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W.P.No.33866 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.33866 of 2022

and

W.M.P.No.33348 of 2022

1.Union of India,
Represented by The General Manager,
Southern Railway,
Park Town P.O,
Chennai – 600 003.

2.The Assistant Personnel Officer / Settlement,
Chennai Division,
Southern Railway,
Chennai – 600 003.

... Petitioners

Vs.

1.G.Ragavan

2.The Registrar,
Central Administrative Tribunal,
Chennai.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records from the file of the 2nd respondent in O.A.No.700 of 2018 dated 28.06.2022 and quash the same.

For Petitioners	: Mr.C.Kulanthaivel Senior Panel Counsel
For R1	: Ms.Kumudhaa.G For Mrs.Aparna Nandakumar
For R2	: Tribunal

ORDER

[Order of the Court is made by **S.M.SUBRAMANIAM, J.**]

The order of the Central Administration Tribunal dated 28th June, 2022 in O.A.No.700 of 2018 is sought to be assailed in the present writ proceeding.

2. The Union of India, represented by the General Manager, Southern Railways is the writ petitioner before us. The 1st respondent was initially engaged as Casual Labour/Substitute in the Chennai Division in Southern Railways and was subsequently granted temporary status with effect from



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21.10.1980.

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3. The temporary services of the 1st respondent ended with an order of regularisation with effect from 28.03.1992 against a substantive vacancy in the time-scale of pay. The 1st respondent subsequently retired from service on 31.01.2015 on attaining the age of superannuation.

4. A dispute arose regarding the calculation of qualifying services for retirement benefits. The petitioners have calculated 50% of the temporary status services rendered by the 1st respondent from 21.10.1988 till 23.03.1992, and 50% of the service alone was reckoned for the purpose of calculating the qualifying service.

5. Not satisfied with the said calculation of the 50 % of the service, 1st respondent filed O.A.No.700 of 2018. The Tribunal allowed the original application and directed the writ petitioners to calculate the entire temporary services in full for reckoning the qualifying service to settle the pensionary benefits. Aggrieved by this order, the Union of India has preferred the present writ petition.



6. The learned Senior Panel Counsel appearing on behalf of the writ petitioners would submit that the ratio laid down by the Hon'ble Supreme Court of India in the case of ***Union of India and Others vs. Rakesh Kumar and Others***¹, has been erroneously interpreted by the Central Administration Tribunal. Consequently, the relief granted in favour of the 1st respondent is contrary to the judgment of the Hon'ble Supreme Court as well as Rule 31 of the Railway Services (Pension) Rules, 1993.

7. The 1st respondent was initially engaged as a casual labourer, and temporary status was subsequently granted to him. He continued to work as a temporary employee, and his salary was paid from contingency fund of India. His salary was not paid from the consolidated fund of India. As per the rules, he is therefore entitled for counting of 50% of service rendered for reckoning the qualifying service for the payment of pension.

8. The learned counsel for the 1st respondent would oppose by stating that the temporary status granted to the 1st respondent is sufficient to establish that he is a regular employee. Once the temporary status was granted and the 1st respondent was allowed to continue his service, resulting

1. (2017) 13 SCC 388



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in regularisation, the 1st respondent is entitled for counting of entire temporary services in full for reckoning the qualifying services. Thus, the Tribunal has rightly considered the issues, and therefore, the present writ petition is liable to be rejected.

9. Considered the arguments as advanced between the respective learned counsels appearing on behalf of the parties to the *lis* on hand.

10. The facts of the case are not in dispute. The 1st respondent was initially engaged as a casual labourer on 21.10.1980, and was subsequently granted temporary status after four months of service. The said temporary service ended with an order of regularisation with effect from 28.03.1992. He was later allowed to retire from service on 31.01.2015.

11. The Hon'ble Supreme Court of India in the case of ***Rakesh Kumar*** cited *supra* considered the issues relating to the regularisation of temporary status employees, pensionary benefits and calculation of qualifying service.

12. In paragraph 53.1, the Apex Court held that “The casual worker after obtaining temporary status is entitled to reckon 50% of his services till



he is regularised on a regular/temporary post for the purposes of calculation of pension”.

13. In paragraph 53.3 states that “Those casual workers who are appointed to an post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge of such post as per Rule 20 of the 1993 Rules”.

14. With reference to the above ratio laid down by the Apex Court, it is relevant to consider Rule 31 of the Railway Service (Pension) Rules, 1993, which reads as under:

“31. Counting of service paid from Contingencies- *In respect of a railway servant, in service on or after the 22nd day of August, 1968, half the service paid from contingencies benefits on absorption in regular employment, subject to the following condition namely: -*

- (a) the service paid from contingencies has been in a job involving wholetime employment;*
- (b) the service paid from contingencies*



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should be in a type of work or job for which regular posts could have been sanctioned such as posts of malis, chowkidars and khalasis;

(c) the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though no analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments;

(d) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break;

Provide that the weightage for past service paid from contingencies shall be limited to the period after 1st January 1961 subject to the condition that authentic records of service such as pay bill, leave record or service-book is available.

NOTE -

(1) the provisions of this rule shall also apply to casual labour paid from contingencies.

(2) The expression “absorption in regular



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employment” means absorption against a regular post.

15. Therefore, the word “temporary status” or “temporary capacity” must be considered with reference to the sources of salary payment for such temporary status employees, specifically whether it was paid from the Contingency Fund of India or the Consolidated Fund of India.

16. Conversely, if a temporary employee holds a substantive post and their salary is paid from the Contingency Fund of India, then those employees are entitled for counting of 50% of the temporary services under Rule 31 of the Railway Services (Pension) Rules. If a temporary employee holds a substantive post and their salary is paid from the Consolidated Fund of India, then those employees are entitled for full services for reckoning the qualifying services.

17. With reference to the above distinction between temporary employees, the counter affidavit filed by the writ petitioners before the Tribunal reveals that the applicant's service as casual labour substitute before and after the conferment of temporary status was paid out of contingency



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fund and only 50% of the service will count for qualifying service in terms of Rule 31.

18. Therefore, the 1st respondent is eligible for counting only 50% of his services as qualifying services under Rule 31. When the counter affidavit reveals that the 1st respondent received his salary from the contingency fund, he cannot be construed as regular employee of Indian Railways. For all purposes, he is a temporary employee, who received his salary from contingency fund of India. As per Rule 31 of Railway Service (Pension) Rules, he is entitled for counting of 50 % of the temporary services, rendered by him between 21.10.1980 and 28.03.1992.

19. The Central Administrative Tribunal, however, failed to consider the nature of salary paid to such temporary status employees whether from Consolidated Fund of India or from the Contingency Fund of India. Consequently, the Tribunal granted a direction for counting the 1st respondent's full services, which, in our opinion, contravenes Rule 31 of the Railway Services (Pension) Rules, 1993, as well as the ratio laid down by the Hon'ble Supreme Court of India in the case of **Rakesh Kumar** (*supra*).



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20. In view of the above discussion, the order impugned dated 28th June, 2022 in O.A.No.700 of 2018 is hereby set aside. Consequently, the Writ Petition stands allowed. The connected Miscellaneous Petition is closed. There shall be no order as to costs.

[S.M.S., J.] [M.J.R., J.]
26.11.2024

Index : Yes
Speaking order / Non-speaking order
Neutral Citation : Yes

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To

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The Registrar,
Central Administrative Tribunal,
Chennai.



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AND
M.JOTHIRAMAN, J.

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