

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 29, 2023

+ W.P.(C) 2320/2023, CM APPL. 8787/2023

UNION OF INDIA & ORS.

..... Petitioners

Through: Ms. Manisha Agrawal Narain, CGSC
with Ms. Rakshita Goyal and
Mr. Sandeep Singh Somaria, Advs.
alongwith Mr. S. S. Rathi, APO,
Legal/DLI, Mr. Vijay Singh, APO,
Settlement/DLI and Dr. D. S. Meena,
Sr. Law Officer, DLI for UOI

versus

SMT. KAMLA DEVI

..... Respondent

Through: Mr. T. D. Yadav, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioners challenging the orders dated March 22, 2021 in Original Application No.2208/2018 and September 9, 2022 in Review Application No.28/2022 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short). The Tribunal, vide order dated March 22, 2021 allowed the OA filed by the respondent herein and directed the petitioners herein to grant family pension at rates applicable from time

to time and other terminal dues as per rules with interest on the arrears which are due from May 23, 2018. By the order dated September 9, 2022, the Tribunal has dismissed the review application filed by the petitioners herein seeking review of order dated March 22, 2021 on the ground that there is no error apparent either on facts or in law in the order dated March 22, 2021.

2. The facts as noted from the petition are that the respondent is the widow of one Narayan Dutt, who was engaged as a casual labour on December 18, 1972 under the petitioners / Northern Railway. He was granted the authorised pay scale of ₹196-232 w.e.f. April 1, 1974. He was drawing a basic pay of ₹226/- per month, when he unfortunately died on July 28, 1983. He left behind his widow, three children aged around four years (son), two years, and six months (daughters).

3. On the death of the respondent's husband, the respondent was paid his gratuity. Subsequently, her elder son was appointed as a Group-D employee on compassionate ground by the petitioners in the Railway in the pay scale of ₹2550-3200 on March 8, 2001.

4. It was the case of the respondent that her case is covered under Rule 75 of Family Pension Scheme for Railway Servants, 1964 ('Rules of 1964', hereinafter) for payment of family pension and other retiral benefits. She made representations in this regard on November 10, 2017. However, there has been no response which resulted in filing of O.A. 2208/2018, wherein she had relied upon the judgment of the Supreme Court in the case of *Prabhavati Devi v. Union of India & Ors., (1996) 7 SCC 27*.

5. The case of the petitioners herein before the Tribunal was that the husband of the respondent, Narayan Dutt was not screened and as such he was not a regular employee. A reference has also been made in the reply filed by the petitioners that the son of the respondent has also been given compassionate appointment.

6. The Tribunal was of the view that the husband of the respondent had put in service from December 18, 1972 to July 28, 1983. The said service was in an authorised scale from April 1, 1974 to July 28, 1983, i.e., of more than nine years, as against one year specified in Rule 75 of the Rules of 1964 which is reproduced as under:

***“75. Family Pension Scheme for railway servants,
1964***

xxx xxx xxx

(2) Without prejudice to the provisions contained in sub-rule (3), where a railway servant dies:-

(a) after completion of one year of continuous service,
or

xxx xxx xxx

the family of the deceased shall be entitled to a family pension 1964 (hereinafter in this rule referred to as family pension) the amount of which shall be determined in accordance with the Table below

xxx xxx xxx

(3) The amount of family pension shall be fixed at monthly rates and expressed in whole rupees and where the family pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee:

Provided that in no case a family pension in excess of the maximum specified under this rule shall be allowed."

7. The Tribunal had also relied upon the judgment in the case of

Prabhavati Devi (supra). The Tribunal has referred to a notification signed by Assistant Personnel Officer-IV, Delhi Division, New Delhi dated September 23, 1983, wherein it was notified that Narayan Dutt, Substitute S&T Khallasi working under Signal Inspector (West) Delhi had died on July 28, 1983 and any information with respect to any amounts due to the said employee, be sent to the Settlement Section of the Personnel Branch. It was thereafter recorded by the same Assistant Personnel Officer that Narayan Dutt was appointed Khallasi; scale of pay of ₹196-232 was granted to him w.e.f. April 1, 1974; Provident Fund (PF) was deducted from December 1980; he is an unscreened Khallasi; and he was not absorbed against a regular post.

8. The Tribunal noted that the aforesaid aspects recorded by the Assistant Personnel Officer-IV, Delhi Division, New Delhi have not been contested by the petitioners. In other words, the Tribunal was of the view that Narayan Dutt had acquired the status of a temporary employee.

9. That apart, the Tribunal by relying upon ***Prabhavati Devi (supra)***, directed that under the conditions, a substitute shall be accorded all the rights and privileges as may be admissible to a temporary Railway servant from time to time on completion of six months of continuous service.

10. Even before this Court, Ms. Manisha Agrawal Narain, learned CGSC appearing for the petitioners would submit that there are relevant provisions related to the process of screening of casual labours. Narayan Dutt was not screened and as such he was not a regular employee in the department. Hence, he was not entitled to any

pensionary benefits.

11. That apart, regularisation, entitlement of pension and family pension as well as counting of casual service is governed by the provisions of paragraph 2005(a) which stipulated that casual labours including project casual labours shall be eligible to count only half the period of service rendered by them after obtaining temporary status on completion of prescribed days of continuous employment and before regular absorption as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in employment. Such casual labours, who have attained temporary status will also be entitled to carry forward leaves at their credit to the new post on absorption in regular service. Daily wagers and casual labours are not entitled to such benefits.

12. She submitted that the Tribunal has failed to take into account that circulars issued by the Railway Board has statutory force of law as per paragraph 157 of the Indian Railway Establishment Code. Therefore, such circulars have the force of law, being an analogous rule at par, framed by delegated authority under the proviso to Article 309 of the Constitution of India. Hence, the respondent was not entitled to family pension as widow of an unscreened employee.

13. On the other hand, Mr. T.D. Yadav, learned counsel for the respondent would justify the order of the Tribunal. The benefits given by the Tribunal in favour of the respondent in terms of law laid down by the Supreme Court and the rules of the Railways cannot be set aside, merely because the petitioners contend that the appointment of Narayan Dutt was not regular, as he was not screened.

14. He states that in the facts of this case, this Court ought not interfere with the impugned order.

15. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the deceased husband of the respondent was entitled to pension, which shall now entitle the respondent herein to family pension.

16. Though the Tribunal has relied upon the judgment in the case of *Prabhavati Devi (supra)*, we find that two subsequent judgments of the Supreme Court on the same issue, being *Union of India and Ors. v. Rabia Bikaner and Ors.*, (1997) 6 SCC 580, and *General Manager, North West Railway & Ors. v. Chanda Devi, Civil Appeal No. 5833/2007*, decided on December 12, 2007, have not even been considered by the Tribunal. In *General Manager, North West Railway (supra)*, the aggrieved was Smt. Santosh, widow of one Ram Niwas, who was appointed as project casual labour on November 8, 1979. The Supreme Court noted that the case of regularisation of similarly situated employees had come up before the Court earlier in *Inder Pal Yadav and Ors. v. Union of India and Ors.*, (1985) 2 SCC 648. During the hearing of that matter, the Apex Court had, *inter alia*, suggested for framing a scheme for regularisation of such employees. Pursuant thereto and in furtherance thereof, proposals were placed before the Supreme Court by the Railway Administration. A scheme was eventually produced before the Supreme Court, Clause 5.1 whereof reads:

“5.1. As a result of such deliberations, Ministry of Railways has now decided in principle that casual labour employed on

projects (also known as 'project casual labour) may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:

“(a) These orders will cover:

(i) Casual labour on projects who are in service as on January 1, 1984; and

(ii) Casual labour on projects who, though not in service on January 1, 1984, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future. (A detailed letter regarding this group follows.)

(b) The decision should be implemented in phases according to the Schedule given below:

****”

17. In terms of the scheme, those casual labours, who have completed three years as on January 1, 1984, but less than five years and who have worked for more than 1095 days have been ordered to be considered as temporary employees from January 1, 1985. Those casual labour who have worked for 360 days on December 31, 1983, but less than three years have been ordered to be considered as temporary employees from January 1, 1986. Therefore, certain casual workers were eligible to be considered as temporary employees, but it was decided to appoint them only after their selection by the selection committee.

18. Unfortunately, Ram Niwas expired on December 29, 1988. His wife filed an application for grant of family pension. The said request was rejected on April 23, 2003 stating that she is not entitled to family pension under the Railway Rules. In other words, the pension

is not admissible to substitute temporary employees.

19. The Tribunal allowed the OA vide judgment / order dated April 7, 2004 relying upon a decision of a Coordinate Bench of the Tribunal at Ahmedabad in the case of ***Smt. Vallam Badia v. Union of India (2003) 2 SLJ CAT 271***, which was affirmed by the Division Bench of the Gujarat High Court.

20. The Supreme Court noted the provisions of the Railway Service (Pension) Rules to hold that the said Rules are not applicable as the same shall apply only to the Railway servants. In other words only Railway servants appointed on regular basis would enjoy the status having regard to the provisions contained in Article 309 of the Constitution of India. The Supreme Court was also of the view that the case of Ram Niwas shall be governed by Chapter XX of the Rules. Rule 2001 excludes the applicability thereof which governs the service conditions of permanent and temporary staff. Rule 2002 lays down the rights and privileges admissible to casual labours. It was clearly stated casual labours are not entitled to any privileges other than those statutorily admissible under various Acts such as Minimum Wages Act, 1948, the Workmen's Compensation Act, 1923 etc. or those specifically sanctioned by the Railway Board from time to time. Rule 2005 lays down entitlement and privileges admissible to casual labours who are treated as temporary, i.e., those given temporary status, on the following terms:

“2005 clearly lays down the entitlement and privileges admissible to casual labour who are treated to be temporary i.e. given temporary status in the following terms;

2005. Entitlements and Privileges admissible to Casual

Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be).--(a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D & A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-à-vis other regular/temporary employees. This is, however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group D Posts in the manner laid down from time to time. Subject to such orders as the Railway Board may issue from time to time, and subject to such exceptions and conditions like appointment on compassionate ground, quotas for handicapped and ex-servicemen etc. as may be specified in these orders they will have a prior claim

over others to recruitment on a regular basis and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual labour before attaining the age of 28 years should be allowed relaxation of the maximum age limit prescribed for Group D posts to the extent of their total service which may be either continuous or in broken periods.

(c) No temporary posts shall be created to accommodate such casual labour, who acquire temporary status, for the conferment of attendant benefits like regular scale of pay, increment etc. After absorption in regular employment, half of the service rendered after attaining temporary status by such persons before regular absorption against a regular/temporary/permanent post, will qualify for pensionary benefits, subject to the conditions prescribed in Railway Board's letter No. E(NG)II/78/CL/12 dated 14-10-80. (Letter No. E(NG)II/85/CL/6 dated 28-11-86 in the case of Project casual labour).

(d) Casual labour who have acquired temporary status and have put in three years continuous service should be treated at par with temporary railway servants for purpose of festival advance/Flood Advance on the same conditions as are applicable to temporary railway servants for grant of such advance provided they furnish two sureties from permanent railway employees.

(e) Casual labour engaged on works, who attain temporary status on completion of 120 days continuous employment on the same type of work, should be treated as temporary employees for the purpose of hospital leave in terms of Rule 554-R-I (1985 Edition)."

21. The Supreme Court has noted that a casual labour who has attained temporary status and has been paid regular pay-scale, when re-engaged after having been discharged earlier on completion of work or for non-availability of further productive work may be started on the last pay drawn by him. In paragraphs 17 to 23, it held as under:

“17. The aforementioned Rule 2005 replaced an earlier Rule being Rule 251 occurring in Chapter XXV of the previous publication which has inter alia been noticed by this Court in Ram Kumar and Others Vs. Union of India and Others [(1988) 1 SCC 306]. Ranganath Misra, J. speaking for a Division Bench noticing the different entitlements of an employee who has acquired temporary status as noticed in Inderpal Yadav case held; 2. It is the stand of the learned Additional Solicitor General that no pensionary benefits are admissible even to temporary railway servants and, therefore, that retiral advantage is not available to casual labour acquiring temporary status. We have been shown the different provisions in the Railway Establishment Manual as also the different orders and directions issued by the Administration. We agree with the learned Additional Solicitor General that retrial benefit of pension is not admissible to either category of employees.

18. A clarification was, however, subsequently made in Ram Kumar and Others Vs. Union of India and Others [1988 (1) SCC 306], stating; The only other question to be seen is with regard to entitlement to pension. It appears that the Board on the basis of the Fourth Pay Commission report has provided for pension at the time of superannuation even to those who are temporary employees. In paragraph 12 of our order on the basis of material then placed before us, we had taken the view that temporary employees were not entitled to pension on superannuation. We direct the Railway Board to consider the claim of temporary employees who are before us for pension at the time of superannuation or otherwise in view of the fact that the Board has taken its own decision differently. Obviously appropriate material had not been placed before this Court when the submission of Mr. Ramaswamy for Railway administration was accepted in the order. The decision is beneficial to the employees and we direct that the Boards decision may be implemented.

19. Ram Kumar (supra) was followed by this Court in Union of India and Others Vs. Rabia Bikaner and Ors. [1997 (6) SCC 580] stating : . It is contended by the learned counsel for

the respondent-widows that under para 2511 Rights and Privileges admissible to the casual labourers who are treated as temporary after completion of six months continuous service of the Railway Establishment Manual, they are entitled to family pension. We find it difficult to give acceptance to the contention. It is seen that every casual labourer employed in the railway administration for six months is entitled to temporary status. Thereafter, they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On their appointment, they are also required to put in minimum service of one year in the temporary post. In view of the above position, if any of those employees who had put in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his widow would be eligible to pension under the Family Pension Scheme, 1964. In all these cases, though some of them have been screened, yet appointments were not given since the temporary posts obviously were not available or in some cases they were not even eligible for screening because the posts become available after the death. Under these circumstances, the respondent-widows are not eligible for the family pension benefits.

20. The contrast between a casual labour having a temporary status and a temporary servant may immediately be noticed from the definition of a temporary railway servant contained in Rule 1501 occurring in Chapter XV of the Manual.

501 (i) Temporary Railway Servants Definition A temporary railway servant means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include casual labour, including casual labour with temporary status, a contract or part time employee or an apprentice.

21. We have noticed hereinbefore that in the Office Order dated 24.1.1989, the designation has been shown as T.S. Helper CSI (Construction) i.e. temporary status as per the

CSI (Construction). However, wrongly it was said to be a pensionable post. Before the High Court, an additional affidavit was filed by the Railway Administration wherein inter alia it was stated that the screening tests were held long thereafter viz. some time in the year 1999. Only upon holding a screening test, the services of the employees concerned could be regularized; and as in the case of Ram Niwas, he had expired in the year 1988, he had not and could not have undergone any screening test and that no pensionary benefit or benefit of family pension was admissible to him.

22. The decision of the Gujarat High Court relied upon by the Tribunal as also the Division Bench, in our opinion, may not be correct. It was held therein that as temporary servant also is entitled to pension on his attaining the age of superannuation, the purported amendment in the Railway Manual to the effect that they would enjoy the status of temporary employee is bad in law.

23. The Gujarat High Court in Rukhiben Rupabhai (supra), no doubt on analyzing the scheme filed before this Court, opined : 2. This change has been made by Railways after the Apex Court decision in Inder Pal Yadav case (supra). The original definition 'temporary railway servant' is clear, but in the above quoted definition in Clause (1501), Railways have included the 'casual labour with temporary status', thereby, taking them out from the category of "temporary railway servant". How and why this change has been made, what procedures were adopted for making the change, there is no whisper, although, this change has grievously affected the casual labour becoming temporary on completion of 360 days continuous employment, and committed breach of the Apex Court's decisions in Inder Pal Yadav case (supra) followed by Dakshin Railway Employees case (supra), making casual labour 'temporary railway servant'. Since there exists only four categories, namely, (1) permanent, (2) temporary (3) casual labour and (4) substitutes, casual labour, under the original scheme approved in cases referred to hereinbefore, becomes 'temporary railway servant', after completion of 360 days' continuous employment, therefore, he cannot be made

'casual labour with temporary status' by subsequent gerrymandering by the Railways by its Circular dated 11th September 1986, which was not brought to the notice of the Apex Court in Dakshin Railway Employees case (supra). Therefore, this Circular has no legal sanction, against the Apex Court decisions in Inder Pal Yadav case (supra), contrary to original scheme and as such, hit by Articles 14, 16, 21, 41/42 of the Constitution of India.; but evidently the provisions of the Railway manual were not considered in their proper perspective. What has been considered therein was that the Railway Mannual should be given effect to as it governs the terms and conditions of service of the employees working under the Railway Administration. A scheme when engrafted in a rule must be read in the context in which the same was done. This Court while accepting the scheme, nowhere suggested that the amendments made in the Railway Manual would be of no effect. Even otherwise the same could not have been done.'

22. The Supreme Court finally held that the Gujarat High Court had failed to notice that when casual labour has been excluded from the definition of a permanent or temporary employee, he could not have become a temporary employee and there is no legal sanction thereof. The Supreme Court was of the view that what was protected by conferring a temporary status upon a casual labour was his service and by reasons thereof, the pension rules were not made applicable. In other words, any entitlement has to be strictly in terms of the statute / statutory rules. In concluding as above, the Supreme Court was of the view that a casual worker who acquired temporary status but was not a temporary employee of the Railway cannot be held to be entitled to Railway Pension Rules, which are only applicable to Railway servants, which would not include a casual labour acquiring a temporary status.

23. The Supreme Court in paragraph 19 of its judgment has by referring to the judgments in the case of ***Ram Kumar and Ors. v. Union of India and Ors., 1988 1 SCC 306*** and also ***Rabia Bikaner (supra)*** held that under Rule 2511, the contention that the widow of the deceased casual labour is entitled to family pension cannot be accepted. In fact, we find that in ***Rabia Bikaner's*** case the Court has held that a casual labour employed in Railway Administration for six months after being granted temporary status, will have to be empanelled and then screened by the competent authority. As and when the vacancies for temporary posts in regular establishments are available, they are to be appointed in the order of merit after screening. It was also noted that on their appointment they are required to put minimum service of one year in temporary post. The Supreme Court was of the view that it is only when those employees who had put in required minimum service of one year, that too after due appointment to the temporary post, dies while in service, that his widow would be eligible to pension under the Family Pension Scheme, 1964.

24. Having noted the above conclusion of the Supreme Court in ***Rabia Bikaner (supra)***, reiterated in ***General Manager, North West Railway & Ors. (supra)***, it must be stated that the late husband of the respondent, was not empanelled for being screened to be appointed against a temporary post in the regular establishment. Him not having been appointed as a temporary railway servant, the respondent cannot be said to be entitled to family pension. Though much reliance has been placed by the learned counsel for the respondent and the Tribunal on the noting of the Assistant Personnel Officer to state that the

deceased husband of the respondent was being paid in the pay-scale of ₹196-232/- when he had died and that he was being paid PF, the same would not enure to the benefit of the respondent as the noting also reveal that the late employee was neither screened nor absorbed against a regular post.

25. It may also be stated in paragraph 5 of *Rabia Bikaner (supra)*, the judgment in *Prabhavati Devi (supra)*, on which much reliance has been placed by the Tribunal while passing the impugned order, was distinguished by the Supreme Court in the following words:

“5. The learned counsel strongly relied upon the judgment in Prabhavati Devi v. Union of India [(1996) 7 SCC 27: 1996 SCC (L&S) 369: (1988) 2 SCR 138]. Therein, the facts were that from the year 1981 to 27-4-1993, the husband of the appellant had worked as casual worker and obtained the status of substitutes who were working, as defined under Rule 2315 of the Railway Establishment Manual, in a regular establishment on a regular scale of pay and allowances applicable to those posts in which they were employed. Since he died while working in the regular post, his widow became eligible to claim the benefits of the pension scheme. Thus, in that case, the appellant's husband was a substitute working in a regular scale of pay in the Railway Establishment. Obviously, he was screened and was also appointed to the temporary status but instead of being given appointment to a temporary post, he was treated as substitute and appointed to the vacancy when the regular candidates went on leave. Under these circumstances, this Court had held that the widow of such employee is entitled to the benefit of the family pension. The above ratio is inapplicable to the cases referred to hereinbefore. The question also was considered in a recent judgment of this Court in Union of India v. Sukanti [SLP (C) No. 3341 of 1993 decided on 30-07-1996 (Appended below)] wherein relying on the ratio in Ram Kumar case [(1988) 1 SCC 306 : 1988 SCC (L&S) 329 : (1987) 5 ATC 404 : (1988) 2 SCR 138] this Court held that

no retiral benefit was available to the widow of the casual labourer who had not been regularised till his death. Thus, we hold that the view taken by the Tribunal in granting the pensionary benefits to the respondents is clearly illegal.”

26. In view of our discussion above, we are of the view that the orders of the Tribunal are overlooking the position of law laid down by the Supreme Court in ***Rabia Bikaner (supra)*** and ***General Manager, North West Railway (supra)***. In terms of the said judgments, the respondent is not entitled to family pension.

27. Accordingly, the petition is allowed. The orders of the Tribunal dated March 22, 2021 and September 9, 2022 are set aside. No order as to costs.

CM APPL. 8787/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 29, 2023/aky