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W.P.No.13167 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.07.2023

DELIVERED ON: 25.07.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT.JUSTICE P.B.BALAJI

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V.Kasthuri

.. Petitioner

Vs.

1.Union of India, rep by the General Manager,
Southern Railway, Park Town, Chennai-3.

2.The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai-3.

3.The Senior Divisional Personnel Officer,
Chennai Division, Southern Railway,
NGO Annexe, Park Town, Chennai-600 003.

4.The Registrar,
The Central Administrative Tribunal,
Chennai Bench, Chennai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorarified Mandamus calling for the



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records relating to the order of the 4th respondent made in OA.No.594 of 2014 dated 11.02.2015, to quash the same and to consequently direct the respondents 1 to 3 to sanction pension and other retirement benefits to the petitioner's husband and consequential family pension to the petitioner.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.P.T.Ramkumar, Standing Counsel
for R1 to R3

ORDER

D.KRISHNAKUMAR, J.

The petitioner, challenging the impugned order passed by the Central Administrative Tribunal, Chennai dated 11.02.2015 made in O.A.No.594 of 2014, in and by which her claim for family pension came to be rejected, has filed the instant writ petition.

2. The writ petitioner is the wife of the deceased Mr.K.Veeraragavan, who was engaged as Casual Labourer in the respondent Railways from 11.10.1976 and he continued to work in the said capacity till he died in harness on 15.01.1986. Subsequent to his demise, the wife of the petitioner had approached the railway authorities



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seeking for family pension in respect of the service rendered by her deceased husband for more than 10 years in the Railway Department, however, the respondents denied the same. Therefore, the petitioner filed O.A.No.594 of 2014 on the file of the Central Administrative Tribunal [CAT], Chennai. The Tribunal did not accept the contention of the petitioner and dismissed the original application, vide order dated 11.02.2015. Challenging the order passed by the CAT, the petitioner has filed the instant writ petition.

3. The third respondent has filed a counter affidavit stating as follows:

(i) The petitioner's husband was neither appointed nor regularized against any regular post and he died on 15.01.1986, even before grant of regularization and therefore, at the time of death, the employee was only a Casual Labour with temporary status.

(ii) Since the petitioner's husband was not granted regularization, he could not be treated as a regular railway servant and therefore, she cannot be extended the benefits of Family Pension Scheme.



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(iii) The grant of rights and privileges to the petitioner's husband under Chapter 25 of Indian Railway Establishment Manual does not confer on him the status of a regular railway servant, in terms of Section 23(2) of the Railway (Services) Pension Rules, 1993.

(iv) The petitioner's husband has not fulfilled any conditions of being a substitute and therefore, he cannot be treated as a regular railway servant as contended by the petitioner.

(v) The petitioner's husband was not regularized, until his date of death due to non availability of vacancies and further the claim of the petitioner at this distant point of time is highly belated.

4. Mr.L.Chandrakumar, learned counsel for the petitioner submitted that the petitioner's husband was initially engaged as a CPC Khalasi, a substantive post and later was employed as a Gangman, a permanent post and as such, the petitioner's husband ought to have been treated as "Substitute" in terms of Paras 2315 and 2316 of the Railway



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Establishment Manual, 1968 and thereby should have been extended with the privileges extended to temporary employees with reference to Section 1 in Chapter 23 & Para 2318 of the 1968 Manual and therefore, the order of the Tribunal holding that the petitioner's husband was a Casual Labour is liable to be quashed. The learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in C.A.No.3938 of 2017, where it was held that 50% of service rendered as casual labour is entitled to be calculated for pensionary benefits and in the light of the aforesaid decision, the services rendered by the petitioner's husband in either of the status as Casual Labourer and Substitute will qualify for pension and other retirement benefits and therefore, prayed for setting aside the impugned order passed by the Tribunal.

5. Mr.P.T.Ramkumar, learned Standing Counsel for the respondents 1 to 3 strongly objected that the petitioner's husband was engaged as a Casual Labour in the respondent Railways and having completed four months continuous service, he was granted temporary



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status with effect from 01.02.1977 and on the grant of temporary status, a Casual Labour becomes eligible for the rights and privileges admissible to a temporary railway servant as laid down in Chapter XXV of Indian Railway Establishment Manual and he is granted medical facilities, pass facilities and other facilities, as mentioned in Chapter XXV of the Indian Railway Establishment Manual, but the same does not mean that the petitioner's husband has been regularly absorbed as a regular railway servant. It is the contention of the respondents that the petitioner's husband was neither appointed nor regularized against any regular post and he died on 15.01.1986, even before the grant of regularization. According to the respondents, there is no provision to give family pension to temporary causal employees in the railways and they are entitled only for rights and privileges under Indian Railway Establishment Manual and therefore, prayed for dismissal of the writ petition. The learned Standing Counsel for the respondents, in support of his contentions, has placed reliance upon the following decisions:

(i) Union of India and Others v. Rabia Bikaner and Others
[(1997) 6 SCC 580]

(ii) General Manager, North West Railway and Others v.



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Chanda Devi [(2008) 1 SCC (L&S) 399]

(iii) Union of India and Others v. Central Administrative Tribunal, Chennai and Others [Order dated 06.03.2019 in W.P.No.676 of 2018].

6. Heard the learned counsel for the parties and perused the materials on record.

7. The fact remains that the petitioner's deceased husband viz., Thiru K.Veeraraghavan, served in the respondent Railways as Casual Labour from 11.10.1976 till 15.01.1986 for a period of ten years and he was granted temporary status on 01.02.1977. The learned counsel for the petitioner made efforts to convince this Court that temporary employees who served in the respondent Railway Department are entitled for family pension and in this regard has relied on the decision of the Hon'ble Supreme Court in C.A.No.3938 of 2017, however, the facts of the said case is entirely different from the present case on hand. In the case on hand, the deceased is holding only a temporary post and as such, the writ petitioner, being his wife, is not entitled for any family pension.



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8. The Hon'ble Supreme Court in *Union of India and Others v. Rabia Bikaner and Others* [(1997) 6 SCC 580], held that under para 2511 of the Railway Establishment Manual, casual labourers with temporary status are entitled to certain entitlements and privileges granted to temporary railway servants, but this does not entitle them to family pension..."

9. A Division Bench of this Court in the judgment dated 06.03.2019 in W.P.No.676 of 2018 [*Union of India and Others v. The Central Administrative Tribunal, Chennai and Others*], has held as under:

"40. No wonder, an 'Employee' with a 'Temporary Status' is eligible for pension only if he/she is absorbed and regularised, after due screening by the Screening Committee. Viewed in that perspective, this Court is of the considered view that when the 2nd respondent's deceased wife Meenakshi, during her life time, was not absorbed and regularized while serving as 'Substitute Sanitary Cleaner' at Health inspector Office, Madurai District in Southern Railway, then, the claim of the 2nd respondent seeking Family Pension, is not maintainable, in the considered opinion of this Court."



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10. The aforesaid decision of the Division Bench of this Court clearly laid down the proposition that a casual or temporary employee is not entitled for family pension unless he/she has been absorbed in a permanent post, after screening by the screening committee. In the case on hand, the status of the petitioner's husband remained as casual / temporary in nature till his demise and he has not been absorbed or subject to screening by a Screening Committee and in the absence of the same, the claim of the petitioner is legally unsustainable. Furthermore, as per Chapter XXV of the Railway Establishment Manual, casual labourers with temporary status are entitled only with regard to certain rights / entitlements and privileges and they are not entitled for family pension. That apart, the petitioner has approached the Tribunal belatedly after a lapse of 25 years. Therefore, we are of the view that the writ petitioner is unable to sustain her claim and the order of the Tribunal does not deserves interference. This Court finds no merit in the writ petition and the same is liable to be dismissed.



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11. In the light of the reasons assigned above, the writ petition stands dismissed. No costs.

[D.K.K., J.,] [P.B.B., J.]
25.07.2023

Index :yes
Internet:yes
Jvm

To

- 1.The General Manager,
Union of India,
Southern Railway, Park Town, Chennai-3.
- 2.The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai-3.
- 3.The Senior Divisional Personnel Officer,
Chennai Division, Southern Railway,
NGO Annexe, Park Town, Chennai-600 003.
- 4.The Registrar,
The Central Administrative Tribunal,
Chennai Bench, Chennai.



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**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

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**Order in
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