

(2020) 09 PAT CK 0183

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16637 Of 2019

Union Of India And Ors

APPELLANT

Vs

Brahmdeo Mistry And Ors

RESPONDENT

Date of Decision : 14-09-2020

Acts Referred:

Citation : (2020) 09 PAT CK 0183

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : D.K. Sinha, Satyeshwar Prasad, Munna Pd Dixit

Final Decision : Disposed Of

Judgement

The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video

Conferencing from their residence.

Heard learned counsel for the petitioners and learned counsel for the Respondents.

Petitioners have prayed for following reliefs:-

1. For setting aside the order dated 17.05.2016 passed in O.A. No. 318 of 2016 by the learned CAT, Patna whereby and whereunder the original

application filed by the applicants (respondents, herein) has been disposed of at the admission stage itself with a direction to the respondents

(petitioners herein) to verify the facts related to each applicant and extend to them the same benefit as granted to similarly placed employee by

treating 100% service as temporary status and 50% of service as causal for qualifying service for pension. The respondents shall comply with the

above direction within a period of four months from the date of receipt of a copy

of this order; and

(ii) for setting aside the subsequent order dated 15.05.2019, passed in R.A. No. 06 of 2017, by the learned Central Administrative Tribunal, Patna

Bench, Patna whereby and whereunder the review application filed by the applicant (original respondents & petitioners herein), for review of the

aforementioned order dated 17.05.2016, passed in O.A. No. 318 of 2016, by the learned Central Administrative Tribunal, Patna Bench, Patna,

(hereinafter called learned CAT, Patna) has been dismissed by disregarding the principle of law decided by the Honâ??ble Supreme Court, in the

case of Union of India Vs. Rakesh Kumarâ? reported in 2017(1) PLJR SC 83, regarding counting of temporary/casual service, according to which the

period of casual service as well as temporary status service is to be reckoned 50% for the purpose of pension.

(iii) Consequently, allow this writ petition, in terms of the judgment passed by the Honâ??ble Supreme Court in the case of Union of India Vs.

Rakesh Kumarâ? reported in 2017(1) PLJR SC 83, which has already been followed by the co-ordinate Bench of this Court in the case of C.W.J.C.

No. 5111/2017 â??Union of India Vs. Binod Singhâ? and C.W.J.C. No. 4612/2017 â??Union of India Vs. Md. Karar Husainâ? by which the

Honâ??ble Court has directed that the period of work, both as casual or temporary has to be treated 50/50 for purposes of calculating the qualifying

service for pension.

(iv) For grant of any other relief(s), as this Court may deem fit and proper in the facts and circumstances of this case.â??

The counsel representing the petitioner/railways submits that decision of Honâ??ble Apex Court rendered in the case of Union of India Vs. Rakesh

Kumar since reported in 2017 (3) PLJR SC 83 makes the direction of the tribunal to count 100% service as temporary status employee and 50% of

service as casual employee for qualifying service for grant of pension in the teeth of ratio of the decision.

The Honâ??ble Apex Court crystallized the issue in the following manner:-

â??55. In view of foregoing discussion, we hold:

(i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularized on a regular/temporary post for the

purposes of calculation of pension.

(ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.

(iii) those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire

period from date of taking charge to such post as per Rule 20 of Rules, 1993.

(iv) It is open to Pension Sanctioning Authority to recommend for relaxation in deserving case to the Railway Board for dispensing with or relaxing

requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfill the requirement

of existing rule for grant of pension, in deserving cases. On a request made in writing, the Pension Sanctioning Authority shall consider as to whether

any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993.â??

In view of judgment and order passed by the Apex Court as referred above and followed by this Court in C.W.J.C. No. 4612 of 2017 (Union of India

and others Vs. Md. Karar Husain) order dated 24.08.2017 and in C.W.J.C. No. 5111 of 2017 (Union of India and others Vs. Binod Singh) order dated

24.07.2017, the judgment and order of the tribunal is modified to the extent that 50% of service rendered as temporary status employee and 50% of

service rendered as casual employee will be counted for the purpose of qualifying service for grant of pension.

With aforesaid modification, this writ petition is disposed of.