

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24236 of 2019

1. The Union of India, through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel), 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 Officer (Con.), East Central Railway, Mahendrughat, Patna (Bihar).
5. The Dy. Chief Personnel Officer (Con.), East Central Railway, Mahendrughat, Patna (Bihar).
6. The Deputy Chief Engineer (Con.), Ganga Bridge, East Central Railway, Digha Ghat, Patna (Bihar).
7. The Senior Divisional Financial Manager, East Central Railway, Danapur (Bihar).

... .. Petitioner/s

Versus

1. Dukhi, Son of Late Kastoro, Resident of Village/Post- Sigsigi, P.S.- Rehla, District- Palamu, Ex Blacksmith, under Section Engineer, (P.Way), Dehri-on-Son, District- Gaya, (Bihar).
2. Tulsi Choudhary, Son of Late Mohan Choudhary, Ex Choukidar, under Deputy Chief Engineer (Con.), East Central Railway, Barkakana, Resident of Village/Post- Sigsigi, P.S. Rehla, District- Palamu.
3. Sudama Ram, Son of Late Lal Bir Ram, Ex Choukidar, under Deputy Chief Engineer (Con.), East Central Railway, Barkakana, Resident of Village/Post- Berwadiah, District- Latehar.
4. Ganesh Singh, Ex Track Man, under Section Engineer (P.Way), East Central Railway, Dehri-on-Son, District- Gaya, (Bihar), Resident of Village- Bodra, Post- Harigawan, District- Garwa.
5. Md. Hanif, Son of Late Sharfuddin, Ex Khalasi, at Danapur under Deputy Chief Engineer (Con.), East Central Railway, Saharsa, Resident of Village- Jhagaruwa, Post- Diharya, P.S. Rehla, District- Palamu.
6. Sachida Nand, Son of Late Bilat, Ex Track Man under Section Engineer (P.Way), East Central Railway, Japla, Resident of Village- Ghaghuva, Post- Tolra, District- Palamu.
7. Mundrika, Son of Late Mahabir, Resident of Village- Ghaghuva, Post- Tolra, District Palamu, Ex Khalasi, under Deputy Chief Engineer (Con.), Ganga Bridge, East Central Railway, Digha Ghat, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dr. Anand Kumar



For the Respondent/s : Mr.Munna Pd Dixit (M.P. Dixit)

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:-

“For issuance of an appropriate writ or writs, preferably in the nature of certiorary for quashing the order dated 04.07.2019 passed in R.A. No. 15/2017 and order dated 02.09.2016 passed in O.A. No. 233/2016, by the learned C.A.T., Patna Bench, whereby and whereunder the learned Tribunal has directed the petitioner to extend the benefit to the respondents/applicants by treating their 100% service as temporary status and 50% service as casual for qualifying service of pension. The learned C.A.T. has passed this order contrary to the judgment passed by the Hon’ble Apex Court in the matter of Union of India and others Vs.



Rakesh Kumar and Others.”

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

