

**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
HON'BLE SMT JUSTICE G.ANUPAMA CHAKRAVARTHY**

W.P.No.12627 OF 2008

ORDER: *(Per Hon'ble Sri Justice Abhinand Kumar Shavili)*

This writ petition is filed seeking the following relief:

“.... to issue a writ order or direction more particularly one in the nature of a writ of Certiorari after calling for the records relating to and connected with order passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad in O.A.No.926 of 2005, dated 13-06-2007 and quash or set aside the same by declaring it illegal, arbitrary, against to the statutory Rules and the law and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri Krishna Kishore Kovvuri, learned Standing Counsel appearing for the petitioners and Sri Pawan Murthy, learned counsel appearing for the respondent.

It is the case of the petitioners that the respondent was engaged as casual labour in the year 1977 and temporary status was granted in her favour on completion of one year continuous service with effect from 01.01.1982 and her services were also regularized in a permanent post. The petitioners have treated the period from the date of conferment of temporary status till the date of regularization of the respondent as 50% qualifying service for the purpose of pensionary benefits, but the respondent

intended to count the casual service also from 1977 for the purpose of qualifying service. As the case of the respondent was not considered, she has filed O.A.No.926 of 2005 before the Central Administrative Tribunal, Hyderabad, and the Tribunal partly allowed the said O.A directing the petitioners to treat the service of the respondent from the date of conferment of temporary status till the date of absorption also as qualifying service at the rate of 100% and also treat the service as casual labour from 01.01.1981 to 01.01.1982 as qualifying service at the rate of 50% and to calculate the pension accordingly, and the same is contrary to the law laid down by the Apex Court in *Union of India and others vs. Rakesh Kumar and others*¹, wherein it was held that from the date of granting temporary status, an employee is entitled to reckon 50% of casual/temporary service, till he is regularized on regular/temporary post for purposes of calculation of pension.

Learned Standing Counsel appearing for the petitioners had contended that appropriate orders be passed in the writ petition by setting aside the order dated

¹ (2017) 13 SCC 388

13.06.2007 passed by the Tribunal in O.A.No.926 and allow the writ petition.

Learned counsel appearing for the respondent had fairly conceded that the relief granted by the Tribunal is contrary to the law laid down by the Apex Court in *Union of India and others vs. Rakesh Kumar and others* (referred to supra) and let the petitioners treat the entire service of the respondent from the date of casual service till retirement in terms of the aforesaid judgment of the Apex Court.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that the Tribunal was justified in granting 100% qualifying service from the date of conferment of temporary status till the date of absorption as per the law laid down by the Apex Court in *Union of India and others vs. Rakesh Kumar and others* (referred to supra). The Apex Court at para 53 of the said judgment has held as under:

“It is open to the 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 fulfil 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 the 1993 Rules.”

In view of the law laid down by the Apex Court in the judgment referred to supra, the petitioners are directed to fix the pension and pensioary benefits.

With the above observations, the Writ Petition is disposed of. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

ABHINAND KUMAR SHAVILI,J

G.ANUPAMA CHAKRAVARTHY,J

Date: 08.08.2022
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