

03
14.08.2024
Ct. No. 11
Jayanta

WP.CT 207 of 2024

**Union of India & Ors.
vs
Murari Mohan Mondal & Ors.**

Mr. Ajit Kumar Mishra
Ms. Priti Jain
Mr. Abhishek Dey

..... For the Petitioners.

Mr. Saptarshi Roy
Ms. Gargi Roy

..... For the Respondents.

The present writ petition has been preferred by Union of India and its functionaries challenging the order dated 13th September, 2023 passed by the learned Tribunal in the original application (in short, OA), being OA 248 of 2023. By the said order the petitioners were directed to take into account 50% of the service rendered by the original applicants/respondents herein as casual labour prior to their attainment of temporary status and before their regularization for determining their pensionary benefits.

Indisputably, the respondents were engaged as casual labour on diverse dates in between 13th June, 1972 and 19th March, 1980. Thereafter, they were granted temporary status on diverse dates in between 1st January, 1981 and 1st January, 1984 and all were regularized with effect from 1st April, 1998. The said respondents had thereafter retired on diverse dates in between 31st January, 2009 and 31st May, 2021.

Mr. Mishra, learned advocate appearing for the petitioners submits that question of counting the period of casual service for grant of pensionary benefits would have occurred had such casual labour failed to acquire the requisite period of qualifying service for grant of pensionary benefits. There was no deficiency in qualifying service of the respondents. In the present case all the respondents after acquiring temporary status and regularization completed the minimum period of qualifying service required for grant of pensionary benefits. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Uday Pratap Thakur & Anr. –vs.– The State of Bihar & Ors.*, reported in AIR 2023 SC 2971 and *Director General, Doordarshan Prasar Bharati Corporation of India & Anr., –vs.–Smt. Magi H Desai*, reported in AIR 2023 SC 1623.

He argues that the learned Tribunal failed to appreciate the provisions of the Indian Railways Establishment Manual and the Master Circular No. 54 of Indian Railways which *inter alia* provides that only half of the period of service after attainment of temporary status would be taken into consideration for calculation of the pensionary benefits.

According to Mr. Mishra, the judgments delivered in the cases of *Union of India & Ors. – vs. – Sarju & Ors.*, [Special Leave to Appeal (Civil) No.(s).20041/2008] and *Union of India & Ors.- vs. – Rakesh Kumar & Ors.*,

reported in (2017) 13 SCC 388 are based on the principles of natural justice and are applicable in cases where a deficiency of qualifying service arises. The constitutionality of the railway rules were not under challenge and the same had also not been declared as unconstitutional. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

Mr. Roy, learned advocate appearing for the respondents denies and disputes the contention of the petitioners and submits that in the case of *Rakesh Kumar (supra)*, the Hon'ble Supreme Court had categorically directed upon consideration of the applicable railway rules that the period of service rendered by a casual labour prior to grant of temporary status has to be counted to the extent of 50% for the purpose of pensionary benefits. In view thereof, there is no infirmity in the order impugned and the learned Tribunal had exercised discretion in favour of the respondents also taking note of the fact that all zonal railways have implemented the judgment delivered in the case of *Rakesh Kumar (supra)*.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The Hon'ble Supreme Court in the case of *Rakesh Kumar (supra)* considering the railway circulars 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. All zonal railways have implemented the judgment delivered in the case of *Rakesh Kumar (supra)*. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. In view thereof, the learned Tribunal has rightly exercised discretion in favour of the respondents.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned, warranting interference of this Court.

Accordingly, the writ petition being WP.CT 207 of 2024 is dismissed.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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