

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.375 of 2014

In
Civil Writ Jurisdiction Case No.2552 of 2009

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1. The Union Of India through Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
 2. The General Manager, NF Railway, Maligaon, Assam.
 3. The Divisional Railway Manager, NF Railway, Maligaon, Assam.
 4. F and CAO, NF Railway, Maligaon, Assam

... ..Review Petitioner/s/ Respondents

Versus

Ujaria Devi, W/o Late Jhapsi Mahato, Resident of Village - Raghunathpur,
P.O. - Barsoi, P.S. - Barsoi, District – Katihar.

... .. Opposite Party/s/ Writ petitioner

Appearance :

For the Petitioner/s : Mr. Anil Singh, Advocate

For the Opposite Party/s : Mr. Kamlesh Kumar Pathak, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-07-2019

Heard learned counsel for the applicants and the learned
counsel for the respondent.

This review application was filed in the circumstances
which have been discussed in our order dated 24th January, 2019
which is extracted hereinunder:-

“Heard Shri Anil Kumar Sinha, learned
counsel for the appellant.

This review application has been filed
contending that the impugned judgment dated 30th of



July, 2009 deserves to be reviewed in the background that the Special Leave Petition filed against the said judgment being Special Leave to Appeal No. 3127-3128 of 2011 vide order dated 16.07.2014 has been disposed of with liberty to the applicants to file an application for review as the judgment in the case of General Manager, North-West Railway & Ors. Vs. Chanda Devi reported in (2008) 2 SCC 108 was not brought to the notice of this Court in spite of the fact that the judgment under review was delivered later on 30th of July, 2009. Taking aid of the order of the Apex Court aforesaid, the present review application has been filed. The review application has been taken up almost after four years and what we find is that no notices have been issued to the respondent-petitioner Ujaria Devi till date.

It has been pointed out by Shri Sinha that certain more developments have taken place during the pendency of this review application which deserve notice and for that he has invited the attention of the Court to the judgment of the Apex Court in the case of Union of India Vs. Rakesh Kumar and Ors. reported in 2017 (3) PLJR (SC) 83.

A perusal of the said judgment would indicate that the entire law on the subject has been reviewed and in paragraph 32 of the report, the judgment of the Andhra Pradesh High Court in the case of General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P. & Anr. Vs. Shaik Abdul Khader, reported in 2004 (1) S.L.R. 214 was noticed and discussed. A subsequent judgment in the case of General Manager, South Central



Railway, Secunderabad and Ors. Vs. A. Ramanamma by the Andhra Pradesh High Court decided on 1st of May, 2009 was also noticed and the same was found to have laid down the correct law subject to the observations made therein. For this, we extract paragraphs 44 and 45 of the Apex Court pronouncement hereinbelow:-

“44. The judgment of Andhra Pradesh High Court in A.Ramanamma case had considered in detail the judgment of this Court in Chanda Devi's case as well as Para 20 of Master Circular and para 2005 of IREM and has also considered other case of this Court and has rightly come to the conclusion that casual labour after obtaining temporary status is entitled to reckon only half of the period. It may, however, be noticed that in A. Ramanamma case the Andhra High Court has also held that 50% of service as casual labour cannot be counted, which is not correct. Rule 31 of Rules, 1993 provides for counting of service paid from contingencies. Note 1 of Rule 31 provides:-

" The provisions of this Rule shall also apply to casual labour paid from contingencies when Note 1 expressly makes applicable Rule 31 to the casual labour they are also entitled to reckon half of casual services paid from contingencies.”

45. Thus except to the above extent, the judgment of Andhra Pradesh High Court in A. Ramanamma case lays down the correct law. ”

The Apex Court thereafter concluded in paragraph 55 as follows which is extracted hereinunder:-

“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 regularised 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 Rules, 1993.

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 fulfill 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. ”

In the instant case, the Division Bench, while allowing the writ petition, has relied on the judgment in the case of Sheikh Abdul Qadir (supra) which has now been finally interpreted by the Apex Court in the terms referred to hereinabove.

Thus, the judgment relied on by the learned counsel for the applicants now has a direct bearing on the case and, consequently, the review application may have to be considered on the scrutiny of the said law laid down by the Apex Court for which notices will have to be necessarily issued to the respondent-petitioner.

Accordingly, issue notice to the respondent No. 1 returnable at an early date, by both modes i.e. under registered cover with A/D as well as by ordinary process, on steps being taken within two weeks.



The matter shall be listed after return of service of notice on 25th of March, 2019.”

On issuance of notices, learned counsel for the respondent-petitioner has put in appearance and he submits that according to Rule 107 of the 1993 Rules, the respondent-petitioner is entitled to regularisation.

Having considered the submissions raised, we have already noted the legal position which now stands reflected in the judgement of the Apex Court in the case of **Union of India Versus Rakesh Kumar & Ors.** (supra). The applicants had been given the liberty vide order dated 16.07.2014 to file a review application before this Court and this is how the present review application has been filed for consideration.

Consequently in the circumstances of the case and keeping in view the judgement in the case of **General Manager, North-West Railway & Ors. Vs. Chanda Devi**, reported in **(2008) 2 SCC 108** as well as the judgement in the case of **Union of India & Ors. Vs. Rakesh Kumar & Ors.** (supra), the judgement dated 30th July, 2009 is reviewed to the extent that the claim of the deceased employee for computing his period of services for the purpose of pension shall be only to the extent of 50% of the services till he was regularized. Accordingly, the direction contained in the judgment for counting 100% of the



services rendered by the employee as casual labourer on temporary status shall stand reduced to 50% of his services.

The Review Application is allowed to the aforesaid extent and subject to the directions hereinabove.

Disposed of.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.07.2019
Transmission Date	

