

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11401 of 2019

1. The Union of India through the General Manager, East Central Railways, Hajipur, P.O. Dighi Kala, Dist.-Vaishali (Bihar)
2. The General Manager (Personnel), East Central Railways, Hajipur, P.O. Dighi Kala Dist.-Vaishali (Bihar)
3. The Financial Advisor and Chief Accounts Officer, East Central Railway, Hajipur, P.O. Dighi Kala Dist.-Vaishali (Bihar)
4. The Divisional Railway Manager, East Central Railway, Samastipur, Bihar-848101
5. The Senior Divisional Personnel Officer, East Central Railway, Samastipur, Bihar-848101
6. The Senior Divisional Financial Manager, East Central Railway, Samastipur, Bihar-848101

... .. Petitioner/s

Versus

Amira Kumari W/o Late Akhila Nand Jha, Record Khalasi, Office of the Senior Divisional Financial Manager, East Central Railway, Samastipur (Bihar)

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abbas Haider, Advocate
Mr. Wasi Mohammad, Advocate

For the Respondent/s : Mr. M . P. Dixit, Advocate
Mr. S. K. Dixit, Advocate
Mr. Sanjay Kumar Choubey, Advocate
Mrs. Swastika, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-06-2019

Heard learned counsel for the petitioners-Union of India.

This petition questions the correctness of the judgement of the Tribunal whereby it has been held that the respondent-



applicant was entitled to the benefits governed by the Old Pension Scheme.

The main and principal ground of challenge is that in view of the Circular dated 29th October, 2014 it is only the substitutes who are entitled to such benefit provided they were appointed prior to 1st of January, 2004. It is contended by the learned counsel for the petitioners that the respondent-applicant has been unable to establish the status of employment as that of a substitute prior to 01.01.2004 and, therefore, the Old Pension Scheme would not be applicable and consequently the impugned judgement suffers from an erroneous assumption resulting in a wrong declaration of law.

Replying to the said contention, Shri M.P. Dixit, learned counsel for the respondent-applicant has invited the attention of the Court to the Office Memo dated 29th March, 2005 and the letter dated 21st April, 2005 that were on record before the Tribunal to contend that the respondent-applicant was treated as a substitute and was regularized in the services keeping in view the aforesaid status. It is, therefore, not correct on the part of the petitioners to contend that the respondent-applicant was not a substitute.

We have considered the submissions raised. The respondent was appointed on casual basis as is evident from the



letter dated 13th June, 1997 and was also given the pay scale in the same category vide letter dated 05th February, 1998.

However, the contention is that the status was converted to that of a temporary status which fact is not disputed and, therefore, in the said circumstances, the respondent-applicant was entitled for the benefit of Old Pension Scheme. For this, the respondent-applicant relied on the Office Memo dated 29th March, 2005 and the letter dated 21st April, 2005.

We have examined the pleadings and the petitioners do not appear to have challenged the contents of these two documents. What they have said is that the respondent-applicant was never appointed as a substitute prior to 01.01.2004. This contention does not hold water keeping in view the aforesaid two documents which leave no room for doubt that the respondent-applicant was treated as a substitute and then regularized. The said documents being on record and having not been rebutted by any other cogent material, the contention of the petitioners that the respondent-applicant was never appointed as a substitute is not correct.

Accordingly, it is evident that the respondent-applicant after having acquired the temporary status has been ultimately regularized in service and was treated on rolls as a substitute when



she was extended the said benefits. Consequently, she was in the capacity of a substitute prior to 01.01.2004 and in these circumstances, in the absence of any material to the contrary, the conclusion drawn by the Tribunal does not appear to be suffering from any factual or legal error.

Apart from this, the contention raised by the learned counsel for the respondent-applicant also finds support from the Division Bench Judgement of this Court in CWJC No.17204 of 2015 (The Union of India & Ors. Versus Mukti Prasad Yadav & Ors.) decided on 15th February, 2015.

The petition lacks merits and is, accordingly, rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.06.2019
Transmission Date	

