

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19129 of 2017

1. The Union Of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager, East Central Railway, Hajipur, District- Vaishali Bihar.
3. The Chief Administrative Officer Con, East Central Railway, Mahendrughat, Patna Bihar.
4. The Financial Advisor and Chief Accounts OfficerCon, East Central Railway, Mahendrughat, Patna Bihar.
5. The Deputy Chief Personnel Officer Con, East Central Railway, Mahendrughat, Patna Bihar.
6. The Deputy Chief Engineer Construction, East Central Railway, Dhanbad.
7. The Deputy Chief Engineer Construction, East Central Railway, Hazaribagh.
8. The Deputy Chief Engineer Construction, East Central Railway, Kodarma.
9. The Senior Divisional Engineer Co-ordination, East Central Railway, Dhanbad.
10. The Senior Divisional Financial Manager, East Central Railway, Dhanbad.

... .. Petitioner/s

Versus

1. Jitan Pandit and Ors son of Late Hulas Pandit, Ex Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Ganga Bridge, Dighaghat, Patna Bihar.
2. Jhari son of Late Dhanu, Ex Khalasi, under Junior Engineer Con, E.C. Railway, Works Bermo, O/O the Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
3. Nand Lal, son of Lat Gendu, Ex. Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
4. Rangu, son of Late Binay, Ex Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Hazaribagh.
5. Bhola, son of Late Bishwanath, Ex Helper, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
6. Jitan, son of Late Sohan, Ex Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
7. Thanu, son of Late Matuk, Ex Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
8. Tilak, son of Bhawani, Ex Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Hazaribagh.
9. Peary, son of Late Ganesh Mahto, Ex Hamerman, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
10. Bharat, son of Late Alam, Ex Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Kodarama.



11. Mangra, son of Late Bhikhan, Ex Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
12. Smt. Teena Devi, wife of Late Megh Lal, Ex Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Kodarama.
13. Laloo, son of Late Bhairo, Ex Survey Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Hazaribagh.
14. Chhedi Ram, son of Late Sukar Ram, Ex Chainman, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
15. Dharam Thakur, son of Late Manager Thakur, Ex Trackman, Ex Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
16. Shyam Lal, son of Nanu Thakur, Ex Chainman, under Deputy Chief Engineer Con, E.C. Railway, Kodarama.
17. Sakur Ansari, son of Late Dil Mohammad, Ex Trackman, under Deputy Chief Engineer Con, E.C. Railway, Kodarama.
18. Dhuran, son of Late Bhikhari, Ex Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Hazaribagh.
19. Bhuneshwar Shaw, son of Late Pannu Saw, Ex Trackman, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
20. Sewa Mahto, son of Late Indraman, Ex Survey Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
21. Babujan, son of Late Keshu, Ex Chainman, under Deputy Chief Engineer Con, E.C. Railway, Dhanbad.
22. Nehal Mahto, son of Late Sona Ram Mahto, Ex. Trackman, under Senior Divisional Engineer Co-ordination, E.C. Railway, Dhanbad.
23. Anil Kumar Thakur, son of Late Jagdeo Thakur, Ex Jeep Khalasi, under Deputy Chief Engineer Con, E.C. Railway, Hazaribagh, resident of Village-Chhotaki Amar, Post- Gosaimath, District- Nalanda Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Satyeshwar Prasad, Adv.

For the Respondent/s : Mr. Munna PD Dixit (M.P. Dixit), Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 14-09-2020

The proceedings of the Court are being conducted
through Video Conferencing and the Advocates joined the



proceedings through Video Conferencing from their residence.

Heard learned counsel for the petitioners and learned counsel for the Respondents.

Petitioners have prayed for following reliefs:-

- (i). "For setting aside the order dated 12.04.2017 passed in O.A. No. 741 of 2016 by the learned CAT, Patna Bench, Patna whereby and whereunder the original application has been allowed with a direction to the respondents/railways to re-fix the pension by computing the qualifying service counting of 50% of causal service and 100% of temporary/regular service and with further direction that no arrears of monthly pension shall be payable but arrears of other retiral dues and revision shall be paid within three months from the date of receipt of a copy of this order; and for any delay after that, the respondents shall be liable to pay interest @ 8% till the date of payment; and
- (ii) For, further, quashing the order dated 29.08.2017 passed in R.A. No. 45/2017 by the learned Central Administrative Tribunal Patna Bench, Patna whereby the learned tribunal has dismissed the review application filed by the petitioner/railways for reviewing the aforementioned order dated 12.04.2017 passed in O.A. No. 741/2016 and has also disposed of M.A. No. 287/2017 filed therein for condonation of delay in filing the review application by brushing aside the principle of law decided by the Hon'ble Supreme Court regarding counting of temporary/casual service in judgment dated 24.03.2017 passed in Union of India Vs. Rakesh Kumar reported in 2017(3) PLJR SC 83 according to which the casual service as well as the causal labour with temporary status service is to be reckoned 50% for purpose of pension;
- (iii) To allow this writ petition in terms of judgment passed by the Hon'ble Supreme Court in case of Union of India Vs. Rakesh Kumar



reported in 2017(3) PLJR 83 which has been followed by this Hon'ble Court in similar matters by granting similar relief(s) by order dated 24.07.2017 in C.W.J.C. No. 5111/2017 "The UOI & Ors Vs. Binod Singh" and order dated 24.08.2017 in C.W.J.C No. 4612/2017 "The UOI & Ors Vs. Md. Karar Husain;and/or (iv) For grant of any other relief(s) including, waiving the direction of the learned Tribunal to pay 8% interest, if other retiral dues and revised pension are not paid within 3 months (for the delay occurred due to pendency of review application/writ petition) as this Court may deem expedient in the interest of justice.

The counsel representing the petitioner/railways submits that decision of Hon'ble Apex Court rendered in the case of Union of India Vs. Rakesh Kumar since reported in 2017 (3) PLJR SC 83 makes the direction of the tribunal to count 100% service as temporary status employee and 50% of service as casual employee for qualifying service for grant of pension in the teeth of ratio of the decision.

The Hon'ble Apex Court crystallized the issue in the following manner:-

"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 regularized 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 view of judgment and order passed by the Apex Court as referred above and followed by this Court in C.W.J.C.



No. 4612 of 2017 (Union of India and others Vs. Md. Karar Husain) order dated 24.08.2017 and in C.W.J.C. No. 5111 of 2017 (Union of India and others Vs. Binod Singh) order dated 24.07.2017, the judgment and order of the tribunal is modified to the extent that 50% of service rendered as temporary status employee and 50% of service rendered as casual employee will be counted for the purpose of qualifying service for grant of pension.

With aforesaid modification, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.10.2020
Transmission Date	NA

