

WP.CT 205 of 2024

**Kaushal Kumari Rauth
vs
Union of India & Ors**

Mr. Mahadeb Ghosh
Mr. N. D. Bandyopadhyay
Mr. Pritam Ghosh

..... For the Petitioner.

Mr. S. N. Dutta
Ms. Animika Pandey

..... For the UoI/Respondents.

The present writ petition has been preferred challenging an order dated 10th July, 2023 passed by the learned Tribunal in the original application (in short, OA), being OA 1377 of 2020. By the said order the learned Tribunal arrived at a finding that as the deceased employee was never absorbed in a Group 'C' or Group 'D' post, the service rendered by him cannot be counted for pensionary benefits and accordingly did not interfere with the order dated 18th September, 2019 passed by the Divisional Railway Manager, (P) East Central Railway.

Mr. Ghosh, learned advocate appearing for the petitioner, namely, Kaushal Kumari Rauth (in short, Kaushal) submits that Prem Chand Rauth (in short, Prem), the father of Kaushal, while working as a substitute Safaiwala at Punarakh Station under Danapur Division went missing from the month of June, 1983. The sister of Kaushal, namely, Kalpana was granted compassionate appointment in place and stead of Prem.

Kaushal being the unmarried daughter of Prem applied for family pension but such prayer was refused by an order dated 18th September, 2019 passed by the Divisional Railway Manager, (P) East Central Railway. Challenging the same, Kaushal preferred the OA.

He argues that Prem was initially engaged as a substitute on 10th December, 1975. He was thereafter granted temporary status on 4th January, 1981. The respondents ought to have reckoned such service rendered by Prem for the purpose of calculation of family pension and disbursement of the same in favour of Kaushal. Such argument was glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court. In support of such contention reliance has been placed upon the judgment delivered in the case of *Union of India & Ors. Vs. Rakesh Kumar & Ors.*, reported in, (2017) 13 SCC 388.

Mr. Ghosh contends that treating Prem to have been regularized in railway service, the authorities have granted compensation appointment to Kalpana. In view thereof, the respondents cannot now dispute that Prem was not a regularized employee under the railways.

Mr. Dutta, learned advocate appearing for the respondents denies and disputes the contention of the petitioner and submits that Prem went missing and he was never regularized after acquiring temporary status.

Grant of temporary status is not akin to appointment against a post and as such the service rendered by him cannot be taken into consideration for the purposes of pension. Placing reliance upon a circular being RBE 256/86, Mr. Dutta submits that grant of compassionate appointment to Kalpana does not elevate the status of Prem to be a regularized employee. In view thereof, the learned Tribunal rightly did not interfere with the order dated 18th September, 2019.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, Prem was engaged as a substitute Safaiwala on 10th December, 1975 and he attained temporary status on 4th January, 1981. Subsequent thereto, he went missing from the month of June, 1983.

The Hon'ble Supreme Court in the case of *Rakesh Kumar (supra)* had held *inter alia* that a casual worker before obtaining the temporary status and after obtaining temporary status is entitled to reckon 50% of the casual/temporary service, till he is regularized for the purposes of calculation of pension.

Applying such proposition of law to the facts of the case, we are of the considered view that the petitioner is entitled to family pension and the respondents ought to have disbursed the same in her favour upon reckoning

the service rendered by Prem from the date of his engagement till the date he went missing.

In view thereof, the order dated 18th September, 2019 passed by the Divisional Railway Manager, (P) East Central Railway and the order dated 10th July, 2023 passed by the learned Tribunal in OA 1377 of 2020 are set aside and the respondents are directed to calculate and disburse the family pension in favour of the petitioner upon reckoning 50% of the total service rendered by Prem from the date of his engagement on 10th December, 1975 till the month of June, 1983 for the purposes of such pension, within a period of eight weeks from date of communication of this order.

With the above observations and directions, the present writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)