

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5714 of 2018

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 Divisional Railway Manager, East Central Railway, Danapur, Bihar.
4. The Senior Divisional Personnel Officer, East Central Railway, Danapur, Bihar.
5. The Senior Divisional Engineer Co-ordination, East Central Railway, Danapur, Bihar.
6. The Senior Divisional Finance Manager, East Central Railway, Danapur, Bihar.
7. The Senior Section Engineer Works, East Central Railway, Kiul, Bihar.

... .. Petitioner/s

Versus

Laxmi Devi W/o Late Sushil Resident of Qr. No. 109, EF, near Railway High School, Khagaul, District - Patna Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Praveen Kumar Sinha, Advocate.
For the Respondent/s	:	Mr. Munna Pd Dixit, Advocate
		Mr. S. K. Dixit, Advocate
		Mr. S. K. Chaubey, Advocate
		Mrs. Swastika, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 02-03-2023

The Petitioners-Department of Railways have assailed the order of the Central Administrative Tribunal, Patna Bench, Patna (for short 'CAT') dated 28.08.2017 passed in O.A. No. 675 of 2016.

2. Brief facts of the case are that Respondent's



husband deceased-Sushil was appointed as a casual labourer in the year 1979. He was subjected to medical examination on 03.10.1979 for appointment to Group-D post on permanent basis, even though there was process of providing Group-D permanent status but no order for his appointment was issued. Thereafter, petitioners-Railway Department evolved Scheme called 'decasualization'. Under such Scheme, the deceased-Sushil who was working with the status of temporary Khalasi was made permanent with effect from 15.12.1992. Such permanent status was with retrospective effect and it has been ordered on 01.06.1993 and he was given posting at Mokama. He could not report for duty, might be, due to illness and he died on 18.06.1993. In this backdrop, Respondent-Laxmi Devi, wife of deceased-Sushil, has been denied the retiral benefits and pensionary benefits. In this regard, the Respondent-Laxmi Devi filed O.A. No. 351 of 2013 and it was decided on 18.11.2014. Thereafter, on 24.04.2015 in the guise of compliance to the order dated 18.11.2014 passed in O.A. No. 351 of 2013, claim of the Respondent-Laxmi Devi was rejected.

3. Feeling aggrieved and dissatisfied with the communication dated 24.04.2015 the Respondent-Smt. Laxmi Devi filed O.A. No. 675 of 2016 and it was decided in her favor



on 28.08.2017, hence the present writ petition on behalf of the Petitioners-Railway Department.

4. Learned counsel for the petitioner vehemently contended that the CAT has committed error in not appreciating facts relating to giving effect to decasualization order and posting order. Deceased-Sushil remained absent from 01.03.1993 till his death, therefore, he has not occupied the post with reference to his status as regularly appointed/permanent appointment and failed to join at transferred place, namely, Mokama. The aforesaid contention is not appreciable for the reasons that CAT has taken note of the aforementioned contention and considered in Para-9 to 11 in the impugned order.

5. Petitioner-Railway Department being a Model employer should have been fair to the Respondent-Laxmi Devi, who is legal heir of deceased employee who has rendered service from the year 1979 till 01.03.1993. In all fairness, the concerned authority should have extended the benefit of retiral benefits and family pension. Insofar as retiral benefits is concerned, the earlier O.A. No. 351 of 2013 has attained finality. Now the question for consideration is only to the extent whether Respondent-Laxmi Devi is entitled to family pension or



not? It is not that deceased-Sushil was given permanent status with effect from 01.06.1993, so as to contend that he remained absent from 01.03.1993. On the other hand, permanent status has been granted in favour of the deceased-Sushil with effect from 15.12.1992. As on 15.12.1992 he was very much in service and he has been assigned permanent status with effect from 15.12.1992. Therefore, the inference that remaining absent with effect from 01.03.1993 till his death resulted in the deceased holding the temporary status on the date of his death, is wrong. Once he has been granted permanent status with effect from 15.12.1992, in the result, respondent is entitled to family pension in the light of order passed in O.A. No. 675 of 2016.

6. We feel inclined to modify Para-11 of the CAT order passed in O.A. no. 675 of 2016 to the extent that respondent is entitled to interest @ 8% per annum from three years prior to filing of O.A. No. 351 of 2013 in the light of Apex Court decision in the case of *M. R. Gupta Vs. Union of India and Ors.*, reported in, (1995) 5 SCC 628 read with Apex Court decision in the case of *Vijay L. Mehrotra Vs. State of U.P. and Ors.*, reported in, (2001) 9 SCC 687. In other words, respondent is entitled to interest on belated arrears of family pension three years prior to filing of O.A. No. 351 of 2013, the same shall be



calculated and disbursed in favour of the respondent within a period of three months from the date of receipt of this order, failing which, respondent is entitled to litigation cost and it is quantified at Rs. 50,000/-, for the reasons that she is before judicial forum for almost a decade.

7. The L.P.A. stands rejected.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.03.2023
Transmission Date	NA

