

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 04-11-2016

CORAM

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
AND
THE HONOURABLE MR.JUSTICE **N.AUTHINATHAN**

WRIT PETITION No.37533 of 2016
and
WMP No.32162 of 2016

1.Union of India
Represented by, The General Manager
Southern Railway, Park Town,
Chennai - 600 003

2.The Senior Divisional Personnel Office
Madurai Division, Southern Railway,
Madurai - 16

... Petitioners

-VS-

1.S.Kasipandy

2.The Registrar
Central Administrative Tribunal
Madras Bench
Chennai

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari, to call for the records pertaining to O.A.No.310/01061/2015 dated 09.08.2016 on the file of the 2nd respondent Tribunal, quash the same.

For Petitioner : Mr.M.L.Ramesh

For respondents : Mr.L.Chandrakumar for R1

ORDER
(delivered by **S.MANIKUMAR, J.**)

Challenge in this writ petition is to an order made in O.A.No.310/01061/2015 dated 09.08.2016, by which, the Central Administrative Tribunal, Madras Bench, has set aside the order dated 09.06.2015 of the Senior Divisional Personnel Officer, Southern Railway, Madurai Division, Madurai, the second petitioner herein, and further directed the writ petitioners to consider the aspects stated in paragraph 7 of the order.

2. Facts leading to the writ petition are that the 1st respondent, joined Railways, on 01.05.1974, as Casual Labourer and continued to work as Casual Labourer till he was conferred temporary status in 1979 and thereafter regularised. While he was working as a Pointsman at Tenkasi Junction, Madurai Division. He applied for appointment for his son, under the Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (in short LARSGESS).

3. As per the extant guidelines, LARSGESS provides for extension of the scheme to safety category employees drawing Grade pay of Rs.1900/- and expected to be in the age group of 55 to 57 years, and should have completed 33 years of qualifying service,

whose suitability would be assessed by an Assessment committee. It is the further case of the first respondent that though he had completed 33 years of service, the writ petitioners have chosen to reject his request stating that, he did not complete 33 years of service.

4. Being aggrieved by the same, the first respondent has filed Original Application No.1262 of 2012 and vide order dated 30.01.2015, the Tribunal directed the writ petitioners to consider the period of service rendered by the first respondent, as a casual labourer. Thereafter, vide order dated 09.06.2016, the Senior Divisional Officer, the 2nd petitioner herein, has rejected the request, as not permissible.

5. Being aggrieved by the same, the first respondent filed another Original Application No.1061/2015 to quash the order dated 09.06.2016 and consequently, prayed for a direction to the writ petitioners, to accept his request for voluntary retirement and to consider his son's appointment, on compassionate grounds.

6. Before the Tribunal, the first respondent, has contended that Railway Board's letter No.E(NG)II/71/CL/83 dated 11.05.1973 provides for temporary status on completion of 120 days and by virtue of the same, the first respondent herein, should have been given

temporary status, on and from 30.11.1974, and regularly appointed on 11.06.1979 and therefore, 50% of the service in temporary status rendered by the first respondent ought to have been added with regular service, for all purposes, including extension of benefit under LARSGESS scheme, and in the above circumstances, the action of writ petitioners, in rejecting the request of the first respondent for voluntary retirement and consequently, to extend the benefit of LARSGESS are unsustainable.

7. Before the Tribunal, the first respondent has also submitted that the Railway Board's letter No.E(NG) II/77/CL/46 dated 08.06.1981, states that on completion of 120 days of casual labour service, one has to be given temporary status and inasmuch as the first respondent had enjoyed the privilege of attaining the temporary status from 30.11.1974, which ended on 11.06.1979, on being absorbed in regular capacity, the writ petitioners ought to have taken 50% of the service for all purposes including LARSGESS Scheme. He has also contended that Board's letter No.E(NG) II/78/CL/12 dated 16.10.1990, letter No.E(NG) II/85/CL/6 dated 28.11.1986 and further letter dated 19.05.1986 also stipulated, counting of half of the temporary service rendered (i) in the case of open line casual labour after 01.01.1961 (after attaining temporary status) and (ii) in the case of project casual labour (after attaining temporary status) after

01.01.1981, as qualifying service for pensionary benefits, in the eventual absorption in a regular post, and therefore the petitioners ought to have taken 50% of the service rendered by the 1st respondent on completion of 120 days and up to 11.06.1979, for all purposes, including extension of benefit under LARSGESS Scheme, and rejection of his request for voluntary retirement, under the scheme with consequential benefits of employment assistance on compassionate grounds to his son, is liable to be set aside.

8. In support of the above, he has also relied on paragraph 2005 of the Indian Railway Establishment Manual Vol.II, which states that casual labour service, including project, shall be eligible to count half the period of their service, after attaining temporary status, on completion of prescribed days on continuous employment, and before regular absorption, to be taken as qualifying service.

9. Before the Tribunal, the first respondent has further contended that the action of the writ petitioners, in insisting for 33 years of service, for considering his request for voluntary retirement and compassionate appointment to his son under LARSGESS scheme, is an act of suppression of facts, as the Railway Board has clarified that the pre-requisite service required is only 20 years, as per the Railway Board's Letter No.E [P&A] 1-2014/RT-5 dated 20.05.2015,

based on the recommendations of VI Pay Commission, and implemented from 01.01.2006. For the above said reasons, he has prayed to set aside the order dated 09.06.2015 and to grant the consequential benefits.

10. Before the Tribunal, the writ petitioners, in their counter affidavit, have submitted that the first respondent was appointed as a Substitute Sweeper Cum Porter (SCP in short), at Sengottai Station of Madurai Division, Southern Railways and paid Rs.196/- in the scale of pay Rs.196 - 232 (III CPC Scale), with effect from 26.01.1986. He was granted temporary status, on completion of four years continuous service, with effect from 26.05.1980 and empanelled for regular appointment as a Substitute Sweeper cum Porter in Traffic Department with effect from 08.02.1984. He was promoted as Senior SCP in the scale of Rs.775 - 1025 (IV CPC scale), with effect from 06.07.1988 and further promoted as Pointsman 'A' in the scale of Rs.950-1500 with effect from 15.07.1997. While working as Senior SCP, he applied for voluntary retirement and requested appointment to his ward, under LARSGESS scheme, introduced for voluntary retirement and appointment of wards of the above said category. The request of the first respondent was considered and rejected.

11. Vide order dated in 30.01.2015 in O.A.No.1262/2012, the Tribunal directed the petitioners to re-examine the case, with reference to the records available with them and submitted by the first respondent, within a time frame, and to pass a reasoned order. It is the case of the writ petitioners that pursuant to the above, the first respondent did not produce any document. However, the case of the first respondent was re-examined with reference to the available records, and on 08.05.2015, a reply was given. Thereafter, the first respondent, submitted a representation dated 11.05.2015, with certain documents stating that he satisfied the qualifying service for the benefit under LARSGESS Scheme. The said representation and documents submitted, were considered and the second petitioner herein has sent a reply dated 09.06.2015, stating that the request of the first respondent cannot be considered.

12. Before the Tribunal, submissions has been made by the petitioners that, the aggregate service of the first respondent, as per the order dated 09.02.1984, was 2070 days. Empanelment of the employees mentioned in the office order was made by the Railway Divisional Manager on 08.02.2014. As regards the claim of first respondent for inclusion of his service from the date of empanelment, the first respondent has produced his casual labour card to prove that he had worked as a casual labour from 01.05.1974. On the basis of

the casual labour history card, the official respondents have contended that he had not worked continuously, for 120 days from 01.05.1974 to 25.01.1978, for grant of temporary status. Paragraph No.8 of Master Circular No.48, dealing with continuous employment of casual labourers has been pressed into service, by the writ petitioners.

13. The writ petitioners have further contended that as per the above said circular, the first respondent, who had no continuous service of 120 days, up to 25.01.1978, is not entitled to conferment of temporary status. According to them, the first respondent had put in 29 years 4 months and 23 days of service, after his empanelment and up to 01.07.2012, and still required more than four years and seven months of qualifying service, after attainment of temporary status.

14. It is also their submission that since only 50% of the service rendered, after temporary status has to be taken into account, as qualifying service, the first respondent, who had no continuity service till 25.01.1978, did not satisfy the qualifying service of 33 years. It is also their submission that even taking it for granted, that the first respondent, got his temporary status, soon after, on 25.01.1978, even then, he did not have the qualifying service of 33 years. According to them, as on 01.07.2002, the first respondent did not have the qualifying service of 33 years or more and therefore, rejection of his

request to extend the benefit under LARSGESS Scheme, is correct.

14. Material on record discloses that during the course of hearing, Mr.L.Chandrakumar, learned counsel for the first respondent, has drawn the attention of the Tribunal to the Railway Board's letter No.E [P&A] 1-2014/RT-5 dated 20.05.2015, whereby, the qualifying service for consideration, under LARSGESS scheme has been reduced from 33 years to 20 years. But, the learned counsel for the writ petitioners submitted that the said letter dated 20.05.2015, cannot be applied retrospectively.

15. Adverting to the above, at paragraph No.7 of the order in O.A.No.310/01061/2015 dated 09.08.2016, the Tribunal has held as follows:

"The Tribunal in the earlier OA No.1262 of 2012 had gone deep into the matter and finally directed the respondents to re-examine the case with reference to the records available with them and with the applicant. After considering all the documents available with the respondents and also the documents furnished by the applicant along with his representation, the respondents have stated that the applicant is entitled for a qualifying service of 30 years, 2 months and 29 days only. From the perusal of the copy of the service register and Casual Labour Service Card, we are able to see that the

applicant was working from the year 1974 but with breaks and break period is also less than 10 days every time. Even the Master Circular relied on by the respondents provides for condonation of gaps for grant of temporary status from 21.01.1980. When the employees who joined the Railways later in 1980 are enjoying the benefit of the Master Circular 48, why not the applicant who joined the Railways in the year 1974. Moreover the latest Ministry of Railways, Railway Board, Lr.No.E(P&A)-I-2014/RT-5 dated 20.05.2015 reduced the qualifying service for consideration under the LARSGESS Scheme from 33 to 20 years. Therefore, the impugned order dated 09.06.2015 is quashed and set aside. The respondents are directed to consider all the above aspects and pass appropriate orders. We hope that again the applicant will not be driven to this court. The OA is allowed. No costs."

16. Though Mr.M.L.Ramesh, learned counsel for the writ petitioners, reiterated the very same reasons, objecting to the relief sought for, and further contended that the Tribunal, has failed to consider that the Railway Board's Letter No.E(P&A)-I-2014/RT-5 dated 20.05.2015 reducing the total years of service from 33 yeras to 23 years, to become eligible for LARSGESS scheme, is not retrospective and further contended that the said letter can be given only prospective effect, this court is not inclined to accept the said contention, for the reason that when one of the Zonal Railways sought

for clarifications, as to whether the services of an employee, who had worked, as a casual labourer/temporary status, and as a substitute in different departments in the past, and whether the services rendered by him, in such capacities, can be reckoned, for determining the eligibility of such employee, as qualifying service, under LARSGESS Scheme, the Ministry of Railway Board, Government of India, in Letter No. E(P&A)-I-2014/RT-5 dated 20.05.2015, addressed to all the General Managers of Indian Railways has issued a clarification, as hereunder:

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD

No.E(P&A) I-2014/RT-5

New Delhi dated 20.05.2015

The General Managers (P)
All Indian Railways.

Sub : Clarification regarding operating of scheme of LARSGESS

One of the Zonal Railways had sought clarification, whether the service of an employee who worked as casual labourer/temporary status, substitutes in different departments in the past can be reckoned for determining the eligibility of the employee in respect of qualifying service under LARSGESS.

2. The matter has been examined by Board. Under the SRRS renamed as LARSGESS, 33 years of qualifying service was stipulated for determining the eligibility of the employee considering that full pension was admissible on completion of

33 years of qualifying service. This period was subsequently reduced to 20 years of qualifying service for GP 1800, as in accordance with the recommendations of 6th CPC full pension is admissible on rendering 20 years of qualifying service. Hence, the period of service which is being reckoned for purpose of pension in terms of Rule No.31 & 32 of the Railway Services (Pension) Rules, 1993 may be reckoned for determining the eligibility of the employees in respect of qualifying service viz. 20/33 years, under the Scheme as well.

(This disposes off NWR's letter No.817-E/4/Retirement Scheme/LARSGESS/Policy/204 dated 11.06.2014).

(K.Shankar)
Director Estt. (P&A)
Railway Board

Copy to FA&CAOs, All Indian Railways."

17. Clarification issued by the Railway Board, makes it clear that it applies to those who had worked in the above capacities and therefore it has retrospective effect. Contention of the writ petitioners, objecting to the relief sought for, have been duly considered by the Tribunal, in the order by the Railway Board, impugned before us, and clarifications have been issued to the Railway Board, to consider the services of an employee, who had worked in different capacities. Objection of the writ petitioners that the letter dated 20.05.2015 cannot be applied retrospectively, is not accepted. When the period has been reduced to 20 years, the petitioner ought to have been extended the benefits.

For the reasons stated supra, writ petition is dismissed. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petition is closed.

(S.M.K.,J.) (N.A.N.,J.)
04-11-2016

Index : Yes/No
Internet : Yes/No
Asr

S. MANIKUMAR, J.
AND
N.AUTHINATHAN, J.

Asr

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