
(2019) 08 RAJ CK 0172
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11348 Of 2017

Union Of India And Ors

APPELLANT

Vs

Puranmal Sharma

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Railway Service (Pension) Rules, 1993 — Rule 20, 31

Citation : (2019) 08 RAJ CK 0172

Hon'ble Judges : Sangeet Lodha, J;P.K. Lohra, J

Bench : Division Bench

Advocate : Kamal Dave, S.S.Nirban

Final Decision : Partly Allowed

Judgement

1. This writ petition is directed against order dated 20.2.17 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur ("the Tribunal"), whereby original application preferred by the respondent seeking directions to the petitioners herein for counting his half service rendered as Casual Labour and full service rendered by him on temporary basis alongwith services rendered after regularisation for the purpose of determining his total qualifying service for granting him all pensionary benefits under the Old Pension Scheme, has been allowed and the petitioners herein have been directed to redetermine the pension and pensionary benefits of the applicant within a period of two months and pay him the pensionary benefits accordingly.

2. The facts relevant are that the respondent joined the service of the Northern Railway, Bikaner on the post of Casual Hot Weather Waterman on 28.4.74 at Lalgarh Station, Bikaner and continued to work on the said Railway Station upto 30.9.74. Thereafter, the respondent was again given appointment on the said post on 22.4.89 and worked upto 14.9.89. The respondent was re-employed on 21.4.90 and continued in the service till his retirement after attaining the age of superannuation. The respondent was denied retiral benefits i.e. pension, gratuity, commutation, leave encashment and other benefits and therefore, he preferred

original application before the Tribunal seeking directions to the petitioners to release him the pensionary benefits under the Old Pension Scheme by taking into consideration the services rendered by him as aforesaid. The respondent also claimed for consideration of his case for regular line of promotion from Helper II, sanctioning of ACP and consequential pay fixation etc..

3. The stand of the Railway before the Tribunal was that the respondent was granted temporary status (CPC Scale) on 12.10.91 vide letter dated 11.10.91 and after screening was regularised in service w.e.f. 12.12.07. Later on he was promoted to the post of PMA (Group C post) in pay band Rs. 5200-20200 + GP Rs.1900/-. It was contended that the respondent got CPC Scale on 12.10.91 purely as Casual Labour and after screening for Group D post was regularised after 1.1.04 after introduction of the New Pension Scheme and thus, will be governed by the New Pension Scheme and not the Old Pension Scheme.

4. The Tribunal arrived at the finding that the persons who got temporary status prior to 1.1.04 but got regularised thereafter, will be governed under Old Pension Scheme and New Pension Scheme cannot be thrust upon them. Relying upon the Railway Board order RBE No.121/2014 dated 29.10.14, the Tribunal observed that the employees who have got temporary status prior to 1.1.04 but regularised/absorbed after 1.1.04 will be entitled to be covered under Old Pension Scheme. The Tribunal held that the respondent is entitled for counting of 100% temporary status service and 50% of the services as Casual Labour for computation of qualifying service towards pensionary benefits and accordingly, directed the petitioners to consider the case of the respondent for granting him all pensionary benefits under the Old Pension Scheme. Hence, this petition.

5. Learned counsel appearing for the petitioners contended that the Tribunal has erred in directing counting of 100% of the temporary status service of the respondent instead of 50% for the purpose of grant of pension. Learned counsel submitted that in case of General Manager, North Western Railway vs. Chanda Devi: (2008) 2 SCC 108, after examining the provisions under the Indian Railway Establishment Manual Vol. II, Para No.2001, 2002 and 2005, the Supreme Court concluded that the Railways Casual Labour with temporary status cannot be equated with temporary status. Casual Labours holding the temporary status are not entitled to benefits as applicable to regular or temporary employee and thus, the respondent was not entitled for counting 100% Casual Labour with temporary status service for grant of pensionary benefits. Relying upon yet another decision of the Supreme Court in Union of India & Ors. Vs. Rakesh Kumar and Ors. : AIR 2017 SC 1691 and a Bench decision of this Court in Union of India & Ors. Vs. Smt. Jubeda & Anr. (D.B.Civil Writ Petition No. 1732/07) decided on 11.4.17, learned counsel submitted that casual labours attaining temporary status are entitled to reckon only half of services for pensionary benefits. It is submitted that the entitlement of an employee for pension shall be governed from the date of entry of the employee in regular service and since the respondent entered into service as regular employee only on 12.12.07, when

New Pension Scheme came into force w.e.f. 1.1.04 and as such, the services of the respondent as Railway employee shall be governed by the New Pension Scheme and not the Old Pension Scheme and thus, the Tribunal has erred in holding that the services of the respondent shall be governed by Old Pension Scheme.

6. On the other hand, learned counsel appearing for the respondent submitted that the respondent was in continuous service of the Railway from 21.4.90 to 31.5.14 i.e. 23 years and 306 days and similarly situated persons were extended the benefits of entire service including the services rendered as casual labour with temporary status for the purpose of grant of pension and thus, the respondent cannot be picked up for different treatment being given. Learned counsel submitted that the respondent being in continuous service as aforesaid, his services will be governed by the Old Pension Scheme. Merely because, the respondent's services were regularized belatedly vide order dated 7/12.12.07, he cannot be denied the benefits available to him under the Old Pension Scheme and thus, the order impugned passed by the Tribunal does not warrant any interference by this Court in exercise of its extra-ordinary jurisdiction.

7. We have considered the rival submissions and perused the material on record.

8. Indisputably, after engagement for a short period intermittently, the respondent was again accorded appointment on the post of casual Hot Weather Waterman on 21.4.90 and was granted temporary status (CPC Scale) on 12.10.91 vide order dated 11.10.91 and thereafter, the respondent remained in continuous employment of the Railway. Later, after screening the services of the respondent were regularized vide order dated 7/12.12.07.

9. In Chanda Devi's case (supra), the Supreme Court held that the Pension Rules under which Railway employees are granted pension do not apply to casual labourer having temporary status which protects only casual employee's service. However, in Rakesh Kumar's case (supra), the Supreme Court after due consideration of the provisions of Rule 20 and 31 of Railway Service (Pension) Rules, 1993, opined that the grant of temporary status of casual labour is not akin to appointment against the post and such contingency is not covered by Rule 20 of the Rules and the same is expressly covered by Rule 31 which provides for "half the service paid from contingency shall be taken into account for calculating pensionary benefits on absorption in regular employment subject to certain conditions enumerated therein". Accordingly, it was categorically held that Rule 31 is clearly applicable while computing the eligible services for calculating pensionary benefits on granting of temporary status. The period of casual labour prior to grant of temporary status by virtue of Note (1) to Rule 31 has to be counted to the extent of 50% for pensionary benefits.

10. A similar view is taken by a Bench of this Court in Smt. Jubeda's case (supra).

11. In view of the settled legal position as aforesaid, the respondent is entitled for reckoning his services as casual labour with temporary status prior to his

regularization in service only to the extent of 50% for pensionary benefits. Thus, apparently, the Tribunal has erred in directing that while considering the case of the respondent for grant of pension and pensionary benefits, half the service rendered by him as casual labour and full service rendered by him with temporary service along with services rendered after regularization shall be counted for the purpose of determining his total qualifying service for granting him all pensionary benefits under Old Pension Scheme.

12. In the considered opinion of this Court, in view of the position settled by the Supreme Court, the respondent shall be entitled for counting his half the service rendered as casual labour with temporary status and the services rendered after regularization for the purpose of granting him all pensionary benefits under the Old Pension Scheme. The services rendered by the respondent as casual labour without temporary status and services beyond 50% rendered as casual labour with temporary status cannot be counted.

13. In the instant case, the respondent being entitled for counting half of the service as casual labour with temporary status i.e. from 12.10.91 to 11.12.07 for the purpose of grant of pensionary benefits, the contention sought to be raised by the appellant that the respondent having been regularized with effect from 12.12.07 shall be governed by New Pension Scheme which has come into force w.e.f. 1.1.04 cannot be countenanced by this Court. We are firmly of the view that taking into consideration the duration of the service of the respondent which includes 50% of the services rendered as casual labour with temporary status prior to regularization required to be counted for grant of pensionary benefits, his services shall be governed by the Old Pension Scheme and not the New Pension Scheme.

14. In view of the discussion above, the order impugned passed by the Tribunal to the extent directing that half the service of the respondent as casual labour and full service rendered by him as casual labour with temporary status, shall be counted for the purpose of grant of pensionary benefits under Old Pension Scheme, deserves to be set aside.

15. In the result, the writ petition is partly allowed. The direction issued by the Tribunal to the petitioners herein to count half the service rendered by the respondent as casual labour and full service rendered by him with temporary status for the purpose of determining his qualifying service for granting him all pensionary benefits under the Old Pension Scheme, is set aside. The order passed by the Tribunal to consider the case of the respondent under Old Pension Scheme is upheld. The services rendered by the respondent as casual labour without temporary status shall not be counted, however, half the service rendered by the respondent as casual labour with temporary status along with services rendered after regularization shall be counted for the purpose of determining his total qualifying service for grant of pensionary benefits. The petitioners shall re-determine the pension and pensionary benefits payable to the respondent within a period of two months from the date of this order and shall

make payment thereof to him within a period of one month thereafter. The order passed by the Tribunal giving liberty to the respondent to approach the appropriate forum, if any grievance remains, is also maintained. The order passed by the Tribunal shall stand modified accordingly. No order as to costs.