

(2000) 11 RAJ CK 0039
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1978 of 1999

Smt. Somoti Dai	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 13-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 1 RLW 595 : (2001) 1 WLC 322 : (2001) 1 WLN 677

Hon'ble Judges : Mohd. Yamin, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Ravi Shankar Sharma, for the Appellant;

Judgement

Lakshmanan, CJ.

(1). Heard learned counsel for the petitioner Mr. Ravi Shankar Sharma.

(2). The petitioner is the widow of deceased Shreeram who was initially appointed on the post of T.S. Gangman in the office of PWI (CTR) Sawai Madhopur on 21.3.83. He was granted the temporary status on 19.10.84. He continued to work as I. S. Gangman till 14.3.89. A copy of death certificated dated 14.3.89 has been filed and marked as Annex. R/4 to the petition. While working on the said post, petitioner's husband died on 13.3.89. The petitioner submitted a representation on 13.7.89 for grant of family pension which was rejected by Divisional Railway Manager, Western Railway, Kota Division, Kota on the ground that petitioner's husband was only a temporary status holder and was not a regular employee of the Railway. According to the petitioner casual labourer namely her husband is entitled to the protection of para 2511 (A) of the Indian Railway Establishment Manual which provides as under:-

"(A) Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary Railway servants as laid down in Chapter XXIII of the Indian Railway Establishment Manual. The rights and privileges admissible to such labour also includes the benefits of the discipline and appeal

Rules. Their services, prior to the date of completion of six Month's continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority etc. Such casual labour can carry forward the leave at his credit to the new post on absorption in regular services."

(3). Therefore, it is urged before the learned Tribunal that the petitioner's husband was entitled to all the rights and privileges as admissible to temporary railway servants as laid down in chapter XXIII para 2311(3)(b) which provides for grant of family pension in respect of temporary Railway servants who have completed not less than one year's continuous services. The said rule is reproduced hereinbelow:

"2311(3)(b). The widow/widower/minor children of a temporary railway servant, referred to in the preceding sub para, who dies while in service after a service of not less than one year continuous (qualifying service) shall be eligible for a family pension under the provisions of para 001 of the Manual of Railway Pension Rules. In their case the amount of death gratuity admissible will be reduced by an amount equal to the employee's two months pay on which the death gratuity is determined."

(4). The Tribunal after hearing counsel for both the sides, by its order dated 21.8.98 dismissed the original application filed by the petitioner on the ground that the deceased was only a temporary status holder Gangman, and although he was having temporary status but he was neither screened nor was he regularized. In this context, the tribunal after following the judgment of the Supreme Court reported in Union of India and others vs. Rabia Bikaner etc. (1) rejected the application filed by the petitioner.

(5). We have perused the entire pleadings and also the relevant ruling laid down by the Supreme Court in the case of Union of India and others (supra). Perusal of the order of the tribunal only reveals that no argument appears to have been advanced before the tribunal on the basis of the Rule 2311 (3) (b). However, this point has been raised by the petitioner in her writ petition now filed before us. The Rule 2311(3)(b) stipulates three conditions in order to claim the benefit under the said rule. The Rule stipulates that (1) the employee should have been completed one year continuous service and before completion of one year continuous service, the deceased Government employee concerned could have been examined by the appropriate authority for Government service (2) the widow/widower or minor children of temporary railway servant who died while in service after serving not less than one year continuous (qualifying service) either shall be eligible for family Pension Under Railway Manual concerned. In the facts and circumstances of the case, there is no averment that the railway employee has continuous service of not less than one year (qualifying service). Secondly, it is not averred in the petition that the service of the deceased employee has been regularised before his death. Under such circumstances, we are of the opinion that the tribunal is right in considering the services of the deceased government employee as temporary status that his services neither screened nor regularised.

The Supreme Court in Union of India vs. Rabia Bikaner etc. (supra) has held that the widow of the services of a casual labourer were not regularised till his death, is not entitle for family pension and no retiral benefits for his widow casual labourer could be given.

(6). In view of the fore-going discussion, we are of the opinion that the petitioner is not entitled for family pension. Therefore, the writ petition fails and it is hereby dismissed.