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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.11.2019

DELIVERED ON : 13.12.2019

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.27100 of 2018

Udayakumari ..Petitioner
Vs.

1.Union of India rep by
The General Manager,
Southern Railway,
Park Town, Chennai-600 003.

2.The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai-600 003.

3.The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the 3rd respondent made in O.A.No.310/00795/2015 dated 10.04.2017 and to quash the same and to consequently direct the respondents 1 and 2 to extend enhanced family pension with effect from the date of death of petitioner's husband for a period of seven years and normally family pension thereafter as per Rule 75 of the Pension Rules and other death/retirement benefits to the petitioner with admissible interest thereon.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.P.T.Ramkumar
Standing Counsel for Railways (R1 & R2)



O R D E R

M.SATHYANARAYANAN, J.

The original applicant in O.A.No.795 of 2015 on the file of the Central Administrative Tribunal, Madras Bench is the writ petitioner.

2. The original applicant made a request for settlement of terminal benefits, family pension and compassionate ground appointment and vide impugned order dated 03.03.2015, the said request made by the original applicant was rejected by the second respondent. Challenging the legality of the same, she filed O.A.No.795 of 2015, praying for quashment of the said order with a consequential direction to settle all the benefits for the services rendered by her deceased husband and allied reliefs. The Tribunal, vide impugned order dated 10.04.2017, has dismissed the said original application and aggrieved by the same, the present writ petition has been filed.

3. Husband of the original applicant, namely Late T.A.Radha worked as Extra Labourer (ELR) Khalasi in the office of the Signal and Telecommunication Department, Bangalore city with LTA No.517 between 10.09.1980 and 13.04.1984 and he expired on 15.04.1984. It is the claim of the original applicant that her husband, from the date of engagement as Extra Labourer on 10.09.1980 till his demise on 15.04.1984, was not considered for temporary status or for empanelment for regular appointment at any point of time. Therefore, the original applicant/wife of the deceased, filed a claim petition in C.P.No.44/1987 before the Labour Court / Central Administrative Tribunal, Chennai and it was dismissed on 26.06.1991 for want of jurisdiction. The original applicant/writ petitioner filed yet another petition before the said Court in C.P.No.50/1996 and it was dismissed on 27.09.2002 on the ground that a writ petition was already dismissed against the contesting party.

4. The original applicant once again filed an original application in O.A.No.1237 / 2014 praying for appropriate direction directing the second respondent to settle all the benefits to her for the services rendered by her husband from 03.05.1971 to 13.04.1984 under the control of the respondent with 18% p.a. as per the rules in force and the said original application was disposed of, vide order dated 27.01.2015 by directing the respondent to consider the representation of the applicant dated 25.07.2014 in accordance with law and as per rules, and pass a reasoned order, within a stipulated time.



The second respondent, in compliance of the said order, has passed the impugned order dated 03.03.2015, rejecting the claim of the original applicant/writ petitioner on the ground that her husband was not empanelled against any regular post and the post of Extra Labourer is not at all a Railway Employee / Servant and he will attain the status only on absorption/empanelment against regular vacancy of any post. Challenging the legality of the same, the original applicant has filed the present writ petition.

5. Mr.L.Chandrakumar, learned counsel appearing for the petitioner has invited the attention of this Court to the Indian Railway Establishment Manual [IREM], Volumes I and II and would submit that Chapter XX, Clause 2005 in Volume II of IREM deals with Entitlements and Privileges admissible to Casual Labour, who was treated as temporary after the completion of 120 days or 360 days of continuous employment as Casual Labour and the husband of the petitioner was employed as Casual Labour (Project) and in the light of the fact that he has put in more than 180 days of continuous employment, he should have been treated as worker acquired temporary status and in that event, he is entitled for the benefits as claimed and would further add that the Railway Administration, being a Model Employer, cannot stand on hyper-technicalities to deny the relief to a widow and hence prays for appropriate orders.

6. Per contra, Mr.P.T.Ramkumar, learned Standing Counsel appearing for the respondents 1 and 2 / Railways would submit that the husband of the petitioner, from the date of his engagement as Extra Labourer on 10.09.1980 till his death i.e., on 15.04.1984, was not considered for temporary status or for empanelment for regular appointment at any point of time and he cannot be treated as Railway employee/servant and he will attain the status only on absorption / empanelment against regular vacancy of any post and admittedly, the husband of the original applicant/writ petitioner did not fulfill the said criteria. It is the further submission of the learned Standing Counsel appearing for Railways that in terms of Railway Services (Pension) Rules, 1993, retiral/death benefits is available only in the event of absorption / empanelment against regular post and since the husband of the petitioner did not fall within the said category, the impugned order of rejection came to be passed rightly. It is also the submission of the learned Standing Counsel appearing for Railways that even the Tribunal itself lacks territorial jurisdiction for the reason that at the time of demise, the husband of the petitioner was employed in the Office of the District Signal and Telecommunication, Bangalore City, which falls within the jurisdiction of South Western



Railways and as such, the Central Administrative Tribunal, Chennai Bench also lacks jurisdiction to entertain the Original Application and prays for dismissal of this writ petition. The learned Standing Counsel appearing for the Railways, in support of his submissions, placed reliance upon the decision in Union of India, Represented by General Manager, Southern Railway and others v. Central Administrative Tribunal, Madras Bench and another [Order dated 06.03.2019 made in W.P.No.676 of 2018].

7. In response to the same, the learned counsel appearing for the petitioner would submit that permanent abode of the original applicant is at Chennai and therefore, a part of cause of action arose within the jurisdiction of the Central Administrative Tribunal at Chennai and the fact remains that the husband of the petitioner worked for 1285 days continuously and as such, the original applicant is entitled to retiral and other consequential benefits and hence prays for interference.

8. This Court has considered the rival submissions and also perused the entire materials placed before it.

9. IREM, Volume II, Chapter XX deals with Casual Labour and the husband of the petitioner was employed as Casual Labour (Project). It is stated in the said volume that Casual Labour on Project, who have put in 180 days of continuous employment on works on the same type are entitled for 1/30th of the minimum of the appropriate Scale of Pay plus Dearness Allowance and that grant of temporary status to project casual labour is regulated by instructions separately issued by the Railway Board.

10. Clause 2002 of IREM deals with Entitlements and Privileges admissible to Casual Labour. Clause 2005 deals with 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). Sub-clause (b) of Clause 2005 of IREM would state that such casual labour who acquires temporary status, will not, however, be brought on to the temporary 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. Sub-clause (d) of Clause 2005 says that 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 etc. Clause 2006 speaks about absorption of Casual Labour in regular vacancies and it can be done in accordance with the instructions issued by the Railway Board from time to time and



such absorption is, however, not automatic and is subject, inter alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc., decided by the Railway Administration.

11. It is not the case of the petitioner that her husband has attained temporary status and that he got absorbed into regular service. The primordial submission made by the learned counsel appearing for the petitioner is that for all practical purposes, the husband of the petitioner is to be treated as railway servant and on account of it, all consequential benefits would follow.

12. The learned Standing Counsel appearing for Railways has placed reliance upon Paragraph Nos.27 and 40 of the order dated 06.03.2019 made in W.P.No.676 of 2018 (cited supra), which dealt with Rule 75(2) of The Railway Services (Pension) Rules, 1993 and observed that 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. As already pointed out, the husband of the petitioner while he was in service, did not attain that status.

13. Rule 3(2) of the Railway Services (Pension) Rules, 1993 defines "railway servant" and means a person who is a member of a railway service and holds a post under the administrative control of the Railway Board and includes a person who is holding the post of Chairman, Financial Commissioner or a Member of the Railway Board but does not include casual labour or person 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. The above definition of "railway servant" makes it clear that it does not include casual labour and unless the services rendered by the husband of the petitioner comes within the definition of railway servant, as defined under Rule 3(23), the prayer sought for by the petitioner cannot be granted.

14. Though it is submitted by the learned Standing Counsel appearing for Railways that the claim of the petitioner is hit by limitation, delay and laches, in the light of the fact that she is a widow, aged about 52 years at the time of filing the original application, she may not be posted with rules, regulations and procedural aspects, this Court is not inclined to reject her claim on the said ground. However, the husband of the petitioner, in the facts and circumstances of the case,



cannot be treated as a Railway servant and that apart, Rule 75 of the Railway Services Family (Pension) Rules, 1993, also speaks about family pension scheme to railway servants and in the considered opinion of the Court, the husband of the petitioner, while he was in service, cannot be treated as railway servant and the claim made by the petitioner with regard to family pension and settlement of all benefits for the services rendered by her deceased husband cannot be granted.

15. The Central Administrative Tribunal, Chennai has taken into consideration all the relevant facts and circumstance and rightly reached the conclusion that the husband of the writ petitioner/original applicant had rendered service only as Extra Labourer on daily basis and he is not at all a railway employee/servant for the reason that he had not been empaneled against regular posts as per rules.

16. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the Tribunal in dismissing the original application and finds no merit in this writ petition.

17. In the result, this Writ Petition is dismissed, confirming the order of the Central Administrative Tribunal, Madras Bench, Chennai dated 10.04.2017 passed in O.A.No.310/00795/2015. No costs.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

Jvm

To

1.The General Manager,
Southern Railway,
Park Town, Chennai-600 003.

2.The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai-600 003.



3.The Registrar,
The Central Administrative Tribunal,
Madras bench Chennai.

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+1 cc to Mr.L.Chandrakumar Advocate sr104219

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