IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 430 OF 2015

Union of India & Anr. ...Petitioners
Versus
Pitchamani V. alias V. Pitchamani ...Respondent

Mr. Suresh Kumar for Petitioners.
Mr. G. S. Walia for Respondent.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

DATE : 23 APRIL 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the impugned judgment and order dated 13th October 2014 made by the Central Administrative Tribunal (CAT) in Original Application No. 486 of 2013 instituted by the respondent.

3] The operative portion of the impugned judgment and order reads as follows :

> *"Having regard to the facts and law as stated above, the letter dated 07.08.2013 is quashed and set aside. The respondents are directed to count the entire 100% temporary status service and 50% of the casual service of the applicant as qualifying*

> *service for the purpose of grant of pension, medical facilities and complimentary passes. The respondents are directed to examine the case of the applicant in the light of the aforesaid orders / judgments and if it is found that the applicant's case is covered under the aforesaid judgments, the respondents shall pass fresh order with regard to enhancement of pension and grant of other benefits including medical facilities and complimentary passes. The respondents shall complete this exercise within a period of three months from the date of receipt of a copy of the order. No order as to costs."*

4] Mr. Suresh Kumar, the learned counsel for the petitioners submits that the operative directions issued by the CAT are contrary to the directions issued by the Hon'ble Supreme Court in the case of ***Union of India & Ors. vs. Rakesh Kumar & Ors. 2017 SCC OnLine SC 274***, which has discussed the issue arising in the present matter thread bare. For this reason itself, Mr. Suresh Kumar submits that the impugned judgment and order is liable to be set aside.

5] Mr. Suresh Kumar submits that in the present case the respondent was given '*temporary status*' on 29th January 1993. The respondent was regularized / absorbed as a Group 'D' employee only on 21st March 1994. Therefore, in terms of the decision of the Hon'ble Supreme Court in *Rakesh Kumar* (supra), the respondent was entitled to reckon 50% of his services whilst on *temporary status.* He submits that the CAT, by the impugned judgment and order has directed that the entire service of the respondent on *temporary status* be reckon for the purposes of calculation of pension / retiral benefits. He submits that this is a clear error apparent on face of record and therefore the impugned judgment and order made by the CAT warrants interference.

6] Mr. G. S. Walia, the learned counsel for the respondent submits that even the respondent relies upon the ruling of the Hon'ble Apex Court in case of *Rakesh Kumar* (supra). He submits that the Hon'ble Supreme Court has held that those actual 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. He submits that the respondent was appointed in temporary capacity by order dated 21st March 1994, with effect from 29th January 1993. Accordingly, he submits that there is absolutely no error in the view taken by the CAT in the impugned judgment and order. He therefore submits that this petition may be dismissed.

7] The rival contentions now fall for our determination.

8] In the present case, there is no serious dispute as regards the facts. Admittedly, by order dated 29th January 1993 '*temporary status*' was conferred upon the respondent, who, earlier, had been recruited as a casual labour since 1st October 1992.

9] By order dated 21st March 1994, the respondent, was absorbed / regularized in Group 'D' category consistent with the provisions of 1993 Rules. The order of absorption is dated 21st March 1994, but, it clearly states that such absorption is with effect from 29th January 1993.

10] In terms of the impugned judgment and order all that the CAT has done is that it as directed that 50% of the services prior to absorption / regularization and 100% of the service after absorption / regularization be taken into consideration for the purpose of grant of pension, medical facilities and complimentary passes. Mr. Suresh Kumar, the learned counsel for the petitioners, states that the petitioners have no difficulty if 100% of the respondent's service after 21st March 1994 is taken into consideration for the purpose of grant of pension etc. However, he submits that the CAT, has erred in treating the services of the respondent from 29th January 1993 to 21st March 1994 i.e. service of about 14 months as temporary service and directing that 100% of such service be taken as qualifying service for grant of pension etc. He submits that only 50% of this service of about 14 months could have been taken as qualifying service.

11] Apart from the fact that the respondent has not gained substantially or for that matter the petitioners have not lost substantially by taking into consideration additional 7 months service of the respondent for purposes of computation of pension etc., we find that even otherwise, the contention of the petitioners, is not at all well founded. The order of absorption / regularization though made on 21st March 1994 very clearly states that the same is to take effect from 29th January 1993. Therefore, the CAT, was not in error in counting the respondent's service between 29th January 1993 and 21st March 1994 as qualifying service to the extent of 100% for computing pension and other benefits. There is no error, much less, any error apparent on face of record.

12] The decision of the CAT, is quite consistent with the law laid down by the Hon'ble Supreme Court in the case of *Rakesh Kumar* (supra).

13] For the aforesaid reasons, we dismiss this petition.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**

CHANDKA