

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION No. 3725 OF 2018.

Smt.Chhayabai Bhimrao Deogade. Petitioner.

VERSUS

Union of India and others. Respondents.

Ms.Rashi Deshpande, Advocate for the Petitioner.
Mr.N.P. Lambat, Advocate for Respondents.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 22 MARCH 2022.

P.C.

Heard learned Counsel for the parties. The Writ Petition is taken up for disposal.

2. The Petitioner has challenged the order passed by the Central Administrative Tribunal dated 4 October 2017 confirming the order passed by Respondent No.1 – Chief Personnel Officer for General Manager of Railways dated 29 July 2013, rejecting the claim of the Petitioner for family pension.

3. Petitioners' husband joined the services of Respondent

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Railways on 1 March 1984 as a casual labour under Senior Sectional Engineer, Chandrapur of Nagpur Division for Central Railway. The husband of the Petitioner expired on 1 March 1998. The Petitioner sought for family pension upon the death of her husband, which by order dated 7 August 2009 was rejected by Respondent No.1. The Petitioner filed Original Application No.2231/2009 before the Central Administrative Tribunal, which was disposed of on 7 December 2012 directing the Respondent No.1 to re-examine the case of the Petitioner.

4. Thereafter by order dated 29 August 2013 the Respondent No.1 again rejected the claim of the Petitioner. The Petitioner again approached the Central Administrative Tribunal by filing Original Application No.2002/2014 and by the impugned order dated 04 October 2017 the Tribunal dismissed the Original Application. The Tribunal came to the conclusion that though the husband of the Petitioner was issued an order of regularization, since he did not report to duties and thereafter he did not undergo screening test, therefore, the status of having been regularized was not conferred upon Petitioners' husband. The Petitioner was therefore not entitled to family pension under Rule 75[2] of the Railway Services [Pension] Rules, 1993 [hereinafter referred to as "the Pension Rules" for short]. The Petitioner being aggrieved by the said decision has filed this Petition.

5. As regards Rule 75[2][a] of the Pension Rules is

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concerned, it grants family pension to a regular employee. The question therefore would be whether the Petitioners' husband was treated as a regular employee. The Petitioner has relied upon service book of her husband and letter dated 18 November 1997 issued by the Respondent stating that Petitioners' husband was regularized. The Petitioner has also relied upon the reply filed by the Respondents in earlier Original Application No.2231/2009, where according to the Petitioner the fact that her husband was regularized, was admitted by the Respondents.

6. The learned Counsel for Respondents submitted that there is difference between issue of letter of regularization and conferment of the status of a regular employee, for which a screening test is required so as to certify the suitability of the employee before grant of such status. According to Respondents, Petitioners' husband did not report to duty, remained absent from 1 January 1996 and thereafter, the regularization could not be given effect.

7. As regards conducting of the screening test prior to regularization is concerned, it has not been shown to us that it is not a requirement of law. It is also not shown to us that Petitioners' husband attended and passed the screening test. As regards the admission in the reply filed in the earlier round of litigation, there is no such admission that services of husband of the Petitioner were regularized. The stand has been consistent that the status of a regular employee was not conferred. That being the finding of the Tribunal

and considering the scope of judicial review, we do not find that this finding can be termed as perverse or contrary to record.

8. There is another Rule under which the Petitioner has claimed family pension i.e. Rule 18[3] of the Pension Rules. According to the Petitioner, family pension of a temporary railway servant who dies in harness, is entitled to family pension and death gratuity.

9. According to the learned Counsel for Respondents, such temporary railway servant should complete 20 years or qualifying service to be eligible for family pension and death gratuity. Rule 18[3] if read as it is, does not refer to any time span, but, the argument of the Respondents is that it must be read along with other clauses of Rule 18, which stipulates such time period.

10. We note that this aspect has not been dealt with in detail in the order passed by the Tribunal. As regards the status of a temporary employee, we note that the averments of Respondents in the reply filed in the Original Application No.2231/2009 wherein it is stated that husband of the Petitioner was a temporary status labourer. The stand is also reiterated in the present reply. Therefore, the stand of the Respondent was even though he was temporary status labourer, he was not regularized.

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11. Since we do not find that Rule 18[3] of the Pension Rules is made basis of claim in the Original Application No.2002/2014 in which the impugned order is passed, considering the fact that the Petitioner is a widow and is litigating since the year 2009, we grant liberty to the Petitioner to file a fresh Original Application.

12. The observations and order of the Tribunal, that the Petitioner is not entitled to family pension as per Rule 75[2][a] of the Pension Rules is confirmed.

13. We grant liberty to the Petitioner to file fresh Original Application in respect of her claim based on Rule 18[3] of the Pension Rules on the contention that her husband was a temporary status employee.

14. As already stated that since the Petitioner is litigating since the year 2009, and noting that it was due to the mistake of the Advocate that in the Original Application Rule 18[3] of the Pension Rules as not invoked, if the Petitioner files a fresh Original Application within a period of four weeks from today, the Tribunal will give priority to the disposal of the Original Application considering it to be filed in the year 2014, when the Advocate for the Petitioner should have taken this ground for the consideration of the Tribunal.

15. With these observations, the Writ Petition is disposed of.

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We make it clear that we have referred to Rule 18[3] of the Pension Rules in the context of rival contentions and the arguments of both the sides are kept open.

Rgd

(ANIL L. PANSARE, J) (NITIN JAMDAR, J)