

3

\$~8 to 18 & 27 to 34

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 10162/2015

UNION OF INDIA

..... Petitioner

Through

Mr. V.S.R. Krishna, Adv.

versus

RAMPRATAP SINGH & ORS

..... Respondent

Through

Mr. R.K. Shukla, Adv.

+ W.P.(C) 10163/2015

UNION OF INDIA

..... Petitioner

Through

Mr. V.S.R. Krishna, Adv.

versus

HARISH KUMAR & ORS

..... Respondent

Through

Mr. R.K. Shukla, Adv.

+ W.P.(C) 10202/2015

UNION OF INDIA & ORS

..... Petitioner

Through

Mr. Jagjit Singh with Ms. Shipra Shukla, Adv.

versus

GOKUL CHAND

..... Respondent

Through

Mr.H.S. Sharma with Mr. Abhishek Bharadwaj and Mr. Anil Kumar, Adv.

+ W.P.(C) 10279/2015

UNION OF INDIA

..... Petitioner

Through

Mr. V.S.R. Krishna, Adv.

versus

SOHAN LAL AND ORS.

..... Respondent

Through

Mr. H.K. Bajpai, Adv.

+ W.P.(C) 10251/2015

UNION OF INDIA

..... Petitioner

Through

Mr. V.S.R. Krishna, Adv.

versus

SHRI MAHENDER KANTI & ORS

..... Respondent

Through

+ W.P.(C) 10231/2015

UNION OF INDIA AND ANR

..... Petitioner

Through

Mr. Ashok Singh, Adv.

versus

JWALA PRASAD

..... Respondent

Through

Mr. H.K. Bajpai, Adv.

- + W.P.(C) 10700/2015
 UNION OF INDIA & ANR Petitioner
 Through Mr. Ashok Singh, Adv.
 versus
 SANTOSH KUMAR Respondent
 Through
- + W.P.(C) 10706/2015
 UNION OF INDIA & ANR Petitioner
 Through Mr. Ashok Singh, Adv.
 versus
 CHANDRA DATT Respondent
 Through Mr. P.S. Khare & Mr. H.P.
 Chakravorti, Adv.
- + W.P.(C) 10720/2015
 UNION OF INDIA & ANR Petitioner
 Through Mr. Ashok Singh, Adv.
 versus
 RAMJI LAL Respondent
 Through Mr. P.S. Khare & Mr. H.P.
 Chakravorti, Adv. 17
- + W.P.(C) 11494/2015
 UNION OF INDIA AND ORS Petitioner
 Through Mr. Ashok Singh, Adv.
 versus
 NIWAS VERMA Respondent
 Through Mr. R.K. Shukla, Adv.
- + W.P.(C) 11521/2015
 UNION OF INDIA AND ANR Petitioner
 Through Mr. V.S.R. Krishna with Ms.
 Rashmi Malhotra and Ms.
 Priyanka Bharihoke, Adv.
 versus
 SURINDER SINGH Respondent
 Through
- + W.P.(C) 7404/2015
 UNION OF INDIA Petitioner
 Through Mr. V.S.R. Krishna, Adv.
 versus
 SUNIL PRASHER & ORS Respondent
 Through
- + W.P.(C) 7538/2015

5

	UNION OF INDIA	 Petitioner
	Through Mr. V.S.R. Krishna, Adv.	
	versus	
	PREM PAL SINGH TOMAR & ORS	 Respondent
	Through	
+	W.P.(C) 9076/2015	
	UNION OF INDIA	 Petitioner
	Through Mr. V.S.R. Krishna with Ms.	
	Rashmi Malhotra and Ms.	
	Priyanka Bharihoke, Adv.	
	versus	
	INDRAPAL YADAV AND ORS.	 Respondent
	Through	
+	W.P.(C) 9077/2015	
	UNION OF INDIA	 Petitioner
	Through Mr. V.S.R. Krishna, Adv.	
	versus	
	SANTAN AND ORS.	 Respondent
	Through Mr. Rizwan, Adv. for R-1	
+	W.P.(C) 7543/2015	
	UNION OF INDIA AND ORS.	 Petitioner
	Through Mr. V.S.R. Krishna with Ms.	
	Rashmi Malhotra and Ms.	
	Priyanka Bharihoke, Adv.	
	versus	
	DAN BAHADUR	 Respondent
	Through	
+	W.P.(C) 7789/2015	
	UNION OF INDIA AND ORS.	 Petitioner
	Through Mr. V.S.R. Krishna with Ms.	
	Rashmi Malhotra and Ms.	
	Priyanka Bharihoke, Adv.	
	versus	
	SAROOP RAM	 Respondent
	Through Lalta Prasad, Adv.	
+	W.P.(C) 9238/2015	
	UNION OF INDIA	 Petitioner
	Through Mr. V.S.R. Krishna, Adv.	
	versus	
	BHAGWATI & ORS.	 Respondent
	Through Mr. R.K. Shukla, Adv.	

+ W.P.(C) 9239/2015
 UNION OF INDIA Petitioner
 Through Mr. V.S.R. Krishna, Adv.
 versus
 TARA DUTT & ORS Respondent
 Through Lalta Prasad, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **18.01.2016**

This batch of Writ Petitions filed by Union of India (Northern Railways) challenge different orders passed by the Central Administrative Tribunal (Principal Bench) allowing Original Applications filed by the respondents/employees with the direction that 50% of the service rendered by them as casual labour would be treated as a part of qualifying service for the purpose of quantification of pension.

Identical issue was considered by a Division Bench of this Court in Writ Petition (C) No. 7618 of 2014, *Union of India & Ors. vs. Prem Pal Singh* decided on 10.11.2014. This judgments refers to an earlier judgment of the Andhra Pradesh High Court in *General Manager, South Central Railway vs. Shaik Abdul Kader*, 2004 (1) SLR 214 and has examined Rule 31 of the Railways Services (Pension) Rules, para 2005 of Indian Railway Establishment Manual (IREM) and holds that neither of these provisions deal with how service of a temporary employee has to be considered for the purpose of pension and whether a temporary employee *per se* is different from a permanent employee for the purpose of reckoning entitlement of terminal benefits. The said Rule and para for convenience are reproduced below:

"31. Counting of service paid from contingencies:- In respect of a railway servant, in service on or after the 22nd day of August 1969, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment subject to the following conditions, namely;

(a) The service paid from contingencies has been in a job involving whole-time employment.

(b) The service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned as posts of chowkidars and khalasis;

(c) The service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which though not analogous to the regular scales of pay, bears some relation In the matter of payment to those being paid for similar jobs being performed at the relevant period by staff in regular establishment;

(d) The service paid from contingencies has been continuous and followed by absorption in regular employment without a break. Provide that the weightage for past service from contingencies shall be limited to the period after January 1961 subject to the condition that authentic records of service such as pay bill leave record of service book is available."

xxx xxx xxx xxx xxx

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 exserviceman 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

9

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 down

10

by him. (This shall be effective from 2nd October 1980)."

The judgment notes and takes on record para 20 of the Master Circular No.54 which reads as under:

"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."

Interpreting the said paragraph it is held that the paragraph deals with the situation where a casual labour/worker is eventually regularised after attainment of temporary status and the combined effect of Rule 31, Para 2005 and para 20 of the Master Circular 54 is that if such worker/labourer had earlier worked as casual labour for a period, then half of the said period would be reckoned for the purpose of pension.

Thereafter, reference was made to Rule 20 of the Service (Pension) Rules, which reads 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 **eighteen** years shall not count, except for compensation gratuity; (Authority: Railway Board's letter No.*

F(E)III/99/PN 1/(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/2004/PN1/21(Amendment) dated 7.12.2004)**”*

The Division Bench, elucidating on the said Rule has held:

“7. The proviso, in our opinion, puts the controversy beyond a shade of doubt in that if an employee officiates in service or is treated as temporary railway servant and subsequently regularized or granted substantive appointment, the entire period of his combined service as temporary appointee followed by the service spent as a permanent employee has to be reckoned for the purpose of pension. Since Rule 20 does not deal with what is to be done with the period of service spent as casual labourer, para 20 of the Master Circular 54 and para 2005 of the IREM address the said issue. Being administrative instructions, they clarify that half the period spent as casual labourers would be eligible to be reckoned for purposes of pension.

12

8. In the opinion of this Court, the subsequent ruling of the Andhra Pradesh High Court in *Ramanamma (supra)*, with respect, does not declare the correct law. Though the judgment has considered certain previous rulings as well as the provisions of the IREM and Rule 31 of the Railway Services (Pension) Rules, the notice of the Court was not apparently drawn in that case and the Court did not take into account Rule 20, especially the proviso which specifically deals with the situation at hand. Likewise, *Chanda Devi (supra)* did not consider the effect of Rule 20, which, in the opinion of this Court, entitles those who work as casual labourers; are granted temporary status, and; eventually appointed substantively to the Railways, to reckon the entire period of temporary and substantive appointment for the purposes of pension.”

We respectfully agree with the aforesaid reasoning given by the Division Bench and following the same, the present writ petitions have to be dismissed.

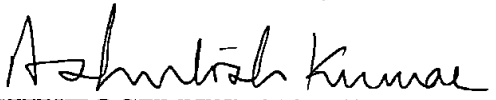
Learned counsel for the petitioner has not been able to highlight and point out any difference or peculiar facts in these writ petitions for us to take a different view, from the view taken by the Division Bench in *Prem Pal Singh (supra)*.

Learned counsel for the respondents during the course of hearing, had drawn our attention to order dated 17.08.2015 passed in Special Leave to Appeal (C) No.14561 of 2015 in the appeal preferred by the Union of India challenging the judgment dated 10.11.2014 in the case of *Prem Pal Singh (supra)*. A perusal of the said order would indicate that a limited show cause notice has been issued as it was highlighted by the Union of India that the employee had worked up to 14.10.1976 and was re-engaged after

a lapse of 10 years in June, 1985. The contention of Union of India was that by virtue of the judgment of the High Court this period between 15.10.1976 to 1985 would be counted. The order passed by the Supreme Court issuing notice specifically records that limited notice was being issued. The facts in these cases do not reveal a similar factual matrix and no such assertion/contention has been raised.

With the aforesaid observations and findings, the writ petitions are dismissed.


SANJIV KHANNA, J


ASHUTOSH KUMAR, J

JANUARY 18, 2016/acm