

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 19TH DAY OF MARCH 2018 / 28TH PHALGUNA, 1939

WP(C) .No. 6000 of 2006

PETITIONER:

L. ROBERT D' SOUZA,
GENERAL SECRETARY,
SOUTHERN RAILWAY,
CONSTRUCTION WORKERS UNION,
KOCHI-16.

BY ADVS.SRI.JOHNSON MANAYANI
SRI.BENHUR JOSEPH MANAYANI
SRI.JEEVAN MATHEW MANAYANI

RESPONDENT(S) :

1. THE SENIOR DIVISIONAL
PERSONNEL OFFICER, SOUTHERN RAILWAY,
THIRUVANANTHAPURAM.
2. THE EXECUTIVE ENGINEER,
SOUTHERN RAILWAY, ERNAKULAM.
3. UNION OF INDIA,
REPRESENTED BY THE GENERAL MANAGER,
SOUTHERN RAILWAY, MADRAS-3.
4. LABOUR COURT, ERNAKULAM.

R1 & R2 BY SRI.JAMES KURIAN, SC
R3 BY SRI.S.K. MURALEEDHARA KAIMAL ADDL.CGSC
R4 BY GOVERNMENT PLEADER SMT.PRIYA SHANAVAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-03-2018 ALONG WITH WPC.6001/2006 & CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 6000 of 2006 (L)

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE COMMON AWARD DATED 27.12.2004
 OF THE CENTRAL GOVT. LABOUR COURT, ERNAKULAM.

EXHIBIT P2 TRUE COPY OF ORDER NO. QEC/114/S
 DATED 30.9.1959 ISSUED BY SOUTHERN RAILWAY.

EXHIBIT P3 TRUE COPY OF LETTER NO.PD/E/579/002946
 DATED 26.4.89 BY CHIEF ENGINEER 9C)GRC.
 DATED 10.5.84.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

mbr/
25.04.2018.

A. MUHAMED MUSTAQUE, J.

W.P. (C) Nos.6000, 6001, 7525
& 23944 of 2006

Dated this the 19th day of March, 2018

J U D G M E N T

In these writ petitions, the petitioners challenge a common Award passed in an industrial dispute between the Railway and the workers. The dispute that was referred for adjudication was whether the workmen are entitled for temporary status under the Railway or not and whether the demand of the Union for granting family pension is justified or not.

2. Though reference has been made in each of the industrial disputes, common issue in all the reference is whether the workmen are entitled for temporary status or not. A common question also arose in regard to the claim for pensionary benefits of such workmen. The Labour Court answered the reference in regard to the temporary status in

favour of the workmen. However, the Labour Court declined the pensionary benefits to the workmen. This Award is questioned by the Railway as well as the workmen.

3. Learned Standing Counsel appearing for the Railway argued in extenso and submitted that the workmen in question are not entitled for temporary status. The case of the Union is that the workmen involved in the matters were working in the construction wing of the open line. The case of the Railway is that the workmen were not working in the open line wing. According to the Railway, casual labourers of the Railway classified as non project casual labourers in the open line are alone entitled for temporary status. The casual labourers doing construction work are called project casual labourers. The Railway contended that the entire casual labourers in the open line wing are entitled to get temporary status as per the provisions of the Railway Establishment Manual on completion of 180 days. However, the workers in the project are not entitled to get temporary status.

4. The Labour Court examined the matter with reference to evidence and found that the workmen in question were

engaged in casual labours in the construction wing in the open line and are entitled to get temporary status on attaining 180 days in a continuous period. The finding was made based on initial date of appointment as well. This finding is rendered on facts.

5. It is not a case where conclusion was made without any evidence. In fact, both sides adduced evidence. Though much effort has been made to assail the findings of fact by the learned counsel for the Railway, the counsel was unable to impress this Court that such findings of facts were either perverse or erroneous. This Court under Article 226 of the Constitution of India is not expected to reappraise the facts to come to a different conclusion as done in appeal. This Court is concerned about only on the decision making process of the Labour Court. If that be so, that findings of fact cannot be interfered with invoking the power under Article 226 of the Constitution of India.

In regard to the claim for pension by the workers, it is to be noted that pension is only allowed to regular permanent employees. There is no regulation under the Railway to allow

the claim for pension to such temporary status employees. In the absence of any statutory provision, the workmen cannot claim pension.

Therefore, these writ petitions are dismissed. No costs.

Sd/-

**A. MUHAMED MUSTAQUE
JUDGE**

smp