuity; (Authority: Railway Board's letter No. F(E)III/99/PN1/ (Modification) dated 23.5.2000)

(c) the provisions of clause (b) shall not be applicable in the cases of counting of military service for civil pension under rule 34. (Authority: Railway Board's letter No. F(E)III/204/PN1/21 (Amendment) dated 7.12.2004).

6. The respondents have also relied on the decisions of the Delhi High Court in WP(C) No.4300/2012 & WP(C) No.6339/2012, dated 04.1.2013 and the Central Administrative Tribunal, Principal Bench made in OA No.1355/2015, dated 10.4.2015.

7. After giving due consideration to Rule 20 of the Railway Services (Pension) Rules, the Central Administrative Tribunal, Madras Bench, at paragraph No.7, of the common order made in OA/310/00137/2015 etc., dated 19.04.2016, by observing that the controversy beyond a shadow doubt is that, if an employee officiates in services or is treated as temporary Railway servant and subsequently regularised or granted

substantive appointment, the entire period of his combined service as temporary service followed by the service spent as permanent employee has to be reckoned for the purpose of pension, proceeded further.

8. Insofar as the relief of counting of 50% of the service rendered as casual labourers, the Tribunal, observed that Rule 20 does not deal with what has to be done with reference to the service rendered as casual labourers. In that context of the matter, the Tribunal considered paragraph No.20 of the Master Circular No.54 of 1994 and Paragraph 2005 of the Indian Railway Establishment Manual, Volume II. At this juncture, it is relevant to extract both Paragraph No.20 of the Master Circular No.54 of 1994 and Paragraph 2005 of the Indian Railway Establishment Manual, Volume II, as follows:

"20. Counting of the period of service of Casual Labour for pensionary benefits:

Half of the period of service of a casual labour (other than casual labour employed on Projects) after attaining of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular railway employee, counts for pensionary benefits. With effect from 01.01.1981, the benefit has also been extended to Project Casual labour.

[Letter Nos.

(i) E(NG)II/78/CL/12 dated 14.10.1980

(ii) E(NG)II/85/CL/6 dated 28.11.1986

(iii) E(NG)II/85/CL/6 dated 19.05.1987

.....

2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 day 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-a-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 14-10-80. (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 drawn by him. (This shall be effective from 2nd October 1980)."

9. Going through the above, the Tribunal, noticed that they were only administrative instructions. However, while considering the scope and giving effect to the administrative instructions, the Tribunal, has considered the decisions relied on by both parties. Analysing the judgment in Ramanamma's case, relied on by the writ petitioners, the Tribunal, has rendered a categorical finding that Ramanamma's case does not declare the correct law for the reason that though in the said judgment, the Andhra Pradesh High Court has considered certain previous rulings, as well as the provisions of Indian Railway Establishment Manual, Volume II and Rule 31 of the Railways Services (Pension) Rules, attention of the Andhra Pradesh High Court was not drawn to Rule 20 of the Railways Services (Pension) Rules, and especially to the proviso, which specifically deals with a situation that service rendered in temporary capacity would also specifically deals with the case that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post.

10. Going due consideration to Chanda Devi's case, relied on by the writ petitioners, the Central Administrative Tribunal, has noticed that in the said judgment also, the effect of Rule 20 of the Railway Services (Pension) Rules, which entails those who had worked as casual labourers, granted temporary status and later on, appointed substantively to Railways, has not been taken note of.

11. On the other hand, going through the judgment of the Delhi High Court in WP(C) No.7618/2014 dated 10.11.2014, the Central Administrative Tribunal, has noticed that though, the

decision of the Hon'ble Apex Court in Chanda Devi's has been considered, uninfluenced by the observations of the Hon'ble Supreme Court in Chanda Devi's case, the Delhi High Court has rendered the decision in W.P.(C)No.7618 of 2014, dated 10.11.2014, granting the relief to the retirees. Apart from the above, from the reading of the common order made in O.A.Nos. OA/310/00137/2015 (batch) dated 19.04.2016, Central Administrative Tribunal, Madras Bench, impugned before us, it is also evident that during the course of the arguments of the above batch of original applications, the learned Senior Counsel, who appeared for the writ petitioners, has also made a fair submission to the Tribunal that in Chanda Devi's case, the Hon'ble Supreme Court did not have an occasion to consider the effect of Rule 20 of the Railway Services (Pension) Rules regarding the computation of qualifying service for pension. Therefore, after considering the decisions relied on by both parties, the Central Administrative Tribunal, Madras Bench, in the common order made in OA/310/00137/2015 (batch) dated 19.04.2016, held that Chanda Devi's case cannot be taken as a binding precedent.

12. At this juncture, this Court deems it fit to consider, as to how, the Andhra Pradesh, Delhi, Jharkhand and Patna High Courts and the Hon'ble Supreme Court have considered the issue.

(i) The Andhra Pradesh High Court, in its judgment in Writ Petition No.10837 of 2001, decided on 23.6.2003 [General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P., and another v. Shaik Abdul Khader] held that once temporary status is granted to a person who is absorbed later on in regular service, he carries forward not only the leave to his credit but also carries forward the service in full. Half of the service rendered by him as casual labour before getting the temporary status has to be counted.

(ii) The Honble High Court of Delhi, vide common judgment, dated 23.11.2007 in Civil Writ Petition No.631-633 of 2006 in the matter of Union of India v. Shri Raj Kumar, passed the following directions:-

"Learned counsel for the Review Applicant-petitioner submits that the above writ petition had been withdrawn since the Special leave Petition that had been filed by the Railways challenging the order of the High Court of Andhra Pradesh, which had dismissed the Writ Petition filed by the Railways against the order of the Central Administrative Tribunal at Hyderabad. Counsel submits that the petitioners have now learnt that the Special Leave

Petition had been withdrawn on humanitarian grounds as the respondent had died. The order passed by the Supreme Court does not contain any such indication. Besides it had been put to learned counsel for the Review Applicant if the view taken by the Central Administrative Tribunal, Hyderabad as also the High Court of Andhra Pradesh, had been assailed by the Railways in any other petition. To that, counsel replied that as per his knowledge, no such petition has been filed challenging similar views taken by the High Court of Andhra Pradesh. The Review Petition also does not disclose any error apparent on the face of it. In these circumstances, we find no justification for allowing the present petition."

(iii) In W.P.Nos.2554 of 2002 and 1351 of 2004, decided on 11th October, 2007, in the matter of Charles David and 20 others v. Union of India, represented by the Chairman, Railway Board, the question considered by the Hon'ble Division Bench of this Court, as to whether, the petitioners therein were open line casual labourers or not and if so, entitled to count their past services before regularisation for pensionary and other benefits. The respondents therein contended that the engagement was on project line. After going through the definitions, "Casual Labour (Open Line)" and "Casual Labour (Project)", Note (1) of sub-para (iii) of Para 2001 of the Indian Railway Establishment Manual and the decision of the Hon'ble Supreme Court in Robert D' Souza v. Executive Engineer, Southern Railway and another reported in 1982 SCC (L & S) 124 and on the facts and circumstances of the case, a Hon'ble Division Bench of this Court, at Paragraph 16, held as follows:

"16. For all these reasons, when at no point of time, the petitioners were treated as Casual Labourers 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 Labourers 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. But, the Tribunal, without appreciating the materials placed on record in their proper perspective has arrived at an erroneous conclusion to dismiss the claim of the petitioners, resulting in miscarriage of justice, thus calling for our interference."

(iv) The decision rendered in W.P.Nos.2554 of 2002 and 1351 of 2004, dated 11.10.2007, in the matter of Charles David and 20 others v. Union of India, represented by the Chairman, Railway Board, has been affirmed by the Hon'ble Apex Court in Union of India v. Charles David and ors. etc., [C.C.No.13015-13016 of 2008, dated 26.09.2008].

(v) The Hon'ble Apex Court in Special Leave to Appeal (Civil) Nos.20041/2008, decided on 30.09.2011, [Union of India and Others Vs. Sarju], dealt with the very same issue. The relevant paragraph of the said order reads as under:-

"Sarju (respondent in SLP(C) No. 20041/2008) was engaged as casual labour on 17.1.1960. He was given temporary status with effect from 1.1.1981 and regularised with effect from 1.4.1988. On attaining the age of superannuation, he was retired from service on 30.11.2001. The application filed by him under Section 9 of the Administrative Tribunals Act, 1985 (for short, 'the Act') for counting his temporary service as part of qualifying service for the purpose of calculation of the retiral benefits was disposed of by the Tribunal vide order dated 1.3.2006, the operative portion of which reads as under:

"In view of the law laid down by the Hon'ble Andhra Pradesh High Court as well as C.A.T., Cuttack Bench, there is no basis/ground to take different view. In the result, the O.A. is allowed. The respondents are directed to recalculate the pension with arrears from due date (the date of superannuation) with all incidental benefits after counting the full service from the date of grant of temporary status i.e. 1.4.1981. These exercises should be completed within a period of four months from the date of receipt of a copy of this order. There shall be no order as to cost."

.....

We have heard learned counsel for the parties and perused the record. We have also gone through the judgment of this Court in Union of India and others v. K.G.Radhakrishnan Panickar and others[(1998) 5 SCC 111]. In our view, the directions given by the Tribunal in the matter of counting of past service of the respondents for the purpose of calculation of the retiral benefits did not suffer from any legal infirmity and the High Court rightly declined to interfere with the same. The judgment of this Court in Union of India and others v. K.G.Radhakrishnan Panickar and others (supra) on which reliance has been

placed by learned counsel for the petitioners is clearly distinguishable. In that case, the Court was called upon to consider whether the services rendered by the employees as Project Casual Labour can be treated as part of the qualifying service for the purpose of calculation of the retiral benefits and whether the cut off date fixed in the policy framed by the Railway Administration for counting half of the service rendered as Project Casual Labour was discriminatory and violative of Article 14 of the Constitution. After advertng to the relevant policy decisions, this Court held that that the policy of the Railways does not suffer from any constitutional infirmity. That judgment has no bearing on the decision of the issue whether temporary service, which was followed by regularisation should be counted as part of the qualifying service for the purpose of retiral benefits. As a matter of fact, if the respondents had prayed for counting half of the service rendered by them as Project Casual Labour as part of qualifying service, we may have examined the issue in detail and decided whether the said prayer should be granted. However as they did not challenge the orders of the Tribunal before the High Court, we refrain from expressing any opinion on the issue.

The special leave petitions are accordingly dismissed. The petitioners are directed to calculate the pension and other retiral benefits payable to the respondents keeping in view the directions given by the Tribunal and pay the arrears within next three months with interest at the rate of 12% from the dates of their retirement on attaining the age of superannuation."

(vi) In W.P.(S)No.4762 of 2015, decided on 30.06.2014 in the matter of Union of India v. Gaffur (Jharkhand High Court), the respondent therein was engaged as the Railway Gangman from the dormant list of casual labour on 16.02.1970 and he acquired temporary status on 17.04.1986. Consequent to the disciplinary proceedings, he was terminated from service on 08.03.1990. Subsequently, the respondent was reinstated in service as substituted Gangman on 23.06.2004 and finally he retired on 28.02.2011. He filed O.A.No.164 of 2011(R), seeking directions for extending pension and retiral benefits, with arrears and to treat his temporary status as qualifying service for the purpose of extending pensionary benefits. The Tribunal held that the respondent therein was in regular service from 23.06.2004 to

28.02.2011, which shall be accounted for 6 years, 6 months and 5 days. The Tribunal further observed that the period of service as temporary status i.e. from 17.04.1986 to 08.03.1990, which comes to 3 years, 10 months and 29 days and if added to the regular service, the total service would be more than 10 years and therefore, the respondent would be entitled to pensionary benefits. Being aggrieved by the same, the Union of India preferred a writ petition, before the Jharkhand High Court, contending inter alia that the Tribunal erred in issuing direction to take into account the service of the respondent rendered in the capacity as a temporary employee. After considering Rule 20 of the Master Circular No.54 dated 30.03.1994 dealing with qualifying service for pensionary benefits, the High Court of Jharkhand, dismissed the writ petition, by sustaining the order of the Tribunal to the effect that the service rendered as temporary status employee, should be taken into account, for the purpose of qualifying service.

(vii) In Civil Writ Jurisdiction Case No.11695 of 2015, decided on 18th August, 2015, in the matter of Union of India v. Subhash Chandra Prasad Singh (Patna High Court), after considering the rival submissions, the Patna High Court, at Paragraph Nos.2 to 5, held as follows:

"2. All these writ petitions involve a singular question, which is no more in controversy. By similar orders, similar reliefs were granted to all the contesting respondents here, when they were forced to approach the Central Administrative Tribunal, Patna Bench. The issue was what period, spent in percentage-wise, as casual and temporary status, would be counted for the purpose of pension and pensionary benefits. The Railways have contended that in casual status nothing would be granted and in temporary status fifty percent. The Tribunal, on the other hand, held that fifty percent in casual status and hundred percent in temporary status. Being aggrieved, these writ petitions.

3. Mr.Dixit, learned counsel appearing for the Patna High Court CWJC No.11695 of 2015 dt.18-08-2015 contesting respondents brings to the notice of this Court that at least in thirty earlier cases, the Tribunal had held so. The Railways being aggrieved had filed at least 25 writ petitions earlier on the same identical issue. They were all dismissed. Some of them even went to Supreme Court and Special Leave to Appeal (S.L.Ps.) were dismissed. Again, the Tribunal being bound by its earlier judgment, repeated the same, and

we are being bound by the earlier judgment by the Division Bench , have to repeat the same, and dismiss all these writ petitions.

4. We wonder why the Railways is forcing each employee to individually approach Tribunal. It is well-settled that once a position in law upon a fact is decided by the competent authority or the Tribunal, that would apply automatically to all similarly situated persons. They need not move the Tribunal or authority afresh. It appears that as no one in the Railways has to pay any cost for litigating, this wrong practice continues. It should be deprecated. It not only wastes time of the litigants, but the time of the Tribunal and the High Court in repeating the same thing again and again, with no benefits to any one in real terms.

5. The issue having been settled repeatedly, all these writ petitions are dismissed."

13. Thus, from the line of judgments, extracted supra, it is abundantly clear that the respondents herein, casual labourers, acquired temporary status and later on, absorbed to railway service, are entitled to count 50% of the service, rendered as casual labourers, as qualifying service, for pensionary benefits.

14. As reliance is made on Chanda Devi's case, we deem it fit to consider few decisions on the law on precedents (binding nature).

(i) In *State of Orissa vs. Sudhansu Sekar Misra*, reported in AIR 1968 SC 647, the Hon'ble Supreme Court explained as to when a decision can be taken as a precedent,

"A decision is only an authority for what it actually decides. What is of the essence of a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic, this is what Earl of Halsbury LC said in *Quinn v. Leatham*, reported in 901 AC 495.

'Now before discussing the case of *Allen vs. Flood*, reported in 1898 AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the

generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

It is not profitable task to extract a sentence here and there from a judgment and to build upon it."

(ii) In *Union of India Vs. Dhanwanti Devi*, reported in 1996 (6) SCC 44 = 1996 (7) Supreme 51, at page 51, the Hon'ble Supreme Court has explained, what constitutes a precedent, which as follows:-

"It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates- (i) findings of material facts, direct and inferential. A inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete

decision alone is binding between the parties to it, but it is the abstract ratio decidendi. ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents."

(iii) In *State of Punjab v. Devans Modern Breweries Ltd.*, reported in (2004) 11 SCC 26, the Hon'ble Supreme Court explained the doctrine of precedents and when a judgment becomes per incuriam. Paragraphs 334 to 336, 339 and 343, of the judgment are relevant and they are as follows:-

Precedent

334. The doctrine of precedent is a well-accepted principle. A ruling is generally considered to be binding on lower courts and courts having a smaller bench structure:

"A precedent influences future decisions. Every decision is pronounced on a specific set of past facts and from the decision on those facts a rule has to be extracted and projected into the future. No one can foresee the precise situation that will arise, so the rule has to be capable of applying to a range of broadly similar situations against a background of changing conditions. It has therefore to be in general terms and 'malleable' ... No word has one proper meaning, nor can anyone seek to fix the meaning of words for others, so the interpretation of the rule remains flexible and open-ended. (See *Dias*

Jurisprudence, 5th Edn., p. 136.)”

335. However, although a decision has neither been reversed nor overruled, it may cease to be “law” owing to changed conditions and changed law. This is reflected by the principle “cessante ratione cessat ipsa lex”.

“... It is not easy to detect when such situations occur, for as long as the traditional theory prevails that judges never make law, but only declare it, two situations need to be carefully distinguished. One is where a case is rejected as being no longer law on the ground that it is now thought never to have represented the law; the other is where a case, which is acknowledged to have been the law at the time, has ceased to have that character owing to altered circumstances. (See Dias Jurisprudence, 5th Edn., pp. 146-47.)”

336. It is the latter situation which is often of relevance. With changes that are bound to occur in an evolving society, the judiciary must also keep abreast of these changes in order that the law is considered to be good law. This is extremely pertinent especially in the current era of globalisation when the entire philosophy of society, on the economic front, is undergoing vast changes.

339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench. (See *Pradip Chandra Parija v. Pramod Chandra Patnaik*, reported in 2003 (7) SCC 01, SCC at paras 6 and 7; followed in *Union of India v. Hansoli Devi*, reported in 2002 (7) SCC 01, SCC at para 2.) But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. *Kalyani Stores*, reported in AIR 1966 SC 1686 and *K.K. Narula*, reported in AIR 1967 SC 1368, both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority.

343. It is also trite that the binding precedents which are authoritative in nature and are meant to be applied should not be ignored on application of the doctrine of *sub silentio* or *per incuriam* without assigning specific reasons therefor. I, for one, do

not see as to how Kalyani Stores and K.K. Narula read together can be said to have been passed sub silentio or rendered per incuriam.

15. As observed earlier, before the Central Administrative Tribunal, Madras Bench, a categorical submission has also been made on behalf of the writ petitioners that the department has accepted and implemented various judgments that had gone in favour of the applicants, in all the original applications concerned.

16. Before the Tribunal, the learned senior counsel for the petitioners pointed out that applicant in O.A.No.243/2015 is not a similarly placed person and there was no service under temporary status. Contention has also been made that the applicant in OA No.532/2015 had been terminated on 29.1.1967 after initial engagement on 23.7.1961. He was re-engaged on 21.12.1967 and his entire service from then onwards upto 30.4.1995 had been taken as full qualifying service at 27.5 years. Therefore, on the facts and circumstances of the above said original applications, the Tribunal directed de-linking of the above said cases. Submission has also been made that except the application in O.A.No.138/2015, the other applicants had qualifying service of over 20 years, even otherwise. While considering the objections of the writ petitioners, on limitation, the Tribunal, declined to accept the same. Thus, after considering the rival submissions, Rule 20 of the Railway Services (Pension) Rules, Paragraph 20 of the Master Circular No.54 of 1994, Paragraph 2005 of IREM, and analysing the judgments submitted by both parties, the Tribunal, at paragraph Nos.11 to 13 held as follows:

"11. Once the settled law is accepted in the aforesaid manner, the decision of the respondents to count only 50% of the service rendered by the applicants under temporary status and not at all count the service rendered as Casual Labour cannot be sustained. The respondents are, therefore, directed to revise the retirement benefits of the applicants taking into account their entire period of service under temporary status and 50% of the service as Casual Labour as the qualifying service and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order.

12. The learned counsel for the respondents pointed out that the applicant in OA 243/2015 is not a similarly placed person and there was no service under temporary status. Further the applicant in OA 532/2015 had been terminated on 29.1.1967 after initial engagement on 23.7.1961. He was re-engaged on

21.12.1967 and his entire service from then onwards upto 30.4.1995 had been taken as full qualifying service at 27.5 years. This order in the batch cases shall not, therefore, be applicable to these two cases. We accordingly direct that these two cases be delinked and listed separately for hearing and disposal.

13....Accordingly, in terms of decisions taken by the Government on the Sixth Pay Commission recommendations, they are entitled to full pension at 50% of the last pay drawn and, therefore, no further revision would be warranted in their cases. The qualifying service, if computed in the manner claimed by the applicants would only entitle them to a higher gratuity. Gratuity being a one time payment, the law of limitation would apply. No relief could be granted to those applicants who had slept over their rights, it was contended. We are, however, not inclined to hold any delay in approaching the Tribunal against the applicants. Considering the level from which the applicants had superannuated as well as their age, such an approach would be too harsh and hostile to them. Once the law is in their favour and it is seen that the authorities had not granted their rightful claim, the applicants should not be deprived of what is legitimately due to them on such technicalities. There is no reason to deny the applicants what has been granted by other Benches of the Tribunal and High Courts to similarly situated persons."

17. Though, Mr.M.L.Ramesh, learned counsel appearing for the petitioners, while assailing the correctness of the common order made in OA/310/00137/2015, etc. batch, dated 19.4.2016, of the Central Administrative Tribunal, Madras, on the grounds that the Tribunal has failed to consider the judgment of the Hon'ble Apex Court in Chanda Devi's case in proper perspective, wherein the Hon'ble Apex Court observed that appointment being temporary in nature, family pension is not payable, and on that score, sought for reversal of the orders impugned, this court, is not inclined to accept the said contentions, for the reason that the said judgment has been rendered without taking note of Rule 20 of the Railway Services (Pension) Rules, which speaks about commencement of qualifying service, which includes temporary service. As rightly observed by the Central Administrative Tribunal, Madras Bench, observations of the Hon'ble Supreme Court in Chanda Devi's case, has been made in the context of the entitlement of family pension claimed by a widow of a substituted temporary employee. The Tribunal has also observed that the Hon'ble Apex Court in Chanda Devi's case had no

occasion to validate the office orders of 1980, 1986 against the Railway Pension Rules and the relevant Maser circulars.

18. Judgment in WP(C) No.7618/2014, dated 11.11.2014 of the Delhi High Court and that of Jharkhand and Patna High Courts, are proximate and relevant to the facts of the instant case. In the light of the law relating to precedents, which we have considered in the foregoing paragraphs, Chanda Devi's case cannot be taken as a binding precedent.

19. On the aspect of limitation, this Court deems it fit to consider Paragraph 4 of the judgment of the Hon'ble Apex Court in Union of India and others v. Tarseem Singh reported in 2008 (8) SCC 648, wherein, it is held that,

"4. The principles underlying continuing wrongs and recurring/ successive wrongs have been applied to service law disputes. A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna S.P. Waghmare vs. Shree Dhyaneswar Maharaj Sansthan - [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of Section 23 of Limitation Act, 1908 corresponding to Section 22 of Limitation Act, 1963) :

"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

In the light of the above, the objection on limitation is overruled.

20. Yet another aspect to be taken note of, is that in similar circumstances, when the writ petitioners have challenged the order of the Hon'ble Division in W.P.Nos.2554 of 2002 and 1351 of 2004, in the matter of Charles David and 20 others v.

Union of India, represented by the Chairman, Railway Board, the same has been confirmed by the Hon'ble Apex Court. Before the Tribunal, it is also the submission of the learned Senior Counsel for Railways, orders granting relief to similarly placed retirees have been implemented. Such being the case, there is no reason, as to why, same benefits are not extended.

21. In Prem Chand Somchand Shah v. Union of India reported in (1991) 2 SCC 48, the Hon'ble Supreme Court, at paragraph 8, held thus,

"8. As regards the right to equality guaranteed under Article 14, the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

22. In State of Karnataka v. N. Parameshwarappa reported in 2003 (12) SCC 192, in paragraph 8, the Hon'ble Apex Court held thus:

"8. we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court."

23. In Hari Ram v. State of Hariyana reported in 2010 (2) CTC 336 (SC), the Supreme Court held that if the Courts are not correcting the wrong action of the Government it may leave citizen with the belief that citizen is right in contacting right persons in the Government as if judicial proceedings are not efficacious. Thus similarly placed persons are bound to be treated equally without discrimination is a fundamental right

guaranteed under Article 14 of the Constitution of India.

24. In State of U.P. v. Dayanand Chakrawarty reported in 2013 (8) Scale 74 : (2013) 7 SCC 595, the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes.

25. In the light of the decisions and discussion, there is no merit in the writ petition. Writ Petition is dismissed. The Writ Petitioners are directed to implement the orders of the Tribunal, within four weeks, from the date of receipt of the passing of the order. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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+1cc to Mr.A. Abdul A jees, Advocate, S.R.No.61308
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sai (CO)
md(25/11/2016)

W.P.No.36630 of 2016