

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NOs.27894 AND 27895 OF 2017

DATED:16-10-2017

W.P. No.27894 of 2017

Between:

Union of India
Rep. by the Chairman
Railway Board, Ministry of Railways
Rail Bhavan, New Delhi
and others ... Petitioners

And

S. Gangadharan ... Respondent

W.P. No.27895 of 2017

Between:

Union of India
Rep. by the Chairman
Railway Board, Ministry of Railways
Rail Bhavan, New Delhi
and others ... Petitioners

And

D. Harron Rasheed ... Respondent

COUNSEL FOR THE PETITIONERS: Ms. Santhi Sree
Vallabhaneni,
for Smt. K. Aruna

COUNSEL FOR THE RESPONDENTS: Sri K.R.K. Prasad

THE COURT MADE THE FOLLOWING:

COMMON ORDER: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

These writ petitions are filed for certiorari to quash common order dt.22.3.2017 in O.A. Nos.1362 and 1479 of 2015 on the file of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad.

2. The respondents in W.P. Nos.27894 and 27895 of 2017 entered the service of the South Central Railway in the category of Drivers (re-designated as Loco Pilots). The respondent in the first mentioned writ petition was declared as unfit on 07.01.2013 for continuing as Loco Pilot, and on 06.09.2013, after rendering the service of 35 years 6 months and 16 days, he has taken voluntary retirement, while the respondent in the second mentioned writ petition was declared as unfit on 17.07.2012 for continuing as Loco Pilot, and on 30.06.2013, after rendering the service of 27 years 3 months and 13 days, he has taken voluntary retirement. Consequent on the voluntary retirement of the respondents, pension was fixed to them by including 30% running allowance as against 55% to be given to Loco Pilots on their retirement upon reaching the age of superannuation. Challenging the denial of 55% allowance, the respondents filed the aforementioned O.As.

3. On behalf of the petitioners, reply statement was filed wherein it was stated that after their medical de-categorisation, the respondents were kept on supernumerary posts and their pay was fixed with 30% pay element in accordance with the Railway Board Instructions communicated vide Board's Letter dated 05.10.2011, that when the respondents have taken voluntary retirement while continuing in the supernumerary post, they are ex-running railway employees only. Therefore, pension cannot be fixed under Rule 49(b) of the Railway Service (Pension) Rules, 1993 (for short, "the Rules").

4. It is noteworthy that during the pendency of the O.As., the petitioners have issued a revised Circular vide RBE No.137/2016, dt.29.11.2016 which provided for reckoning of 55% benefit after deducting 30% pay element. Though the petitioners admitted before the Tribunal that if the Circular is given retrospective operation, the case of the respondents also will be covered, they, however, pleaded that in paragraph 5 of the circular it is clearly mentioned that the same shall take effect from the date of its issue. On construing the contents of paragraph 2 to the effect that "55% benefit will be reckoned after deducting the 30% pay element fixation benefit if granted already as per Board's letter dated 5.10.2011 referred to above",

the Tribunal held that though paragraph 5 mentioned that the Circular shall take effect from the date of its issue, its contents would clearly show that it has retrospective operation.

5. In our opinion, the Tribunal has interpreted the Circular dt.29.11.2016 from a correct perspective. Indeed, the opening paragraph of the Circular would show that the same was issued while clarifying the letters addressed by DC/HCM, PNM/NFIR and PNM/AIRF, on the requests of the recognized staff federation and other trade unions demanding 55% of pay element to be reckoned for computing retirement benefit for those running staff who have been medically decategorized and decided to take Voluntary Retirement, instead of opting for redeployment in an alternative stationary post. Paragraph 5 of the Circular also makes it clear that what was contained therein is a clarification.

6. Thus, having regard to the context in which the clarificatory circular was issued, we are of the opinion that there is absolutely no justification for denying 55% pay element to the respondents, who spent all their service as Drivers/ Loco Pilots. Moreover, as found by the Tribunal, from the language of paragraph 2 referred to above the Circular cannot be construed as prospective in nature, as it covers even the

employees in respect of whom the pay was already fixed by taking 30% pay element.

7. For the aforementioned reasons, we do not find any merit in these writ petitions and the same are accordingly dismissed.

As a sequel to dismissal of the writ petitions, interim orders dt.21.8.2017 granted in both the writ petitions shall stand vacated and W.V.M.P. No.3896 of 2017 and W.P.M.P. No.34643 of 2017 in W.P. No.27894 of 2017 and W.V.M.P. No.3897 of 2017 in W.P.M.P. No.34644 of 2017 in W.P. No.27895 of 2017 shall stand disposed of as infructuous.



C.V. NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

16-10-2017

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