
(2007) 08 CAL CK 0077
In the Calcutta High Court
Case No : W.P.C.T. No. 647 of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Chhanda Mondal

RESPONDENT

Date of Decision : 02-08-2007

Acts Referred:

Citation : (2008) 1 CHN 1093

Hon'ble Judges : Manik Mohan Sarkar, J; Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : D. Purokayastha and N.R. Mukherjee, for the Appellant; Ayan Banerjee and Biswaroop Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

1. By this application the Union of India (Railway Authorities) have challenged the impugned judgment and order dated 25.2.2005 whereby and whereunder the learned Tribunal held that the respondent (applicant before the learned Tribunal) is entitled to get widow pension.

2. Admitted fact is that the husband of the respondent (applicant before the learned Tribunal) was not formally absorbed in the permanent post though all the process for his absorption was taken and before he was medically examined on 20th August, 1986 for absorption against regular vacancy. He was found fit in his category by the Assistant Divisional Medical Officer, Malda, Eastern Railway. He was to appear for a screening test for absorption on 19th August, 1991. However, he failed to appear in the test and as such he was not absorbed. The respondent (applicant before the learned Tribunal) got compassionate appointment. The learned Tribunal relying on Supreme Court judgment and also the relevant rules held that the respondent (applicant before the learned Tribunal) is entitled to acquire such status which attracts the benefit of family pension.

3. The learned Counsel for the petitioner before us drawing our attention to the

relevant rules relating to Family Pension Scheme for Railway Servants, 1964 contends that if the aforesaid rule is read carefully, it would appear that unless the employee concerned is absorbed as the permanent one, he cannot get family pension. However, he is entitled to get pension as temporary employee. The learned Tribunal has applied the law incorrectly.

4. On the other hand, Mr. Ayan Banerjee, learned Counsel appearing for the respondent (applicant before the learned Tribunal) submits that in view of the 1968 Rules framed by the Ministry of Railways (Railway Board), namely, Indian Railway Establishment Manual his client (husband of the respondent) had acquired the status of temporary employee. Clause 3(b) of Rule 2311 specifically provides amongst others that the widow/widower/minor children of a temporary railway servant, referred to in the proceeding 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 801 of the Manual of Railway Pension Rules. He has also drawn our attention to Rule 2511 of the said Manual that the 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 Railways Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. The learned Counsel in support of his submission has drawn our attention to a judgment of the Hon'ble Supreme Court reported in Prabhavati Devi Vs. Union of India and others, Considering the aforesaid rules, the family pension benefit has been given to a widow of deceased employee.

5. On the other hand, the learned Counsel for the petitioner relying on a judgment reported in P. Sadagopan and Others Vs. Food Corporation of India, Zonal Officer (South Zone) Represented by its Zonal Manager and Another, submits that unless an employee becomes a permanent on absorption, he is not entitled to any benefit of family pension. No benefit can be given de hors the recruitment rules.

6. We have heard the respective contentions of the learned Counsel for the parties. We have gone through the impugned judgment and order of the learned Tribunal and it appears to us that the learned Tribunal has granted relief relying on a decision of Central Administrative Tribunal, Ahmedabad Bench wherein all the Supreme Court decisions on the subjects were considered. The case of Prabhavati Devi as cited before us was also considered in the judgment of the learned Tribunal of Ahmedabad Bench. The learned Counsel appearing for the Union of India has drawn our attention to the case, Union of India and Ors. v. Rabia Bikaner and Ors. 1997 SCC (L&S) 1524 and also Ram Kumar and Others Vs. Union of India (UOI) and Others, .

7. It appears to us that Ram Kumar's case (supra) has been reviewed subsequently by the Supreme Court and has held that the earlier decision rendered in Ram Kumar's case is not a correct proposition of law on this subject. We have considered the aforesaid judgments placed before us. We are to take a

view whether such proposition of law laid down by the Supreme Court will be applicable in this case or not.

8. Clause (3)(b) of Rule 2311 of Indian Railway Establishment Manual stated as follows:

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 801 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.

9. Factually we find from the averments made in paragraph 1 of the petition that Harendra Nath Mondal was treated as temporary employee after working 120 days of his status of casualness which started from 11th January, 1985. On and from 12th May, 1985 he was given the benefit of Central Pay Commission Scale. Therefore, it is clear that he was treated as a temporary employee. On 28th August, 1986 he was examined medically for absorption in the regular vacancy. Thus, it is clear that the said Harendra Nath Mondal, since deceased, had served continuously more than one year which is the qualifying service for getting family pension. Going by the admission made in the writ petition we think that the learned Tribunal has come to a correct conclusion regarding the grant of pension benefit.

10. In paragraph 4 of Prabhavati Devi's case (supra), the aforesaid rule has been explained and applied. Therefore, we do not have any manner of doubt that the said deceased employee has been eligible for getting family pension. In all practical purposes he was treated to be a permanent but formally could not be absorbed because of his premature death. For the foregoing reasons, we do not find any reason to interfere with the judgment and order of the learned Tribunal and the same is accordingly affirmed. Thus, the application fails. No order as to costs. Urgent xerox certified copy of this order, if applied for, be given to the parties.