

In the High Court of Judicature at Madras

Reserved on	25.02.2019
Pronounced on	06.03.2019

Coram:

The Hon'ble Mr.Justice M.VENUGOPAL
and
The Hon'ble Mr.Justice SENTHILKUMAR RAMAMOORTHY

W.P.No.676 of 2018 and
W.M.P.No.847 of 2018

1. Union of India
Rep. By the General Manager,
Southern Railway,
Park Town, Chennai - 600 003
 2. The Divisional Railway Manager,
Madurai Division,
Southern Railway,
Madurai - 16
 3. The Senior Divisional Finance Manager,
Madurai Division,
Southern Railway,
Madurai - 16
- ...Petitioners
- Vs.
1. The Central Administrative Tribunal,
Rep. By its Registrar,
Madras Bench,
Chennai - 600 104
 2. U.Krishnan
- ...Respondents

Prayer: Writ Petition filed under Article 226 Constitution of India to issue a Writ of Certiorari by calling for the records of the 1st Respondent / Tribunal in O.A.No.310/00423 of 2014 dated 13.04.2016.

For Petitioner : Mr.C.V.Ramachandramurthy

For Second Respondent : Mr.L.Chandrakumar

O R D E R

M.VENUGOPAL, J.

Heard the Learned Counsel for the Petitioners and the Learned Counsel for the 2nd Respondent.

2. According to the Petitioners, the 2nd Respondent's Wife Late Smt.S.Meenakshi was initially engaged on 22.10.1979 showered with Temporary Status on 01.05.1983 and expired in Harness on 13.01.1985, while working as 'Substitute Sanitary Cleaner', Health Inspector Office in Madurai Division in Southern Railway. The 2nd Respondent filed O.A.No.310/00423/2014 [as an Applicant] before the 1st Respondent/Tribunal seeking to direct the Petitioners / Respondents to consider his request to grant family pension in terms of Rule 75 of the Pension Rules to him with all attendant benefits.

3. The 1st Respondent / Tribunal, in O.A.No.310/00423/2014 on 13.04.2016 at Paragraph No.8, had observed the following:

" 8. The learned counsel for the applicant in response to the query raised by this forum as to what Rule 2318 of the Rules applicable to the Railway Establishment connotes, the learned counsel for the applicant would draw the attention of this forum the comparative table which would show that, earlier the Rule was in para 2318 of the Indian Railway Establishment Manual but now in the revised Indian Railway Establishment Manual, it is para 1515. In fact, the gist and kernel of Para 2318 is found referred to in the Hon'ble Apex Court Judgment (supra). Ultimately, what transpired is that, if a substitute putting in one year of service dies in harness, the deceased employee's Legal Heir would get the family pension. When such is the position, the family pension cannot be denied to the husband of the deceased employee, subject to the applicant establishing his status that he is the husband of the deceased S.Meenakshi. As regards the reliance placed on the order dated 30.09.2010 in O.A.No.789/2009 is concerned, it is known that the casual worker is not a substitute. As such, the said order cannot be pressed into service as against the claim of the applicant."

and disposed of the Original Application by issuing direction to the Respondents therein [Writ Petitioners] to pay family Pension to the 2nd Respondent / Applicant within a period of three months from the date of receipt of copy of this order subject to the 2nd Respondent establishing his status that he is the husband of the deceased S.Meenakshi.

4. The Learned Counsel for the Petitioners submits that the

Impugned Order dated 13.04.2016 in O.A.No.310/00423/2014 is an arbitrary, illegal one, besides the same being contrary to Law. The deceased Employee, viz., Meenakshi was initially engaged as 'Casual Labour' and given Temporary Status and appointed as a 'Substitute Sanitary Cleaner' and on her death in Harness, no family pension could be given to the Family Member of the deceased, as such, the claim of the 2nd Respondent / Claimant is an illegal one and not admissible in terms of the Rule Provisions.

5. The Learned Counsel for the Petitioners brings it to the notice of this Court that the Principal Bench of the Central Administrative Tribunal in the case of Rashida Begum W/o Late Shri Nathu Khan V. Union of India (UOI) through the General Manager, Northern Central Railway and the Divisional Railway Manager, Northern Central Railway decided on 30.01.2008 reported in MANU/CA/0041/ 2008 at Paragraph No.6, had observed as under:

'6. I have perused the pleadings and the judgments relied upon by the counsel for applicant. However, the issue in question was referred to the Larger Full Bench consisting of 5 Members in the case of Smt.Bhagwati Devi V. Union of India and Ors. [OA 1722/2005] along with number of other OAs, which has finally been decided on 5th September, 2007. In the said cases, all the issues were looked into and ultimately the Larger Full Bench has come to the following conclusion:

The term 'Railway Servant' is defined under Rule 3 (23) as following:

'railway servant' means a person who is a member of a railway service or holds a post under the administrative control of the Railway Board and includes a person who is holding a post of Chairman, Financial Commissioner or a Member of the Railway Board but does not include casual labour or persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control.

Therefore, ex facie it is clear that a casual labourer will not be deemed to be under the coverage of the Pension Rules.

21. Rule 75 deals about the Family Pension Scheme. Here also, it is applicable to only Railway servants alone and if any person engaged in the Railway service, does not satisfy the definition of Railway Servant, it may not be logical for us, nevertheless, to declare that he requires to be brought inside, de hors the restriction so spoken. These appear to be elementary principles, while interpreting the provisions of the Statute.

23. Chapter 20 of the Indian Railway Establishment Manual, Vol. 2, is titled as Casual Labour. Paragraph 2001 defines the 'casual labour.

Paragraph 2005 refers to the entitlement and privileges admissible to casual labourers who are considered as temporary (who are given temporary status). We may quote the relevant portion as herein under: (a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D&A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-à-vis other regular/temporary employees.

24. The sub-paragraph further directs that casual labourer shall be eligible to count only half the period of service rendered by them after attaining temporary status before regular absorption, as qualifying service, for the purpose of pensionary benefits. This benefit will be admissible; the rules make it abundantly clear, only after his absorption in regular employment. Sub-paragraph (b) has incorporated perhaps all important prescription, that the casual labourer who acquired status will not, however, be brought on to permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group 'D' posts in the manner laid down from time to time.

It was further observed that:

27. We may notice that there is no claim put on behalf of the applicants that they are temporary railway employees but applicants are agitating the claim on the basis of the temporary status that is gained. The service conditions are governed by statute and it is to be presumed that while issuing the rules, the President was aware of the categories dealt with. We have to decide the issue as is permitted, by interpreting the provisions of the statute alone. The cardinal rule has been succinctly laid down by the Supreme Court in Prabhu Narain and Ors. V. State of U.P. 2004 (13) SCC 662 when it stated 'No doubt pension is not a bounty, it is valuable right given to an employee, but in the first place it must be shown that

the employee is entitled to pension under a particular rule and the Scheme as the case may be'. If so viewed, we may have to observe that the Full Bench Judgment of the Calcutta Bench in Geeta Rani Santra (cited supra) has not been correctly decided.

Referring to the Full Bench decision in the case of Geeta Rani Santra, it was observed as follows by the Larger Full Bench:

29. We may point out that Full Bench had erred, in comprehending the issue by entering into the field of law making. The duty of the court is to interpret the law and not to legislate. If the Full Bench felt that there was unfairness, in appropriate cases, perhaps the provision of statute could have been struck down on the basis of violation of Articles 14 and 16 of the Constitution of India. However, what has been done is to give a positive direction whereby persons, who were declared as ineligible to claim family pension or pension, have been directed to be so considered if the incumbent had undergone minimum period of service of 20 years. Insofar as the position runs contrary to statutory prescriptions and specific provision in the Establishment Manual, and overreaches the Pension Rules framed by the President under Article 309 of the Constitution of India, we have to observe that the decision requires and is hereby overruled.

6. The Learned Counsel for the Petitioners refers to the decision of Hon'ble Supreme Court between Union of India and Others V. Rabia Bikaner and Others reported in (1997) 6 Supreme Court Cases at Pages 580 and 581 wherein it is observed and held as under:

'It is true that under para 2511 of the Railway Establishment Manual, casual labourers with temporary status are entitled to certain entitlements and privileges granted to temporary railway servants but this does not entitle them to family pension. Every casual labourer employed in railway administration for six months, is entitled to temporary status. They are then empanelled and thereafter, they are required to be screened by the competent authority. They are appointed in the order of merit as and when vacancies for temporary posts in the regular establishment are available. On their appointment, they are also required to put in minimum service of one year in the temporary post. If any of those employees who had put in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his widow would be eligible for pension. In

all these cases, though some of the deceased employees had been screened, yet appointments were not given to them since temporary posts were not available or in some cases they were not even eligible for screening because the posts became available after the death. Under these circumstances, the respondent -widows are not eligible for family pension benefits. However, if any amounts have already been paid pursuant to the orders of the Administrative Tribunal, the same may not be recovered from them.'

7. Also, the Learned Counsel for the Petitioners refers to the decision of Hon'ble Supreme Court reported in (2006) 11 Supreme Court Cases at Page 157 between Indian Council of Agricultural Research and Another V. Santhosh wherein it was held that a 'Widow of Casual Labour with Temporary Status, is not entitled for Family Pension'.

8. The Learned Counsel for the Petitioners proceeds to point out that ordinarily qualifying service of a Railway Servant will have to commence from the date he took charge of the post, to which he is appointed either substantively or in an officiating or temporary capacity and therefore, there cannot be any doubt that a person with a temporary status is eligible for pension only if he is regularised and as such, no question of payment of family pension arises in the eventuality of death before this condition is fulfilled. Hence, the Petitioners have filed the present Writ Petition assailing the correctness of the order dated 13.04.2016 in O.A.No.310/00423/2014 passed by the 1st Respondent and to quash the same.

9. The Learned Counsel for the Petitioners refers to the Judgment of the Hon'ble Supreme Court dated 12.12.2007 Appeal (Civil) No.5833 of 2007 between General Manager, North West Railway and Others V. Chanda Devi wherein at Paragraph Nos.6 and 7, it is observed as under:

'6. Original application came to be filed by the first respondent before the Central Administrative Tribunal questioning the validity of the said Rule. The same was allowed by a Judgment and Order dated 7.4.2004 relying on or on the basis of a decision of a co-ordinate Bench of the Tribunal at Ahmedabad Bench in Smt.Vallam Badia V. Union of India [2003] (2) SLJ CAT 271] which was affirmed by a Division Bench of the Gujarat High Court in Union of India v. Shanti Devi, Ramawat Jakri & Ors. [Special Leave Appeal No.12456/03 etc. decided on 21.7.2003]. The Writ Petition filed thereagainst by the appellant was dismissed by a Bench of the Rajasthan High Court holding :

The controversy with regard to the matter being covered

in favour of the petitioner or the respondent widow of Ram Niwas by virtue of judgments either referred before the Tribunal or before this Court in the context of findings given with regard to the status of Ram Niwas, lose all its significance. The said controversy would have been relevant only if it was proved that the status of Ram Niwas was that of a casual labour with temporary status. Surely, if such was a finding given by us, we would have discussed the matter threadbare on the basis of judgment in Union of India and Others V. Rabia Bikaner and Others (supra) and the judgment reported in 1988(1) SCC 306 and the order of review passed by the Supreme Court in the matter of Ram Kumar and Others V. Union of India and Others 1996(1) All India Services Law Journal Vol. IV 116. We may, however, mention that the counsel defending widow of Ram Niwas vehemently contends that the judgment rendered by the Supreme Court in UOI V. Rabia Bikaner (supra) cannot possibly be applied as the same is based upon judgment in Ram Kumar (supra) which has been reviewed in view of the introduction of policy of pension to temporary employees by the Railway itself.

7. Mr. Paramjit Singh Patwalia, learned senior counsel appearing on behalf of the appellant would draw our attention to different provisions of the Indian Railway Establishment Manual, the relevant provisions whereof would be noticed hereinafter, and contend that the Tribunal and consequently, the High Court committed a serious error in passing the impugned judgment insofar as they failed to take into consideration the distinctive feature of a workman with a status of temporary employee and one as casual labour with a temporary status. It was urged that the High Court as also the Tribunal committed a serious error insofar as they failed to take into consideration the decisions of this Court in Ram Kumar and Others Vs. Union of India and Others [1988 (1) SCC 306] as also its review order reported in Ram Kumar Vs. Union of India and Ors. [1996 (1) SLJ 116] and Union of India and Others Vs. Rabia Bikaner and Others [(1997) 6 SCC 580] in their proper perspective. It was further submitted that the view taken by the Tribunal and the High Court is wholly unsustainable inasmuch as the word pensionable occurring in the letter dated 24.1.1989 was an apparent mistake which in terms of the provisions of the Manual should have been ignored. Even the Circular letter issued by the Western Railway on the basis whereof the workman was given a temporary status is of no value'.

10. Apart from the above, the Learned Counsel for the Petitioners in the aforesaid Judgement of the Apex Court refers to Paragraph No.16 and also to Paragraph Nos.20, 25, 26 and 28, which runs as under:

16. Rule 2005 clearly lays down the entitlement and privileges admissible to casual labour who are treated to be temporary i.e. given temporary status in the following terms;

2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be).--(a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D & A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-à-vis other regular/temporary employees. This is, however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group D Posts in the manner laid down from time to time. Subject to such orders as the Railway Board may issue from time to time, and subject to such exceptions and conditions like appointment on compassionate ground,

quotas for handicapped and ex-servicemen etc. as may be specified in these orders they will have a prior claim over others to recruitment on a regular basis and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual labour before attaining the age of 28 years should be allowed relaxation of the maximum age limit prescribed for Group D posts to the extent of their total service which may be either continuous or in broken periods.

(c) No temporary posts shall be created to accommodate such casual labour, who acquire temporary status, for the conferment of attendant benefits like regular scale of pay, increment etc. After absorption in regular employment, half of the service rendered after attaining temporary status by such persons before regular absorption against a regular/temporary/permanent post, will qualify for pensionary benefits, subject to the conditions prescribed in Railway Boards letter No. E(NG) II/78/CL/12 dated 14-10-80. (Letter No. E(NG) II/85/CL/6 dated 28-11-86 in the case of Project casual labour).

(d) Casual labour who have acquired temporary status and have put in three years continuous service should be treated at par with temporary railway servants for purpose of festival advance/Flood Advance on the same conditions as are applicable to temporary railway servants for grant of such advance provided they furnish two sureties from permanent railway employees.

(e) Casual labour engaged on works, who attain temporary status on completion of 120 days continuous employment on the same type of work, should be treated as temporary employees for the purpose of hospital leave in terms of Rule 554-R-I (1985 Edition).

A casual labour who has attained temporary status and has been paid regular scale of pay, when re-engaged, after having been discharged earlier on completion of work or for non-availability of further productive work, may be started on the pay last drawn by him. (This shall be effective from 2nd October, 1980).

20. The contrast between a casual labour having a temporary status and a temporary servant may immediately be noticed from the definition of a temporary railway servant contained in Rule 1501 occurring in Chapter XV of the Manual.

1501 (i) Temporary Railway Servants Definition A temporary railway servant means a railway servant

without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include casual labour, including casual labour with temporary status, a contract or part time employee or an apprentice.

25. Mala fide cannot be attributed to a legislation. It is only its validity, that can be challenged. In these cases, validity of the Rules were not under challenge.

26. The Gujarat High Court in our opinion therefore, committed a fundamental error in opining otherwise. It failed to notice that when casual labour has been excluded from the definition of permanent or temporary employee, he with temporary status could not have become so and there is no legal sanction therefor. It is for the legislature to put the employees to an establishment in different categories. It may create a new category to confer certain benefits to a particular class of employees. Such a power can be exercised also by the Executive for making rules under the proviso appended to Article 309 of the Constitution of India. Dakshin Railway Employees Union, Trivandrum Division Vs. General manager, Souther Railway and Others [(1987) 1 SCC 677] whereupon reliance has been placed by the Gujarat High Court in Rukhiben Rupabhai (supra) does not lead to the said conclusion as was sought to be inferred by it. The question therein was as to whether any direction was to be issued to include the petitioners therein in the scheme for absorption as formulated pursuant to the directions of the Court.

28. Recruitment of Government Employees must be made strictly in terms of the statutory rules. Entitlements of the employees being governed by statute or statutory rules, the question of attribution of any malice in our opinion by the Gujarat High Court was clearly erroneous.

11. The Learned Counsel for the Petitioners seeks in aid of the decision of Hon'ble Supreme Court between Prabhu Narain and Others V. State of U.P. and Others reported in (2004) 13 Supreme Court Cases at Page 662 and at Special Page 664 at Paragraph No.5, it is observed as under:

'5. We have considered the submissions made by the learned counsel for the parties. It is clear from the averments made in the writ petition that the petitioners have not shown as to what is the basis for their claim of pension. There are two things: one is the claim for the regularisation of their services and

the other is the claim for grant of pension. The earlier judgment of this Court in the case of Raj Narain 1 (1998) 8 SCC 473 aforementioned relates only to regularisation of services. If the petitioners had any grievance regarding regularisation of their services and if their services were not regularised early or ignoring their claim services of any juniors were considered, it was open to them to seek appropriate relief based on the Judgment of this Court claiming regularisation of their services from a particular date. That is not the claim made in the writ petition. No details or particulars are given as to who are those juniors whose services were regularised in preference to the services of the petitioners. No doubt pension is not a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled to pension under a particular rule or the scheme, as the case may be. In spite of the fact that in the counter-affidavit it is stated that no rule is quoted by the petitioners to say that under a particular rule or the scheme, as the case may be. In spite of the fact that in the counter affidavit it is stated that no rule is quoted by the petitioners to say that under particular rule they are entitled to grant of pension. In the rejoinder filed the petitioners have also not stated as to under what rules they are entitled to pension. Some of the petitioners, as we are told, have already attained the age of superannuation. We do not have material before us to say that under what scheme the respondents could consider the petitioners for regularisation of their services and if so, from what date. It is stated that more than 5000 work-charged employees have already been regularised. If the petitioners had any grievance of non-regularisation of their services, as already observed, it was / is open for them to claim the appropriate relief, but one thing is clear that unless the petitioners' services are regularised in the first place, we find it difficult as to how they can claim pension.'

12. The Learned Counsel for the Petitioners puts forward an argument that the 2nd Respondent's wife, Meenakshi's name finds a place in Circular No.U/P-407/VIII/Vol.7 dated 10.8.1983 at Sl.No.7, wherein it was mentioned that it was continuous service commenced from 01.1.1983 and that she was granted a 'Temporary Status' from 01.05.1983. The 2nd Respondent's deceased wife, Meenakshi was initially engaged on 22.10.1979 as 'Substitute Sanitary Cleaner'. In the said circular dated 10.08.1983 of the Divisional Office, Personal Branch, Southern Railway, Madurai,

it was mentioned that the conferment of Temporary Status as on the Substitute, will not entitle them to automatic absorption / appointment to Railway Service, unless they are selected in the approved manner for the appointment to regular Railway Post. That apart, it was stated that they are eligible for the Rights and Privileges admissible to Temporary Railway Servant from the date on which, they are granted temporary status.

13. The Learned Counsel for the Petitioners contends that the 2nd Respondent / Applicant's deceased wife was not a regularised servant and that she was treated to be a 'Temporary Employee' and not absorbed and before absorption, she is not entitled for the pensionary benefits.

14. The Learned Counsel for the Petitioners points out that Chapter 20 of the Indian Railways Establishment Manual, Vol.II captioned as 'Casual Labour' wherein at Paragraph 2001 define 'Casual Labour' and Paragraph 2005 refers to the 'Entitlement and Privileges Admissible to Casual Labourers' [which are meant Temporary Status] and the same runs as under :

(a) Casual Labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D&A Rules. However, their service prior to absorption in temporary / permanent / regular cadre after the required selection / screening will not count for the purpose of seniority and the date of their regular appointment after screening / selection shall determine their seniority vis-a-vis other regular /temporary employees.

Moreover, the sub-paragraph further directs that 'Casual Labourer shall be eligible to count only half the period of service rendered by them after attaining temporary status before regular absorption, as qualifying service, for the purpose of Pensionary benefits.'

15. The Learned Counsel for the Petitioners submits that the Casual Labourer, who had acquired the Status will not, however, be brought on to Permanent / Regular Establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group 'D' Posts in the manner laid down from time to time.

16. In response, the Learned Counsel for the 2nd Respondent submits that the 2nd Respondent is the widower of Late Meenakshi, who represented seeking Mandatory Family Pension and since the Petitioners had not responded his request, he filed O.A.No.310/00423 of 2014.

17. The Learned Counsel for the 2nd Respondent contends that as per Rule 75(2) of the Railway Services Pension Rules, 1993 without prejudice to the provisions contained in Sub-Rule (3), where a Railway Servant dies - (a) after completion of one year of continuous service, or (b) before completion of one year of continuous service provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway service and the family of the deceased would be entitled to a Family Pension.

18. The Learned Counsel for the 2nd Respondent comes out with a plea that as per the aforesaid Sub-Rules (a) and (b) of Rule 75(2)(3) of Railway Services Pension Rules, it can be inferred that in case of death in harness, receipt of pension alone or minimum 10 years of Family Pension qualifying service is not mandatory for the entitlement to family pension and service rendered at the time of death should have qualified for pension and as such, late Meenakshi, on being engaged as a Substitute on 22.10.1979 and conferred with temporary status on 01.05.1983 and subjected to medical examination and died in harness on 13.01.1985 as Sanitary Cleaner and thus, in temporary status after putting one year and eight months of service, the 2nd Respondent is entitled with the Mandatory Family Pension.

19. The Learned Counsel for the 2nd Respondent takes a stand that inasmuch as the 2nd Respondent's Wife was engaged against the post of 'Sanitary Cleaner', she was substituted in terms of Chapter 23, 1968 Edition of the Indian Railways Establishment Manual / Chapter 15 of 1989 Edition of the Indian Railways Establishment Manual and as such, the 2nd Respondent is entitled to claim Mandatory Family Pension, as per Rule 75 (2) (a) & (b) of the Pension Rules.

20. The Learned Counsel for the 2nd Respondent submits that since the Pension Rules, 1993 debars certain services as not qualified for pension in Rule 14 of the Pension Rules, which does not include the service rendered by the 2nd Respondent's wife, which is one among the number of services classified as qualifying service in Chapter III of Pension Rules, the 2nd Respondent is entitled to claim Mandatory Family Pension.

21. The Learned Counsel for the 2nd Respondent refers to Chapter XV of the Terms and Conditions Applicable to Railway Servants and Substitutes in Temporary Service, in Paragraph 1501 (i) under the Caption 'Temporary Railway Servants' defines a 'Temporary Railway Servant' means a Railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include 'Causal Labour', including 'Casual Labour with

temporary status', a 'contract' or 'part-time' employee or an 'apprentice'.

22. The Learned Counsel for the 2nd Respondent points out the aforementioned Chapter, in Paragraph 1502, under the Head 'Termination of Service and Periods of Notice', which reads as under:

(1) When a person without a lien on a permanent post under Government is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of the termination of his service, if such termination is due to the expiry of the sanction of the post which he holds or the expiry of the officiating vacancy, or to his compulsory retirement due to mental or physical incapacity or to his removal or dismissal as a disciplinary measure after compliance with the provisions of Clause(2) of Article 311 of the Constitution of India. If the termination of his service is due to some other cause, he shall be entitled to one month's notice provided he was engaged on a contract for a definite period and the contract does not provide for any other period of notice; and to a notice of 14 days if he was not engaged on a contract. Temporary railway servants with over three years continuous service shall, however, be entitled to a month's notice. The periods of notice specified above shall apply on either side., and steps should be taken to bring this condition to the notice of the Railway servants concerned.'

23. The Learned Counsel for the 2nd Respondent refers to Paragraph 1512 of the aforementioned Chapter wherein the 'Substitutes' are defined as :

'Persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant'.

24. Also, the Learned Counsel for the 2nd Respondent points out Paragraph 1513 of the aforementioned Chapter, which speaks of 'Circumstances under which Substitutes can be Recruited' and the same runs as under:

(i) Ordinarily there should be no occasion to engage 'Substitutes' having regard to the fact that practically in all categories of railway servants leave reserve may become inadequate or ineffective as in the

case of heavy sickness, or where the leave reserve is available but it is not possible to provide the same, say at a wayside station, and it may become absolutely necessary to engage substitutes even in vacancies of short duration.

(ii) As far as possible substitutes should be drawn from a panel of suitable candidates selected from Group 'C' and 'D' posts and should be engaged subject to the observations made in (i) above, only in the following circumstances:

(a) Against regular vacancies of unskilled and other categories of Group 'D' staff requiring replacement for which arrangements cannot be made within the existing leave reserve.

(b) Against a chain vacancy in the lower category of Group 'D' staff arising out of the incumbent in a higher Group 'D' category being on leave, where it is not possible to fill the post from within the existing leave reserve.

(c) Against Posts in categories for which no leave reserve has been provided.

(d) Against vacancies in other circumstances notified by the Railway Board from time to time.'

25. Further, Paragraph 1514 of the aforesaid mentioned Chapter under the caption 'Emoluments Payable to the Substitutes' says that 'Substitutes should be paid regular scales of pay and allowances admissible to such posts, irrespective of the nature or duration of the vacancy'.

26. The Learned Counsel for the 2nd Respondent adverts to Paragraph 1515 of the aforementioned Chapter, which deals with the 'Rights and Privileges Admissible to the Substitutes' and the same runs as under:

'Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

Note: The conferment of temporary status on the Substitutes on completion of four months continuous service will not entitle them to automatic absorption / appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and / or they are selected in the approved manner for appointment to regular railway posts.

Substitutes who are appearing in Railway Recruitment Board Examination will be entitled to relaxation of age by the period of service as substitute subject to the age of years not being exceeded, provided he has put in 3 years (at one stretch or broken) service as substitute / casual labour.

27. The Learned Counsel for the 2nd Respondent refers to Paragraph 75 (2) of the Railway Services [Pension] Rules, 1993 under the Caption 'Family Pension Scheme for Railway Servants, 1964', which runs as under:

(2) Without prejudice to the provisions contained in sub-rule (3), where a railway servant dies

(a) after completion of one year of continuous service, or (b) before completion of one year of continuous service provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway service;

(c) after retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to in Rule 53;

the family of the deceased shall be entitled to a family pension 1964 (hereinafter in this rule referred to as family pension) the amount of which shall be determined in accordance with the Table below:

TABLE

Basic pay per month of Railway Servant	Rate of Family Pension per month inclusive of dearness relief upto average Consumer Price Index-608
(i) Not exceeding Rs.1500	30 percent of basic pay subject to a minimum of Rs.375
(ii) Exceeding Rs.1500 but not exceeding Rs.3000	15percent of basic pay subject to a minimum of Rs.450
(iii) Exceeding Rs.3000	15 percent of basic pay subject to a minimum of Rs.600 and a maximum of Rs.1250

Explanation: The expression 'Continuous one year of service' wherever it occurs in this Rule shall be construed to include 'less than one year of continuous service' as defined in Clause(b)

(3) The amount of family pension shall be fixed at monthly rates and expressed in whole rupees and where the family pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee:

Provided that in no case a family pension in excess of the maximum specified under this rule shall be allowed.'

28. Lastly, it is the contention of the Learned Counsel for the 2nd Respondent that it is not correct to state that the 2nd Respondent's wife was engaged as 'Casual Labourer' and further, it is incorrect to state that 'Temporary Status Service' will be reckoned as pension qualifying service only when such service is regularised, which is inconsistent with Rule 20 of Pension Rules and thus impermissible in Law.

29. It is to be remembered that 'Right to Pension' is a 'Substantive Right' and not a 'Gratuitous Payment'. It is also not a 'Bounty'. Undoubtedly, right to get 'Pension' and 'Family Pension' are Conditions of Service.

30. In the first place, 'Onus' is on a Person / Employee to point out under what Rule and Scheme he/she stakes a claim for pension. A person with a 'Temporary Status' is entitled to claim pension only if he/she is regularised and in the event of his/her death, no question of payment of Family Pension that arises for consideration. Inasmuch as the 2nd Respondent's wife viz., Meenakshi was not regularised till her death, the 2nd Respondent / Deceased Meenakshi's Husband is not entitled to claim Family Pension.

31. Ordinarily, if a person who accepts an engagement either Temporary or Casual in character, accepts the said employment with open eyes. The status acquired by him or her in the post in which he / she was temporarily employed or the interest in that post could not be considered to be of such a nature, so as to enable the well laid down procedure being established for making regular appointment to the available post in the service of an organisation. In short, the 2nd Respondent's deceased wife, although had attained the Temporary Status prior to her death, should have undergone the screening and ought to have been regularised in service, that only provides a lever to the Legal Representative(s) of the deceased Employee to claim the benefit of Family Pension.

32. It cannot be forgotten that 'Appointments' whether they are Temporary or Casual, when they are Regularised or made Permanent, a Court of Law is not to be carried away by the fact that the concerned individual had worked for some period and in few cases had served for a considerable length of time.

Furthermore, a 'Temporary Employee', who gets a 'Temporary Status' may receive pay allowances etc., just like that of his colleagues. But, in respect of other substantial benefits, he/she is necessarily to wait and a qualifying service of a Railway Servant will ordinarily commence from the date he assumes charge of the post to which he is appointed either Substantively or in a Transitory Capacity or in an Officiating Capacity.

33. It is to be mentioned that in the Book on Railways' Establishment Rules and Labour Laws, 2002, K.P.Sharma (Bahri Brothers) (updated Reprint October, 2001) in Chapter 19 at Page 641 'Casual Labour and Substitutes', the Definition of 'Casual Labour' reads as under:

'Casual labour on Railways refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Casual labour are not recruited against regular posts or work of regular nature. Normally casual labour are as follows:

(a) Staff-paid from contingencies except those retained for more than four months continuously;

(b) Labour on projects, irrespective of duration other than those transferred from other temporary and permanent employment;

(c) seasonal-labour who are sanctioned for specific works of less than six months of duration'.

34. In the aforesaid Book at Chapter 19 at Pages 644 and 645 in Sl.Nos.8 and 9 about 'Temporary Status' and 'Benefits of Temporary Status' respectively, it is mentioned as under:

'8. Casual labour excepting those working on projects, on completion of 120 days continuous service either on the same work or other work of same type shall be given temporary status. Such casual labour who had attained temporary status is entitled all rights and privileges admissible to temporary Railway servants.

Casual labour working on the projects are brought on monthly rate of wages on completion of 180 days continuous service and are paid consolidated wages at the rate of 1/30th of the minimum scale of pay plus dearness allowance. It has been decided in principle that labour employed on projects may be treated as temporary (temporary status) on completion of 360 days of continuous employment. A schedule indicating the length of service and dates from which temporary status to be given is given below:

(a) Those who have completed five years of service as on 1.1.81 to be treated temporary from 1.1.81.

(b) Those who have completed three years service but less than five years as on 1.1.81 to be treated

temporary from 1.1.82.

(c) Those who have completed 360 days but less than three years on 1.1.81 to be treated as temporary from 1.1.83.

(d) Those who complete 360 days after 1.1.81 to be treated temporary from 1.1.84 or date on which 360 days completed, whichever is later.

[R.B.'s No.E(NG) II-84/CL/41 of 11.9.86, Bahri's 167/86.]

9. Casual labour acquiring temporary status are entitled to all rights and privileges as admissible to temporary Railway employees, i.e., revised scale of pay, house rent and compensatory allowances, dearness allowance, increments, leave, medical facilities, passes, P.T.Os. Casual Leave, hospital leave advances and 3 National Holidays. Such casual labour shall also be governed by the Conduct Rules, Discipline and Appeal Rules.

Skilled artisans, on attaining temporary status (in terms of extent orders) shall be eligible for relevant scale in revised grade applicable to skilled artisans. [R.B.'s No.E(NG) II-84/CL/58 of 20.12.85, Bahri's 339/85].

If a casual labour with temporary status dies in harness, i.e., during his employment with railways and if the case presents features constituting extreme hardship, meriting special consideration, General Manager at his personal discretion, may give appointment to eligible and suitable ward on compassionate grounds. General Manager may also exercise powers personally to decide the request for appointment on compassionate grounds to ward of a casual labourer who dies due to an accident while on duty, provided the casual labourer concerned is eligible for compensation under the Workmen's Compensation Act, 1923.

[R.B.'s No.E(NG) II-84/CL/28 of 4.5.84 and 31.12.86, Bahri's 256/86 and dated 6.12.90, Bahri's 233/90.]

35. Furthermore, in the aforementioned Book at Chapter 19, at Page 646, at Serial No.10, under the caption 'Break in Service', it is stated as under:

"The following period of absence of casual labour shall not be considered as a break in continuous service-

(a) When casual labour is under medical treatment due to injuries sustained on duty.

(b) Authorised absence up to a period of 20/30 days inclusive of three days as unauthorised absence.

[R.B.'s No. E(NG) II-88/CL/18 of 1.1.88, Bahri's

251/88]

(c) Non-performance of work on rest day and on days on which the establishment employing the casual labour remains closed does not constitute a break in service nor will be counted against the limit of 30 days, in case of project labour and 20 years for open line labour.

(d) In case of female labour a period of four weeks (in addition to 20/30 days) may be allowed for maternity purpose.

(e) To determine absence of 20/30 days during last 4/6 months, an absence of half day may be taken as half-day only.

(f) when casual labour is discontinued due to completion of work or further non-availability of work and employed later, the intervening gap will not be treated as break, however, an authorised absence of stoppage of work or the intervening period when the workman on his own changes from one work to another work, shall be treated as a break in service.

Note: Under (b) above 20/30 days have been stated. It means for open lines casual labour the limit is 20 days and for project labour limit is 30 days."

36. Besides this, Serial No.11 speaks of 'Seniority'. Serial No.12 deals with 'Medical Treatment'. Serial No.13 specifies 'Rest'. Serial No.16 refers to 'Daily Allowance', in respect of Casual Labour with temporary status shall be granted daily allowance on the rates admissible to regular employees. [R.B.'s No.E(NG)II/90/CL/1 of 3.2.1994, Bahri's 8/94.]. Serial No.18 deals with 'Live Labour Register'. Apart from that, separate lists of casual labour borne on the Live Registers/Supplementary Live Casual Labour Registers as on 1.4.99 with the prescribed particulars may be made out to the Board. [No.E(NG)II-99/CL/18, dated 11.5.99; Bahri's 103/99]. Serial No.19 speaks of 'Termination of Service'. Serial No.20 relates to 'De casualisation'.

37. It is to be relevantly pointed out that in the Book Bahri's Railway Establishment Rules and Labour Laws (Seventh Central Pay Commission Recommendations) by K.P.Sharma, 12th Edition by Sanjiv Malhotra, 12th Supplemented Reprint Edition, 2017 in Chapter 20 at page 569, at special page 578, wherein Serial No.21, it is mentioned as under:

"21.Introduction of New Pension Scheme-Modification of Scheme for grant of temporary status to casual labour:
In the light of introduction of the New Pension Scheme.

(i) No credit to casual labour service i.e. Counting of the service rendered under temporary status, for the purpose of retirement benefits after

their regularisation shall be available to the casual labour on their regularisation against Group 'D' posts on or after 1.1.2004.

(ii) As there is no provision of State Railway Provident Fund (SRPF) in the New Pension Scheme no further deductions towards State Railway Provident Fund shall be effected from such casual labours w.e.f. 1.1.2004 onwards.

[R.B.'s No.E(NG)II/2004/CL/16/Policy of 17.9.2004, Bahri's 205/2004.]”

38. In the aforesaid Book at Chapter 19 at Page 653 under the Caption 'Substitutes', it is defined as under :

'Substitutes' refer to persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts falling vacant because of absence of leave or otherwise of permanent or temporary Railway servant and which cannot be kept vacant.

39. Further Sl.No.3 of the said Book at Chapter 19 deals with 'Circumstances under which 'Substitutes' can be appointed'. Also Sl.No.5 of the said Book at Pages 656 and 657 speaks of 'Screening of Substitutes for their absorption in Regular Service' and the same runs as under.

'5.1 Substitutes, who have acquired temporary status should be screened by a Screening Committee and not by Selection Boards, constituted for this purpose before being absorbed in regular Group 'C' (Class III) and Group 'D' (class IV) posts.

Such a Screening Committee should consist of at least three members, one of whom should belong to the SC/ST Communities and another to minority communities. [R.B.'s No.E(NG) II/83/RR-1/7, dated 1.6.83.]

5.1 A screening/empanelment of of casual labour/substitutes for purpose of absorption in regular employment be restricted to only those who are in the current casual labour/substitutes Register except such of them as are absent on two occasions when called for such screening. For this purpose the said 'Register' should be maintained in duplicate.

[R.B.'s No.E(NG) II/78/CL/2 dated 21.2.84.]

5.2 Though no roaster is required to be maintained, still be intake of SC/ST while engaging substitutes against each individual category in the various departments should not be below the prescribed percentage of reservation in favour of the two communities.

5.3 The Screening Committee should make good the shortfall, if any, by resorting to direct recruitment

from the open market in each Group 'D' (Class IV) category before the panel is published. Ordinarily, the question of shortfall in non-technical categories should not rise.

5.4 So far as technical categories in Group 'D' (Class IV) are concerned, if there is any shortfall the matter should be reported to the Railway Board with the detailed remarks giving reasons for shortfall and also the steps taken by the Railway Administration to make good the shortfall.

5.5 Screening of substitutes for absorption in regular employment may be made by the Screening Committee with reference to the vacancies available at present and the vacancies likely to arise due to normal wastage up to the end of next one year and available for absorption of Casual Labour. The number to be called for screening will continue to the number assessed in the aforesaid manner plus 25% thereof. In other words, the number to be kept in the panel should be the number assessed, although 25% more are called to cater against the absentees in terms of Board's letter No.E(NG) II/79/C1/2 dated 3.3.82.

[R.B.'s No.E(NG) II/18/CL/18 dated 1.11.88, Bari's R.B.O. 1988-I, 305; Bahri's 250/88.]

5.6 As long as it is established from records that the substitutes have been enrolled within the age limit, relaxation at the time of actual absorption should be automatic.

5.7 In old cases where the age limit was not observed, relaxation of age at the time of regular absorption should be considered sympathetically. CPOs/DRMs are empowered to grant such relaxations in hard cases.

5.8 In the case of vacancies in the Elec./Mech. and S&T Departments, substitutes will be eligible for absorption in regular employment only if they have the minimum educational qualifications of ITI or they are course completed Act Apprentices.

5.9 Subject to what is stated at para 5.8 above and with exceptions like compassionate appointments, recruitment to Diesel/Elec. loco sheds and workshops, etc., all Group 'D' (Class IV) vacancies that may become available upto 31.12.89 or till further instructions in the matter are issued, whichever is earlier, will be filled by the screening and empanelment of substitutes.

5.10 When called for screening, substitutes will be issued passes for their journeys and the period treated as on duty.

5.11 Gaps which may occur in service of

substitutes between two engagements should be ignored for the purpose of temporary status on completion of four months' service, and in case of Teachers, on completion of 3 months' service.

[R.B.'s No.E(NG) II/82/SB/8 of 6.1.63 & 12.3.83]

5.12 The practice of entrusting establishment work to the casual labour/substitute Khalasis in executive officers wherever exists, should be stopped forthwith and they should be utilised only on the work, they are meant for.

[R.B.'s No.E(G) 82/ALI-9, dated 20.8.85, Bahri's R.B.O. 1985, 229; Bahri's 244/85.]”

Furthermore, in the aforementioned Book at Page 658, Sl.No.8 deals with 'Re-engagement of Substitutes.'

40. No wonder, an 'Employee' with a 'Temporary Status' is eligible for pension only if he/she is absorbed and regularised, after due screening by the Screening Committee. Viewed in that perspective, this Court is of the considered view that when the 2nd Respondent's Deceased Wife Meenakshi, during her life time, was not absorbed and regularised while serving as 'Substitute Sanitary Cleaner' at Health Inspector Office, Madurai District in Southern Railway, then, the claim of the 2nd Respondent seeking Family Pension, is not maintainable, in the considered opinion of this Court.

41. Looking at from that point of view, the view taken by the 1st Respondent / Tribunal that the Family Pension cannot be denied to the husband of the deceased Employee is an incorrect one. As such, the direction issued by the 1st Respondent / Tribunal to the Petitioners / Respondents to pay the Family Pension to the 2nd Respondent / Applicant within a period of three months from the date of receipt of copy of this order etc., is unsustainable, in the eye of Law. Consequently, the Writ Petition succeeds.

In fine, the Writ Petition is allowed. The Impugned Order dated 13.04.2016 in O.A.No.310/00423/2014 of the 1st Respondent / Tribunal is set aside by this Court for the reasons assigned in this Writ Petition. Consequently, the Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

Ssd/Sgl

To

The Registrar,
The Central Administrative Tribunal,
Chennai Bench,
Chennai - 600 104

+1cc to Mr.L.Chandrakumar, Advocate SR.No.21259

+1cc to Mr.C.V.Ramachandramurthy, Advocate SR.No.17699

W.P.No.676 of 2018 and
W.M.P.No.847 of 2018

RR(CO)
GMY(26/04/2019)



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