

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

and

***THE HON'BLE SRI JUSTICE M. GANGA RAO**

+Writ Petition No.40140 of 2017

% 29-11-2017

Between:

#Union of India, represented by its Divisional
Railway Manager, South Central Railway, Vijayawada
Division, Vijayawada, Krishna District and 2 others

... Petitioners

Vs.

G.K.V. Ramana Rao, S/o late G.V. Ramana Murthy,
Aged 63 years, R/o Patibandlavari Street,
Frizerpet, Chittinagar, Vijayawada.

.. Respondent

! Counsel for the Petitioner : Mrs. K. Aruna,
standing counsel

^ Counsel for the respondent : None appeared

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

Writ Petition No.40140 of 2017

ORDER: (V. Ramasubramanian, J)

Aggrieved by the order of the Central Administrative Tribunal, directing the Railway Administration to grant pension to the respondent, the Union of India has come up with the above writ petition.

2. Heard Mrs. K. Aruna, learned standing counsel for the petitioner.

3. The respondent herein admittedly rendered services, first as a casual labour, then as a worker with the temporary status and thereafter as a regular employee. The periods of service so rendered by the respondent were as follows:

- 1) Service as casual labour from 22-12-1995 to 22-04-1996 (4 months);
- 2) Service as temporary status was from 22-04-1996 to 12-05-1998 (2 years and 20 days); and
- 3) Regular service from 12-05-1998 to 31-12-2006 (8 years, 7 months and 18 days).

4. The Railway Administration took 50% of the service rendered by the respondent as a temporary status worker, namely 1 years and 10 days (50% of the 2 years and 20 days) together with the regular service of 8 years 7 months and 18 days and came to the conclusion that the respondent had rendered total service for a

period of 9 years 7 months and 20 days, disentitling him from claiming pension.

5. However, the Tribunal directed the counting 50% of the services rendered as a casual labour and 100% of the service rendered as a temporary status worker and arrived at the total qualifying service as 10 years 10 months and 8 days and directed the Railway Administration to grant pension.

6. Challenging the said order on the basis of the decision of the Supreme Court in **Union of India v. Rakesh Kumar and others**¹, the Railway Administration has come up with the above writ petition.

7. In Para 55 of its decision in the said case, the Supreme Court held as follows:

“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 regularized 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 the Rules, 1993; and
- 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 fulfil 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.”

¹ AIR 2017 SC 1691

8. Therefore, it is clear that only 50% of the service rendered as a casual labour before acquiring temporary status and 50% of the service rendered after acquiring temporary status should be taken into account. If so done, the qualifying service rendered by the respondent could be arrived at as follows:

- 1) 50% of service rendered as casual labour from 22-12-1995 to 22-04-1996 – 2 months;
- 2) 50% of service rendered after acquiring temporary status from 22-04-1996 to 12-05-1998 – 1 month and 10 days;
- 3) Regular service from 12-05-1998 to 31-12-2006 – 8 years 7 months and 18 days;
- 4) Total qualifying service – 9 years 9 months and 28 days.

9. Therefore, the Tribunal is obviously wrong in calculating 100% of service rendered by the respondent as a temporary status worker. But at the same time the Railway Administration was also wrong in not taking into account 50% of the service rendered as casual labour prior to acquiring temporary status. Para-55 (ii) of the decision of the Supreme Court is clear at this point.

10. Once it is cleared that the respondent had rendered total qualifying service of 9 years 9 months and 28 days, the question next arises for consideration is as to whether he qualified for pension or not. Rule 69 (3) of the Railway Pension Rules, reads as follows:

“(3) In calculating the length of qualifying service fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service.”

11. If the above Rule is applied, the respondent will be deemed to have been completed 10 years of qualifying service for receipt of

pension. Therefore, the Tribunal was right ultimately in coming to a correct conclusion though on a wrong reasoning.

Hence, the writ petition is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

Date: 29-11-2017

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