



W.P.No.31479 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:29.08.2023

Delivered on: .09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.31479 of 2017

1. Union of India,
represented by its General Manager,
Southern Railway, Park Town,
Chennai – 600 003.

2. The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai – 600 003.

3. The Divisional Personnel Officer,
Salem Division, Southern Railway,
Salem – 600 003.

... Petitioners

Vs.

1. J.V. Jayachandramohan
Retd., Sr.Train Ticket Examiner.

2. The Registrar,
Central Administrative Tribunal,
Chennai.

... Respondents



W.P.No.31479 of 2017

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records from the file of the 2nd respondent made in O.A. No.310/01623 of 2015 dated 27.02.2017 and quash the same.

For Petitioners : Mr. M. Vijay Anand

For Respondents : Tribunal [for R2]

No appearance [for R1]

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Writ Petition is at the instance of the Department, aggrieved by the order of Central Administrative Tribunal, Madras, directing the petitioners to revise the retirement benefits of the first respondent, taking into account his entire period of service under temporary status and 50% of service as casual labour as qualifying service.

2. The grounds of challenge to the said order of the Tribunal are that the Tribunal fell in error in noting the difference between casual labour and substitute; casual labour would be eligible to count only half of the period



W.P.No.31479 of 2017

WEB COPY

of service rendered by them after attaining temporary status; **Rule 20 of the Railway Service (Pension) Rules 1993**, mandates qualification of service of a Railway Servant to commence only from the date of the employee taking charge of the post to which he was first appointed, either substantively or in an officiating or in temporary capacity, provided that such officiating or temporary service was without interruption and followed by a substantive appointment either in the same post or another service or post.

3. We have heard Mr.M.Vijay Anand for the petitioners. Though the second respondent has been served with notice in the above writ petition, there is no appearance. We have perused the records and also the order of the Tribunal.

4. In the course of submissions, the counsel for the petitioners brought to our notice the Judgment of the Hon'ble Supreme Court in **Union of India & Ors Vs. Rakesh Kumar and Ors in C.A. No.3938 of 2017 dated 24.03.2017** and placing reliance on the same, the counsel for



W.P.No.31479 of 2017

the petitioners would submit that the facts of the case on hand were similar to the case that was dealt with by the Hon'ble Supreme Court and therefore following the ratio laid down by the Hon'ble Supreme Court, the order of the Tribunal has to be necessarily reversed.

5. We have carefully perused the judgment of the Hon'ble Supreme Court. In the said case the Hon'ble Supreme Court has laid down the following ratio:

i) A 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 temporary status would also be entitled to reckon 50% of casual service for the purposes of pension.

Iii) Such casual workers who are appointed to any post either substantively or in officiating or temporary capacity shall be entitled to reckon the entire period from the date of taking charge to such post as per Rule 20 of the 1993 Rules.



W.P.No.31479 of 2017

WEB COPY

6. *Rule 20 of the Railway Service (Pension) Rules, 1993* also deals with commencement of qualifying service. It makes it clear that for a railway servant, for the purposes of qualifying service being reckoned, it would only be the date from which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the said Rule comes with a proviso which requires the officiating or temporary service to be followed, without interruption, by a substantive appointment in the same or another service or post. Though a further proviso was included in Rule 20, for the purposes of the present case, we are not concerned with the second proviso.

7. In the instant case on hand, admittedly the second respondent was engaged as a casual labour and was conferred with temporary status on 22.11.1984. He retired on 31.05.2013, as a senior ticket examiner, on obtaining the age of superannuation. The main contention of the second respondent before the Tribunal was that he being engaged as a casual **labourer** on 22.11.1983, the petitioners ought to have conferred his



W.P.No.31479 of 2017

WEB COPY

temporary status even on completion of 120 days. However, contrarily the second respondent was conferred with temporary status only on 22.11.1984, and he was regularly absorbed thereafter on 18.08.1993. It is not a case where the 2nd respondent can be treated as a substitute also in such circumstances, only 50% service rendered by the 2nd respondent as a casual labourer can be taken into consideration.

8. In view of the dictum of the Hon'ble Supreme Court in ***Rakesh Kumar's Case*** discussed supra, the second respondent can be entitled for reckoning only 50% of the casual labour service from 22.11.1984 to 18.08.1993 for the purposes of arriving at his qualifying service in order to calculate his pensionary benefits. However, the Tribunal has erroneously directed his entire period of service as a temporary status to be reckoned for the purposes of calculating the second respondent's pensionary benefits. The petitioners have no grievance with regard to the other part of the order of the Tribunal reckoning 50% of service as casual labourer to be taken as qualifying service. Only in the event of the second respondent being engaged as a substitute, his entire service during such period could



W.P.No.31479 of 2017

WEB COPY

be taken into consideration. However, in the instance case admittedly, the second respondent was engaged only as a casual labourer which is not disputed even by the second respondent before the Tribunal.

9. For the above reasons we are constrained to interfere with the order of the Central Administrative Tribunal in O.A.No.310/01623 of 2015 dated 27.02.2017 and consequently the writ petition is allowed and the order of the Tribunal in O.A.No.310/01623 of 2015 dated 27.02.2017 is set aside and there shall be no order as to costs .

(D.K.K.J) & (P.B.B.J)

.....09.2023

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mjs

To

The Registrar,
Central Administrative Tribunal,
Chennai.



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W.P.No.31479 of 2017

D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J

(mjs)

Pre-delivery judgment in
W.P.No.31479 of 2017

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