
(2013) 12 CAL CK 0044
In the Calcutta High Court
Case No : W.P.C.T. No. 453 of 2013

Nirmal Kumar Basuli

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2014) 1 CHN 374

Hon'ble Judges : Samapti Chatterjee, J;P.K. Chattopadhyay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner herein was an employee under the Ministry of Communications, Department of Posts, Government of India and retired from service on attaining the age of superannuation on 31st May, 2009. The said petitioner was, however, not granted pension by the respondent authorities. It has been submitted on behalf of the respondents that the petitioner herein is not entitled to enjoy the benefit of pension since the said petitioner had retired after serving the department for a period of 5 years 9 months and 25 days only.

2. From the records it appears that the petitioner herein served the department for a period of 27 years as an Extra Departmental Agent and thereafter, his service was regularised against a regular vacant Group "D" post.

3. Now, it is to be decided whether the respondent authorities should altogether ignore the aforesaid 27 years of service of the petitioner against a regular post before his regularisation in the service even for the purpose of allowing pensionary benefit.

4. The Central Administrative Tribunal, Madras Bench considered the aforesaid issue in the case of M.R. Palanisamy v. Union of India & Ors. (O.A. 1264 of 2001) and held;

9.....In a nutshell the essence is that even in respect of

casual labourers who get regularised at a subsequent date against regular Gr. D Posts, a portion of their service rendered with temporary status is reckoned as qualifying service for regulating the retiral benefits.

5. Rule 13 of the CCS. Rules also provides that the qualifying service of a government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

6. In the present case, the temporary status of the employee cannot be altogether ignored specially when by serving the department for a long period of 27 years, the petitioner herein has been regularised as Group "D" employee.

7. The learned Advocate representing the respondents relies on a decision of the Hon"ble Supreme Court in the case of General Manager, North West Railway and Others Vs. Chanda Devi, in support of his contention that the casual labour should not be treated as temporary employee.

8. The aforesaid decision, in our opinion, is not at all applicable in the facts of the present case since the casual labour has been excluded from the definition of permanent or temporary employee in the prescribed Rule by the Railway administration and the Hon"ble Supreme Court in the aforesaid decision specifically observed that the Gujarat High Court failed to notice that the casual labour has been excluded from the definition of permanent or temporary employee. However, facts are different in the present case.

9. In the aforesaid decision also, Hon"ble Supreme Court mentioned the Rule 2005 wherein it has been specifically mentioned that 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. Therefore, the Railway establishment also did not altogether ignore the period spent as casual labour and allowed half the period of such service rendered as casual labour as the qualifying service for the purpose of pensionary benefits.

10. In the case of M.R. Palanisamy (supra), Central Administrative Tribunal, Madras Bench specifically relied on an office memorandum dated 12th April, 1991 issued by the DOPT with regard to the regularisation of casual labourers and referring to the scheme, learned Tribunal observed:

9.....Here we would like to invite a reference to the OM dated 12.04.1991 issued by the DOPT with regard to regularisation of casual labourers are concerned. In the said scheme there is a clause stating that 50% the service rendered as temporary status employee will be reckoned as a qualifying service for regulating the retiral benefits after regularisation against Gr. D Posts.....

11. Therefore, in the present case, when the petitioner has served for a period of

long 27 years as Extra Departmental Agent, the same cannot be altogether ignored for the purpose of considering the retiral benefits of the said petitioner after regularisation in Group "D" post.

12. The respondent authorities, in our opinion, should take note of the aforesaid long 27 years service rendered by the petitioner herein as Extra Departmental Agent and a portion of the same should be reckoned as qualifying service for the purpose of granting the benefit of pension to the employee concerned namely, the petitioner herein who was admittedly, regularised as a Group "D" staff subsequently after rendering the long 27 years of service as Extra Departmental Agent.

13. We are, therefore, unable to approve the stand of the respondent authorities and quash the impugned order dated 27th April, 2009 passed by the respondent No. 3 herein.

14. For the reasons discussed hereinabove, we also set aside the impugned order passed by the learned Tribunal and affirm the decision passed by the Central Administrative Tribunal, Madras Bench in the case of M.R. Palanisamy v. Union of India & Ors. (O.A. 1264 of 2001).

15. The respondent authorities are therefore, directed to take note of the long 27 years of service of the petitioner herein as Extra Departmental Agent for the purpose of reckoning the same as a qualifying service in order to enable the said petitioner to get minimum pension. The respondent authorities are further directed to grant the benefit of pension to the petitioner herein from the date of superannuation in terms of this order without any further delay but positively within a period of six weeks from the date of communication of this order.

16. Needless to mention that while granting the pensionary benefits in terms of this order, if the respondent authorities are of the opinion that any amount has already been disbursed to the petitioner herein in excess of his entitlement then the same may be adjusted against the arrear dues of the said petitioner towards the pensionary benefits.

17. With the aforesaid observations and directions, this writ petition stands allowed.

18. In the facts of the present case, there will be no order as to costs. Let a xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Advocates of both the parties on usual undertaking.