

(2020) 09 PAT CK 0185

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19129 Of 2017

Union Of India And Ors

APPELLANT

Vs

Jitan Pandit And Ors

RESPONDENT

Date of Decision : 14-09-2020

Acts Referred:

Citation : (2020) 09 PAT CK 0185

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

Bench : Division Bench

Advocate : 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:-

(i). For setting aside the order dated 12.04.2017 passed in O.A. No. 741 of 2016 by the learned CAT, Patna Bench, Patna whereby and

whereunder the original application has been allowed with a direction to the respondents/railways to re-fix the pension by computing the qualifying

service counting of 50% of causal service and 100% of temporary/regular service and with further direction that no arrears of monthly pension shall

be payable but arrears of other retiral dues and revision shall be paid within three months from the date of receipt of a copy of this order; and for any

delay after that, the respondents shall be liable to pay interest @ 8% till the date

of payment; and

(ii) For, further, quashing the order dated 29.08.2017 passed in R.A. No. 45/2017 by the learned Central Administrative Tribunal Patna Bench, Patna

whereby the learned tribunal has dismissed the review application filed by the petitioner/railways for reviewing the aforementioned order dated

12.04.2017 passed in O.A. No. 741/2016 and has also disposed of M.A. No. 287/2017 filed therein for condonation of delay in filing the review

application by brushing aside the principle of law decided by the Honâ??ble Supreme Court regarding counting of temporary/casual service in

judgment dated 24.03.2017 passed in Union of India Vs. Rakesh Kumar reported in 2017(3) PLJR SC 83 according to which the casual service as

well as the casual labour with temporary status service is to be reckoned 50% for purpose of pension;

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

in 2017(3) PLJR 83 which has been followed by this Honâ??ble Court in similar matters by granting similar relief(s) by order dated 24.07.2017 in

C.W.J.C. No. 5111/2017 â??The UOI & Ors Vs. Binod Singhâ? and order dated 24.08.2017 in C.W.J.C No. 4612/2017 â??The UOI & Ors Vs.

Md. Karar Husain;and/or

(iv) For grant of any other relief(s) including, waiving the direction of the learned Tribunal to pay 8% interest, if other retiral dues and revised pension

are not paid within 3 months (for the delay occurred due to pendency of review application/writ petition) as this Court may deem expedient in the

interest of justice.

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.