

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5201 OF 2008

Union of India through
General Manager and anr. .. Petitioners
Vs.
Kamal Vithal Zalte .. Respondent

**WITH
CIVIL APPLICATION NO. 965 OF 2017**

Kamal Vithal Zalte .. Applicant

In the matter between:

Union of India through
General Manager and anr. .. Petitioners
Vs.
Kamal Vithal Zalte .. Respondent

Mr. T.J. Pandian, for the Petitioners in WP/5201/08 and for
Respondent in CA/965/17.

Mr.R.P. Saxena, for Respondent in WP/5201/08 and for
Applicant in CA/965/17.

**CORAM : SMT. V.K.TAHILRAMANI &
M.S.KARNIK, JJ.**

16th NOVEMBER, 2017

ORDER (PER M.S.KARNIK, J) :

1. By this Petition filed under Articles 226 & 227 of the

Constitution of India, the petitioner – Union of India has challenged the order dated 31/01/2008 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereinafter referred to as 'Tribunal' for short). The Tribunal by the impugned order was pleased to allow the Original Application (hereinafter referred to as 'OA' for short) filed by the respondent and thereby granted pensionary benefits with effect from 01/12/1994 and also family pension with effect from 07/09/1998. The Tribunal directed the petitioners to take into consideration 50% of the casual service rendered by the husband of the respondent i.e. late Shri Vithal Digambar Zalte from 19/05/1975 to 31/12/1980 as Casual and MRCL Khalasi and full service rendered as Temporary Khalasi on conferment of temporary status from 01/01/1981 to 23/11/1989 which according to the Tribunal is liable to be reckoned for the purpose of pensionary benefits. The arrears accordingly were directed to be paid.

2. Learned Counsel for the petitioners invited our

attention to the impugned order passed by the Tribunal and pointed out that the Tribunal had relied upon the Railway Services (Pension) Rules, 1993 (hereinafter referred to as 'said Rules' for short) as well as decision of the High Court of Andhra Pradesh in the case of **General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P. and anr. Vs. Shaik Abdul Khader reported in 2004(2) ATJ 23** while allowing OA filed by the respondent. Learned Counsel for the petitioners has invited our attention to the decision of the Apex Court in the case of **Union of India & ors. Vs. Rakeshkumar & ors. reported in AIR 2017 SC 1691**. Paragraphs 33 & 34 of the said judgment of the Apex Court reads thus :

33. The above judgment of Andhra Pradesh High Court was subsequently considered by the Andhra Pradesh High Court itself in Writ Petition No. 10838 of 2001, the General Manager, South Central Railway, Secunderabad & another Vs. A.Ramanamma decided on 01.05.2009 wherein earlier judgment of Andhra Pradesh High Court in Shaikh Abdul Khader(Supra) was not followed after referring to judgment of this High Court in General Manager, North West Railway & others Vs. Chanda Devi, 2008 (2) SCC 108.

34. Following are reasons given in subsequent judgment for not following Shaik Abdul Khader(Supra):

“ Similarly, Shaik Abdul Khader(supra) directing counting of the entire service rendered by a casual labour after getting temporary status even before absorption for

purposes of qualifying service for pension/family pension, runs contrary to the distinction between 'casual labour with temporary status' and 'temporary railway servants' recognized by Chanda Devi(supra) and other decisions of the Supreme Court. The conclusion in Shaik Abdul Khader(supra) that once a casual labour is given temporary status, that means that he has been absorbed in the department, does not appear to fit in with the interpretation of the rules and the legal position by the Apex Court.”

3. In his submission, the decision in the case of **Shaik Abdul Khader** (*supra*) is no longer a good law.

4. Learned Counsel for the respondent supported the order passed by the Tribunal. He invited our attention to paragraph 55 of the order passed by the Hon'ble Supreme Court in case of **Union of India & ors. Vs. Rakeshkumar** (*supra*) which reads thus :

55. In view of foregoing discussion, we hold :

- i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.
- ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.
- iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.
- iv) It is open to Pension Sanctioning Authority to recommend for

relaxation in deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfill the requirement of existing rule for grant of pension, in deserving cases. On a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993.

5. In his submission, therefore, even otherwise, the Tribunal is justified in granting pensionary benefits to the respondent and no interference is called for.

6. Having regard to the submissions made by learned Counsel for the parties, we are of the opinion, that the matter needs to be remitted back to the Tribunal for a fresh decision. We find that the Apex Court in the case of **Union of India & ors. Vs. Rakeshkumar** (*supra*) has taken into consideration the aspect that the decision of the Hon'ble Andhra Pradesh High Court in case of **Shaik Abdul Khader** (*supra*) was subsequently considered by the Andhra Pradesh High Court itself in Writ Petition No. 10838 of 2001 in case of **General Manager, South Central Railway, Secunderabad Vs. A.Ramanamma** wherein decision in **Shaik Abdul Khader's** case was not followed. We

also notice that the Tribunal except for making reference to the said Rules, has not considered the relevant provisions of the said Rules. In the submission of the learned Counsel for the petitioners, Rule 14 and 31 are material. Learned Counsel for the respondent tried to support the order of the Tribunal placing reliance on Rule 31 of the said Rules, however, we find that there is no discussion whatsoever by the Tribunal on this aspect.

7. In this view of the matter, in our opinion, OA needs to be remitted back to the Tribunal for a fresh decision on merits and in accordance with law. Hence, the following order.

ORDER

- i) The impugned order passed by the Tribunal dated 31/01/2008 in OA/117/2007 is quashed and set aside.
- ii) OA/171/2007 is remitted back to the file of the Tribunal for a fresh decision on merits and in accordance with law.
- iii) All contentions on merits are kept open and we may

not be understood to have expressed any opinion on the merits of the matter.

iv) The Tribunal is requested to hear and decide the OA as expeditiously as possible and in any event, within a period of 4 months from today.

8. Rule is partly allowed with no order as to costs.

9. In view of disposal of the Writ Petition, Civil Application No. 965 of 2017 does not survive and the same stands disposed of accordingly.

(M.S.KARNIK, J.)

(SMT. V.K.TAHILRAMANI, J.)