
(2015) 06 BOM CK 0241

In the Bombay High Court

Case No : Writ Petition No. 4513 of 2014

Union of India and Others

APPELLANT

Vs

Anandrao Shankarrao

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Citation : (2015) 06 BOM CK 0241

Hon'ble Judges : V.A. Naik, J;P.B. Varale, J

Bench : Division Bench

Advocate : R.S. Sundaram, for the Appellant; Pallavi Mahagaonkar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.A. Naik, J—Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

2. By this petition, the petitioners impugn the common order passed by the Central Administrative Tribunal in four Original Applications, filed by the respondent, seeking a direction to the petitioner-Union of India to pay arrears of pension to the respondents and also monthly pension with effect from 12.09.1995.

3. Few facts giving rise to this petition are stated thus :

The respondent was appointed as a casual labourer by the petitioner-Railways on 30.06.1976. The respondent was granted the status of Monthly Rated Casual Labourer (MRCL) on 19.05.1981. The services of the respondent were regularized and he was brought on Grade "D" post on 21.09.1987. The respondent retired from service on attaining the age of superannuation on 12.09.1995. Since, the petitioners declined to grant the pensionary benefits to the respondent, an Original Application was filed by the respondent before the Central Administrative Tribunal, seeking pensionary benefits. The said Original Application was heard and decided with three other Original Applications, by the

impugned order dated 24.01.2014. The Central Administrative Tribunal considered the various provisions of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as "the Rules of 1993" for the sake of brevity) and the judgments of the Delhi High Court and Andhra Pradesh High Court to allow the four Original Applications. The petitioners have impugned the order passed in the case of the respondent, in the instant petition.

4. Shri Sundaram, the learned counsel for the petitioners submitted that the Tribunal has committed a serious error in allowing the Original Application filed by the respondent. It is submitted that before directing the petitioners to grant pensionary benefits to the respondent and before holding that the respondent was entitled to pension, the Tribunal did not consider the relevant Rules. It is stated that Rules 2(23), 14 and 20 of the Rules of 1993 were not considered by the Tribunal while considering half of the services rendered by the respondent as a casual labourer and full services rendered by him as MRCL. It is submitted that on a reading of Rule 2(23) of the Rules of 1993, it is clear that a casual labourer cannot be considered as a "railway servant". It is stated that as per Rule 20 of the Rules of 1993, the commencement of the qualifying service would be reckoned only when an employee gets MRCL status. It is submitted that the Tribunal has erroneously relied on the judgments of the Andhra Pradesh High Court and the Delhi High Court, reported in 2004(1) SLR 214 (General Manager, South Central Railway, Rail Nialyam, Secunderabad, A.P. and another vs. Shaikh Abdul Khader); and 2013 (3) SLR 296 (Delhi) (Union of India and another vs. Manash Sarkar), respectively. It is stated that the said judgments are distinguishable on facts. Great reliance has been placed by the learned counsel for the petitioners on paragraph 32 of the judgment of the Hon'ble Supreme Court in the case of General Manager, North West Railway and Others Vs. Chanda Devi, (2007) 14 SCALE 296 : (2008) 2 SCC 108 : (2008) 1 SCC(L&S) 399 to canvas that the Rules of 2013 are not applicable to the casual employees. The learned counsel also relied on the judgment of the Hon'ble Supreme Court reported in Union of India and others Vs. Rabia Bikaner etc., AIR 1997 SC 2843 : (1997) 6 JT 95 : (1997) 4 SCALE 625 : (1997) 6 SCC 580 : (1997) SCC(L&S) 1524 : (1997) 1 SCR 442 Supp : (1997) 2 UJ 339 : (1997) AIRSCW 2847 : (1997) 6 Supreme 382

5. Ms. Mahagaonkar, the learned counsel for the respondent supported the impugned order and submitted that the Tribunal has rightly considered the provisions of Rule 31, along with the other Rules, of the Rules of 1993 and the reported judgments of the Andhra Pradesh High Court and the Delhi High Court to allow the Original Application filed by the respondent. It is stated that the reported judgment of the Andhra Pradesh High Court and an unreported judgment of the Delhi High Court, which is referred in the reported judgment of the Delhi High Court, were carried to the Hon'ble Supreme Court, but the Special Leave Petitions were dismissed. It is stated that the judgments of the Hon'ble Supreme Court, on which great reliance has been placed by the counsel for the petitioners cannot be made applicable to the facts of this case. It is stated that in

the matters before the Hon''ble Supreme Court, the services of the railway employees therein, were not regularized and it was, therefore, held by the Hon''ble Supreme Court that temporary or casual employees would not be entitled to the pensionary benefits. It is stated that Master Circular No. 54 of 1994 was considered by the Delhi High Court in the judgment reported in 2013(13) SLR 296. It is stated that as per the Master Circular, after regularization of the services of a railway employee, half of the services rendered by him as a casual labourer are required to be considered while reckoning the service for pensionary benefits. The learned counsel for the respondent relied on Note-1 to Rule 31 of the Rules of 1993 to canvas that even a casual labourer paid from contingencies would be governed by the provisions of Rule 31 of the Rules of 1993, though the said Rule makes a reference to a "railway servant". It is stated that a similar issue fell for consideration in the case of Shri Brijkishor Joshi in an Original Application before the Tribunal in 2006 and the writ petition, filed by the petitioners-Railways against the order of the Tribunal granting pensionary benefits to Shri Brijkishor Joshi, was withdrawn by the petitioners on 07.06.2006. It is stated that the issue involved in this case has attained finality in view of the withdrawal of the writ petition in the case of one of the employees of the petitioners herein.

6. On hearing the learned counsel for the parties and on a perusal of the order of the Tribunal, it appears that there is no scope for interference with the impugned order in exercise of the writ jurisdiction. The Tribunal has considered the relevant Rules of the Rules of 1993. The Tribunal has also considered the judgments of the Andhra Pradesh High Court and the Delhi High Court, reported in 2004(1) SLR 214 and 2013 (3) SLR 296 (Delhi), respectively. The issue fell for consideration before the Andhra Pradesh High Court and the Andhra Pradesh High Court, by the judgment reported in 2004(1) SLR 214, dismissed the petition filed by the Railways while upholding the order of the Tribunal. The Andhra Pradesh High Court mainly relied on Rule 31 of the Rules of 1993 and Master Circular No. 54/1994 for counting 50% of the service rendered by the employee as a casual labourer for reckoning the qualifying service. It is clearly stated in Master Circular No. 54/1994 that half of the period of service of a casual labourer counts for pensionary benefits after his absorption in service as a regular employee. The Tribunal has rightly held that it was necessary for the petitioners to grant the benefits flowing from Master Circular No. 54/1994 to the respondent while counting his service for grant of pensionary benefits. It was held by the Andhra Pradesh High Court that there was no doubt that once the temporary status is granted to a person, who is absorbed as a regular employee, half of the services rendered by him as a casual labourer before getting temporary status, has to be counted for granting pensionary benefits to the employee. The Andhra Pradesh High Court also considered the provisions of Rule 31 and Rule 20 of the Rules of 1993. The judgment of the Andhra Pradesh High Court was challenged by the petitioners before the Hon''ble Supreme Court. The Special Leave Petition was, however, withdrawn. The same issue then came up before the Delhi High

Court in a petition filed by the Union of India and the Railways against the order of the Tribunal granting pensionary benefits to an employee after counting half of his services as a casual labourer. While the Delhi High Court considered the provisions that were considered by the Andhra Pradesh High Court and also some other provisions of the Rules of 1993 and para-2005 of the Railway Establishment Manual, Volume-II to hold that 50% of the services of a casual railway employee, who was later absorbed in regular service, could be considered for calculating the length of service for grant of pensionary benefits. The reliance placed by the learned counsel for the petitioners on Rule 2(23) of the Rules of 1993 to state that the respondent would not be entitled to the pensionary benefits as he does not fall within the definition of the term "Railway Servant", is not well founded as Rule 31 of the Rules of 1993 clearly provides that half of the service of a railway servant paid from contingencies, shall be taken into account for calculating the pensionary benefits and Note-1 to Rule 31 of the Rules of 1993 further provides that the provisions of Rule 31 shall also apply to a casual labourer paid from contingencies. Note-1 to Rule 31 was considered by the Tribunal and also by the Andhra Pradesh High Court and Delhi High Court to hold that half of the period of services rendered by a casual labourer could be considered for grant of pensionary benefits after absorption of an employee in regular service. It is observed by the Delhi High Court in the judgment reported in 2013(3) SLR 296 that against the previous judgment of the Delhi High Court, an appeal was preferred by the petitioners before the Hon"ble Supreme Court and the leave to appeal was dismissed. It is rightly submitted on behalf of the respondent that the judgments of the Hon"ble Supreme Court, reported in General Manager, North West Railway and Others Vs. Chanda Devi, (2007) 14 SCALE 296 : (2008) 2 SCC 108 : (2008) 1 SCC(L&S) 399 and Union of India and others Vs. Rabia Bikaner etc., AIR 1997 SC 2843 : (1997) 6 JT 95 : (1997) 4 SCALE 625 : (1997) 6 SCC 580 : (1997) SCC(L&S) 1524 : (1997) 1 SCR 442 Supp : (1997) 2 UJ 339 : (1997) AIRSCW 2847 : (1997) 6 Supreme 382 and relied on by the learned counsel for the petitioners, cannot be made applicable to the facts of this case. In both the cases before the Hon"ble Supreme Court, the casual labourer was not absorbed in the service of the Railways and though, the Railway employee was holding the temporary post, a prayer was made before the Tribunal for grant of pensionary benefits. In the said cases, it was held by the Hon"ble Supreme Court that a temporary workman would not be entitled to the pensionary benefits. In the instant case, the services of the respondent were regularized on 21.09.1987 in Group "D" post and hence, by the impugned order, the Tribunal has rightly considered Master Circular No. 54/1994, Rule 31 of the Rules of 1993 and the judgments of the Andhra Pradesh High Court and the Delhi High Court to grant the pensionary benefits to the respondent. We do not find any illegality in the impugned order so as to interfere with the same in exercise of the writ jurisdiction.

7. In the result, the writ petition fails and is dismissed with no order as to costs. Rule stands discharged.