

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7452 of 2016

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Smt. Lalita Devi wife of Late Ram Parichhan Ram, Masson Under Chief Engineer/Survey, Eastern Railway Kolkata, Resident of Village & Post- Berar, District- Patna (Bihar).

.... Petitioner

Versus

1. The State of Bihar through the General Manager, Eastern Railway, Kolkata.
2. The Chief Personnel Officer, Eastern Railway, Kolkata. null
3. The Chief Administrative Officer (Con.), Eastern Railway, Kolkata.
4. The Chief Engineer (Survey), Eastern Railway, Kolkata.
5. The Deputy Chief Personnel Officer (Con), Eastern Railway, Kolkata.
6. The F.A. & C.A.O. (Con), Eastern Railway, Kolkata.
7. The Chief Administrative Officer (Con), East Central Railway, Mahendrughat, Patna.
8. The Deputy Chief Engineer (Con)/1, East Central Railway, Danapur.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. M.P. Dixit, Advocate Mr. S.K. Dixit, Advocate Mr. Sanjay Kr. Choubey, Advocate Mr. Shailendra Kumar, Advocate Mr. Sunil Kumar, Advocate
For the Respondents	:	Mr. Bijoy Kr. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 31-01-2017

The order dated 3rd December, 2015 contained in Annexure-13, passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. 787/2011 is being challenged in the present writ application along with order dated 21st January, 2016, which was passed in Review Application No. 05/2016. Both the OA as well as review application was dismissed by the Tribunal not



finding any merit in any of the contentions and claim raised by the present petitioner against the Railway Administration.

From the pleadings, the facts emerge that husband of the petitioner Late Ram Parichhan Ram was initially appointed as a Casual Gangman on 18.07.1972 under the Construction Department for a survey project, which was going on in the District of Giridih. He was subsequently re-designated as a Chainman on 20th October, 1974 and granted temporary status w.e.f. 01.01.1981. The petitioner is the widow, who claimed that her husband had acquired a temporary Government status. He became a Khalasi with a pay-scale and on the husband successfully appearing in a trade test was promoted to the post of Mason with a pay-scale of Rs. 260-400/-. Her case is that it was a case of appointment on the post of Mason-cum-Carpenter w.e.f. 01.05.1985. The husband died on 19.09.1988 so she claimed family pension from the respondent authorities.

The respondents rejected the claim on the ground that he was not a regular employee but only a casual employee with temporary status and the Rules do not provide for grant of family pension. The litigation started thereafter. In the first round by an application which was filed before the Tribunal. It was disposed of with direction upon the authorities to pass a speaking



order. That speaking order remained pending because of the bifurcation of the zone and it was finally passed on 26.07.2011, a copy of which is Annexure-12 to the writ application. The second round of litigation started with O.A. 787/2011 in which the order (Annexure-12) has been challenged.

Learned counsel representing the petitioner raised the bar in his argument by trying to impress upon the Court that by virtue of the decision taken to employ the husband of the petitioner as a Mason-cum-Carpenter he had acquired a kind of permanent status. He was no longer a casual employee, and, therefore, he was entitled to the benefits, which are available to such employees. Family pension is integral to the same.

The foundation, on which such an edifice has been built, fortunately has been brought on record as Annexure-1 dated 26th April, 1985. Since in the same order lies the key to the entire argument, the Court reproduces the order for ready reference :

“EASTERN RAILWAY
(SURVEY ORGANISATION)

OFFICE ORDER NO. 328

Calcutta, the 26th April’85.

The following arrangement is hereby ordered with the approval of the competent authority :-

Sri Ram Parikhan Ram, Khalasi, (Temp. Status) presently working in the Survey Camp at Giridih, who had qualified in the trade test for “Mason-cum-Carpenter” in scale Rs.



260-400/- (RS), purely on local arrangement and adhoc basis w.e.f. 1.5.85(FN) allowed to continue in the same field survey camp.

The above officiating appointment will not confer any claim what-so-ever for absorption as such over his seniors in future.

(L.D. Sarkar)
Asstt. Engineer/Survey,
ERly/Calcutta”

The status of the husband of the petitioner, therefore, cannot be made any better or worse than what has been indicated by the authorities while appointing the husband of the petitioner temporarily as a Mason-cum-Carpenter on an officiating basis purely on a local arrangement and ad hoc basis to continue in the field survey camp. The above order also reiterates the position that the above officiating appointment will not confer any claim whatsoever for absorption as such over and above his seniors in future. In other words, a foundation, no doubt, was laid by this order for consideration of absorption of the husband of the petitioner, but, unfortunately, the occasion for the same never arose because God willed otherwise and within three years of the issuance of Annexure-1 husband of the petitioner died.

The Tribunal has also taken note of the fact that because of the hapless condition of the widow the authorities decided to give her compassionate appointment and to that extent



she is not in distress or penury, as was sought to be made out before this Court.

The entirety of the issue about entitlement of such Railway employees for pension was considered by the Hon'ble Supreme Court in the case of ***General Manager, North West Railway and others Vs. Chanda Devi***, reported in (2008) 2 SCC 108. The Hon'ble Supreme Court after considering the provisions has crystallized the status of such employees in paragraphs 20 to 25 of the said decision, which are reproduced hereinbelow :-

“20. Rule 2005 clearly lays down the entitlement and privileges admissible to casual labour who are treated to be temporary i.e. given temporary status in the following terms:

“2005. Entitlements and Privileges admissible to casual labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days 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 XXIII 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 in 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 grounds, quotas for handicapped and ex-servicemen 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 the Railway Board's Letter No. E(NG)II/78/CL/12 dated 14-10-1980. [Letter No. E(NG)II/85/CL/6 dated 28-11-1986 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 on a 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 Edn.).

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)."

21. The aforementioned Rule 2005 replaced an earlier rule being Rule 251 occurring in Chapter XXV of the previous publication which has inter alia been noticed by this Court in *Ram Kumar v. Union of India* (1988)1 SCC 306. Ranganath Misra, J. speaking for a Division Bench noticing the different entitlements of an employee who has acquired temporary status as noticed in *Inder Pal Yadav* case(1985) 2 SCC 648 held: (Ram Kumar case, SCC pp.310-11, para 12)



“12. It is the stand of the learned Additional Solicitor General that no pensionary benefits are admissible even to temporary railway servants and, therefore, that retiral advantage is not available to casual labour acquiring temporary status. We have been shown the different provisions in the Railway Establishment Manual as also the different orders and directions issued by the Administration. We agree with the learned Additional Solicitor General that retrial benefit of pension is not admissible to either category of employees.”

22. A clarification was, however, subsequently made in *Ram Kumar and Ors. v. Union of India* stating:

“The only other question to be seen is with regard to entitlement to pension. It appears that the Board on the basis of the Fourth Pay Commission report has provided for pension at the time of superannuation even to those who are temporary employees. In para 12 of our order on the basis of material then placed before us, we had taken the view that temporary employees were not entitled to pension on superannuation. We direct the Railway Board to consider the claim of temporary employees who are before us for pension at the time of superannuation or otherwise in view of the fact that the Board has taken its own decision differently. Obviously appropriate material had not been placed before this Court when the submission



of Mr. Ramaswamy for Railway Administration was accepted in the order. The decision is beneficial to the employees and we direct that the Board's decision may be implemented.

23. *Ram Kumar* was followed by this Court in *Union of India v. Rabia Bikaner* (1997) 6 SCC 580 stating: (Rabia Bikaner case, SCC p. 582, para 4)

“4. It is contended by the learned counsel for the respondent-widow that under Para 2511 – ‘Rights and privileges admissible to the casual labourers who are treated as temporary after completion of six months’ continuous service’ - of the Railway Establishment Manual, they are entitled to family pension. We find it difficult to give acceptance to the contention. It is seen that every casual labourer employed in the Railway Administration for six months is entitled to temporary status. Thereafter, they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On their appointment, they are also required to put in minimum service of one year in the temporary post. In view of the above position, if any of those employees who had put in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his



widow would be eligible to pension under the Family Pension Scheme, 1964. In all these cases, though some of them have been screened, yet appointments were not given since the temporary posts obviously were not available or in some cases they were not even eligible for screening because the posts become available after the death. Under these circumstances, the respondent-widows are not eligible for the family pension benefits.

24. The contrast between a casual labour having a temporary status and a temporary servant may immediately be noticed from the definition of a temporary railway servant contained in Rule 1501 occurring in Chapter XV of the Manual:

“1501. (i) Temporary Railway Servants

Definition.-A ‘temporary railway servant’ means a railway servant without a lien on a permanent post on a railway or any other administration or office under the Railway Board. The term does not include ‘casual labour’, including ‘casual labour with temporary status’, a ‘contract’ or ‘part-time’ employee or an ‘apprentice’.”

25. We have noticed hereinbefore that in the office order dated 24.1.1989, the designation has been shown as T.S. Helper CSI (Construction) i.e. temporary status as per CSI (Construction). However, wrongly it was said to be a pensionable



post. Before the High Court, an additional affidavit was filed by the Railway Administration wherein inter alia it was stated that the screening tests were held long thereafter viz. some time in the year 1999. Only upon holding a screening test, the services of the employees concerned could be regularized; and as in the case of Ram Niwas, he had expired in the year 1988, he had not and could not have undergone any screening test and that no pensionary benefit or benefit of family pension was admissible to him.

The above paragraphs lay down the law and it is based on the ratio of the decision of the Hon'ble Supreme Court that the Tribunal has decided to reject the claim of the petitioner holding that since there is no provision to grant pension to Railway employees without absorption in the regular establishment, the decision of the respondent authorities, as stated in the speaking order dated 26.07.2011, is not required to be interfered with.

Counsel for the petitioner thereafter tried to produce various orders, which are unreported decisions passed in cases which he submits are similar to the case of the present petitioner. The Court has gone through those decisions. Some of them being C.W.J.C. No. 3628 of 2007 dated 13.12.2007, which, in the opinion of this Bench, is *per in curium* because the relevant Rules etc. had not been taken into consideration by the said



Division Bench while passing the said order. Some of other decisions, which have been also produced, are C.W.J.C. No. 7789 of 2007 dated 21.01.2008. With due respect to the counsel for the petitioner, the Division Bench cannot lay the law higher than what the Hon'ble Supreme court has said in the case of Chanda Devi (supra).

In yet another decision, which is C.W.J.C. No. 11328 of 2010 decided on 21.07.2015, the issue was whether a family pension granted more than a decade and a half earlier would be unilaterally withdrawn and the same, therefore, also cannot form the basis for interfering with the decision of the Tribunal.

It is a last ditch effort being made by the widow to take a chance by litigating again and again on an issue when she knows well as to what status her husband had. Repeated litigations by itself do not make the case any better. However, refinement in pleadings surely do emerge but that should not take away the attention of the Court from the actual reality which emerges from the original decisions, which have been taken note of and also reproduced in earlier part of the order.

The Tribunal, therefore, has committed no wrong by rejecting the plea of the petitioner for granting any relief or a direction for payment of family pension. Writ application has no



merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	04.02.2017
Transmission Date	

