

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11798 of 2012

1. The Union Of India through Secretary, Ministry of Railways, Rail Bhawan, New Delhi
2. The General Manager, Eastern Railway, Fairly Place, Netajee Marg, Calcutta
3. The Divisional Railway Manager, Eastern Railway, Malda Division, Malda
4. The Senior Section Engineer P-Way, Eastern Railway, Bhagalpur
5. The Assistant Personnel Officer, Eastern Railway, Malda Division, Malda
6. The Divisional Finance Manager, Malda Division, Eastern Railway, Malda
7. The Assistant Divisional Finance Manager, Malda Division, Eastern Railway, Malda
8. The Accounts Officer Pension, F.A. and C.A.Ds Office, Malda Division, Eastern Railway, Malda

... .. Petitioner/s

Versus

Ganesh Son of Late Kanchan Resident of Village - Pachimtola Ekchari, Post Office - Ekchari, Police Station - Kahalgaon, District - Bhagalpur

... .. Respondent/s

Appearance :

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

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-08-2020

Heard.

Petitioners have prayed for following relief:-

“This is an application for issuance of an appropriate writ / order directions for quashing order dated 28.12.2010 passed in O.A. No.643 of 2008 by Hon’ble Mr. A. K. Jain, Member (Administrative) Central Administrative Tribunal, Patna Bench, Patna contained in Annexure 1 whereby and whereunder the Hon’ble Tribunal has been pleased to direct the respondents to re-fix pension and other pensionary benefits of applicant after taking the whole



period between 31.1.1975 to 23.3.1977 as qualifying service for the purpose of pension and other pensionary benefits within three months of receipt/production of copy of the order along with admissible rate of interest on delayed payment of gratuity.”

Heard learned counsel for the Union of India, however, in spite of valid service of notice, there is no representation on behalf of respondent.

The issue raised in this petition is no more res integra and stands decided by the Apex Court in Union of India & Ors. Vs. Rakesh Kumar & Ors. since reported in 2017(3) PLJR (SC) 83. Paragraph 55 of which reads as follows:-

“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."

Case of respondent before the Tribunal was that he was initially appointed as Gang man on 30.1.1975 and retired on 31.1.2006 and had completed 31 years 1 day qualifying service for pensionary benefits but same was altered as 29 years 9 months and 19 days. Petitioners before the Tribunal in their WS have admitted that respondent was initially appointed on temporary basis as Gang man and he was absorbed against permanent vacancy from 23.3.1977. Petitioners have nowhere stated that respondent was appointed as a casual worker and thereafter was granted temporary status and subsequently regularized in terms of scheme of Railways. Petitioners before the tribunal have stated that he was appointed on temporary basis as gang man in the scale of Rs.200-250 on 31.1.1975 as such, he was not appointed as a casual labour but on a fixed pay scale as such, full period between 31.1.1975 to 23.3.1977 has to be taken into account for counting qualifying service for pensionary benefits.

The Tribunal has held that (T) stands for temporary and



not temporary status and as such said period has to be counted for qualifying service for pensionary benefits. The case of respondent is covered under sub-para (iii) of para 55 of the aforesaid judgment of the Apex Court.

This Court does not find any error or infirmity in the order passed by the Central Administrative Tribunal, Patna Bench and accordingly, the writ petition filed by Union of India is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2020
Transmission Date	NA

