

(2000) 07 RAJ CK 0110

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2345 of 2000

Union of India (UOI) and Others

APPELLANT

Vs

Mohinder Singh and Another

RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2000) 3 RLW 1388 : (2000) 3 WLC 306 : (2000) 3 WLN 20

Hon'ble Judges : AR. Lakshmanan, C.J.;Rajesh Balia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

AR. Lakshmanan, C.J.—This petition is directed against the order dated 22nd June, 1999 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur, allowing the original Application No. 126/92 filed by the respondent No. I in the Jodhpur Bench of C.A.T. on 19.3.1997.

2. The respondent has filed the application before the Tribunal alleging that the applicant was appointed as a casual labour on daily wages basis on January 20, 1962. From the date of appointment to 13th September, 1986, the applicant held number of posts. He was appointed on regular post of Trolley Man after qualifying the prescribed screening test by order dated June, 15, 1977. By order dated September 13, 1986, the applicant was promoted as Permanent Way Mistry and he worked on that post till he superannuated on 31st July, 1996. However, he was not paid his pension as the pension payable to him has not been determined for want of his lien on any post in the service. The applicant claimed that his lien should be fixed in department on permanent establishment against 40% vacancies reserved for such employees. The other reliefs claimed in the petition are fixing the pay w.e.f. 13th September, 1986 in scale of 380 to 560 applicable to Permanent Way Ministry by counting 50% period of the service rendered as casual labour before appointment on regular basis for the purpose of counting gratuity and for qualifying service for pension. The post on which he is

said to have worked before his regular appointment as Trolley Man are stated as Mate, Permanent Way Mistry, Permanent Way Mistry and Blacksmith, Store Man, Blacksmith and Store Man. It has also been stated in the application that the Construction Division is a temporary division and as such the permanent employees working in the Construction Division are having their lien upto the extent of 40% in various divisions. He has placed on record the document Ex.3 showing that as per the rules the applicant was granted lien in Delhi Division while he was working as Trolley Man on that post. On his retirement his pension was fixed in the Grade of 200-250 which was payable to a Trolley Man and not in the pay scale which he was drawing at the time of his retirement on the post of Permanent Way Mistry in the pay scale of 380-560 which he was drawing from September, 1986. His case for giving lien on the post of Permanent Way Mistry was not considered and decided.

3. In the short reply, it was stated that respondents have now fixed the lien of applicant in Delhi Division w.e.f. 15.6.1977 on the post of Trolley Man and the respondents have passed final order of pension and paid an amount of Rs. 19,651 and, therefore, the application itself has become infructuous. In rejoinder to this short reply it was pointed out that the pension has been worked out by taking into consideration his salary of Trolley Man in the grade of 200-250 which is wrong. It was also pointed out that infact the applicant has asked for fixing the pay in the Grade 380-560 and to calculate the gratuity and retiral benefits including pension on that basis by counting 50% of the period during which he was in temporary employment under the rules and his pension should be fixed on the basis of last drawn emoluments of the post on which he worked immediately before his retirement. After submission of this rejoinder, the present petitioners, respondents before the Tribunal, filed reply in which they admitted the averments made in para 4.2 and 4.3 about giving first date of appointment as casual and his discharge of duties on various posts including his appointment as Trolley Man after regular selection or promotion to the post of Permanent Way Mistry w.e.f 13.9.1986. However, the plea was taken that since he was not promoted on the post of Permanent Way Mistry on regular basis and he continued till his retirement in the capacity as ad hoc he was entitled to the pension only in the salary payable in his substantive post of Trolley Man. The fact that the petitioner continued to officiate as Permanent Way Mistry since his promotion in 1986 until the date of retirement in 1996 in the Grade of 380-560 was not denied.

4. The Central Administrative Tribunal found that the applicant continued to work on a higher post for a period of ten years continuously till for his retirement and no action was taken either for his confirmation or for his regular promotion on that post, and therefore, pensionary and retiral benefits are required to be worked out on the basis of ten months average pay last drawn by the applicant. The applicant having worked on promotional post for ten years continuously after he was promoted on ad hoc basis, it was none of his fault for which he can be denied his legitimate retiral benefits merely because the respondents chose to

confirm the applicant only on the lower post of Trolley Man and did not consider it necessary to confirm him on the higher post on which he was working for last 10 years. The Tribunal also found that casual labour employees in the Construction Division of Railways on completion of 120 days are entitled to temporary status. Thus, the temporary status is acquired by the casual labour working in the Construction Division of Railways on completion of 120 days under the Indian Railway Establishment Manual Volume II Chapter XX, Para 2001 & 2005. Thus, the Tribunal finding that the applicant was entitled to the fixing of retiral benefits on the basis of last drawn pay in the Grade of 380-560 attached to the post of Permanent Way Mistry, and is entitled to be treated as temporary on completion of 120 days as casual employee since his initial appointment in 1962, allowed the application and directed the respondents, the present petitioners, to calculate all retiral benefits accordingly and to take into account half of the service rendered by the applicant as Casual Labourer after he had acquired temporary status and before his regularisation as Trolley Man for purposes of calculation of qualifying service in order to work out the pensionary benefits, if this period has not been taken into account earlier.

5. Aggrieved of the aforesaid directions, the present petitioners have filed this petition. The only point raised before us primarily is that the applicant having been appointed as casual labour on a project work was not entitled to the benefit of Rule 2001 and 2005 of the Indian Railways Establishment Manual, Volume II referred to by the Tribunal because the said rules do not govern the case of the project labour. He, however, does not dispute that any casual workman other than a project employee is entitled to temporary status on completion of 120 days employment and is also entitled to 50% of entire length of service in temporary capacity towards qualifying service for the purpose of retiral benefits. In this connection, he has placed reliance on a decision of the Supreme Court in *LP. Yadav v. Union of India* 1985 (2) S.L.R. 2048.

6. Having given our anxious consideration, we are of the opinion that his contention of the petitioners is not well founded. We do not find any foundation for the contention that the respondent was working as a project labour while he was casual and not on the regular establishment. The respondent-applicant has specifically stated in his application in Para 4.2 that the applicant was appointed as a casual labourer on daily wages basis on January 20, 1962. Right from January 20, 1962 to September 13, 1986, the applicant held the number of posts and the entire working of the applicant, during this period, has been shown in Schedule "A" and in Para 4.3 it was alleged that since the Construction Department is a temporary Department and as such the permanent employees working and having lien upto the extent of 40% in various divisions, the applicant was having lien in Delhi Division as per General Manager's letter circulated by the Chief Engineer (Construction). Para 4.2 and Para 4.3 have been admitted by the respondents-petitioners in their reply except to the extent that the applicant was not given promotion on regular basis but was only his services were utilised on the post of Permanent Way Mistry since Sept. 13, 1986. In fact

the lien of the petitioner on the post of Trolley Man on which he was given appointment in 1997 has also been fixed only after the applicant has retired from service w.e.f. 1st August, 1996. Thus, no foundation was laid in the pleadings to urge that the applicant was not entitled to be treated as temporary on completion of 120 days as casual workman. In fact, this position has not been disputed before the Tribunal and also not before us that if Para 2001 and 2005 of the Establishment Manual, Volume II is applicable, the applicant was entitled to count 50% of the period during which he worked as casual until before his appointment as Trolley Man on 25.6.1977 on the expiry of 120 days from 20th Jan., 1962.

7. From the, aforesaid averments, it is apparent that the applicant-respondent was working in the Construction Division of the Railways as casual workman. The Supreme Court in *Union of India and Others Vs. Basant Lal and Others*, has stated that a casual labour employed in Construction Division of Railways on completion 120 days service is entitled to get salary as the temporary employees and the rule that a project employee is entitled to the salary on completion of 360 days is not applicable to the casual labour in Construction Division. In view of this later decision of Supreme Court, we are of the opinion that in the state of affairs of the pleadings, the contention raised by the petitioners must fail. The contention is found on *Indrapal Yadav's* case (supra), under which a scheme was devised under the directions of the Supreme Court to treat project employees in temporary service on completion of 360 days. The said principle in view of a clear declaration by the Supreme Court in *Basantlal's* case (supra) that persons employed in Construction division are not project employees cannot be applied to the present case.

8. We are, therefore, in agreement with the Tribunal that applicant is entitled to determination of his pension and gratuity by including 50% of service rendered by him as temporary, on completion of 120 days working as casual w.e.f. the date of the initial appointment, as qualifying service for that purpose.

9. In this connection, the contention was also raised by the learned Counsel for the petitioners that persons appointed directly as casual Mates although continued as such for a considerable period, thereby acquiring temporary status, are not ipso facto entitled to regularisation and for this connection learned Counsel relied on a decision of the Supreme Court in *Union of India v. Motilal* 1996 (2) S.L.R. 90.

10. Having carefully considered the contention in the light of decision of *Motilal's* case (supra), we are of the opinion that there is no substance in this contention either. The claim of the applicant is not founded on any relief for regularisation. In fact the services of the applicant have already been regularised since 1977 when he was appointed" after regular selection as a Trolley Man and on which his lien has also been acknowledged though after retirement. Therefore, we are not considering a case for regularisation. As a matter of fact, the decision relied on by the learned Counsel itself suggests that even after acquiring temporary status

under the rules the incumbent may not be automatically entitled to regularisation. It nowhere says that casual workman cannot acquire a temporary status on completion of requisite period of service. Therefore, there is no substance, in the contention of the learned Counsel for the petitioners that the Tribunal was in error in directing to count 50% of the service rendered as casual before the applicant was appointed as Trolley Man in 1977 in terms of Rules 2001 and 2005 of the Establishment Manual for the purposes of determining retiral benefits including the pension.

11. Lastly, it was contended by the learned Counsel for the petitioners that since the applicant was not holding a lien on the post of Permanent Way Mistry when he retired, he is not entitled to pension in the pay scale drawn by him on that post but only on the lower post. No rule or law has been referred to by the learned Counsel in support of his contention. On the basis of undisputed facts, it is clear that the petitioner has worked uninterruptedly since 13.9.1986 until the date of his retirement. The fact that he was not confirmed on the post so as to create lien on that was not on account of any default of employee. As a matter of fact, when he was promoted on 13th Sept., 1986 the applicant did not hold lien on a lower post from which he was promoted nor was he confirmed on the post till he retired. The fact that after making post retiral exercise by confirming the petitioner only on the lower post and not consequently confirming on the higher post on which he was working for last 10 years before superannuating, cannot be a ground for denial of pension to which he would have been entitled as a person retiring from the post of Permanent Way Mistry. If this were to be accepted, it would lead to a very startling situation that a person who may be employed for more than 20 years and superannuates without the employer taking any action to confirm him on the post on which he was discharging duties for such a long time and then to claim that since he has retired without holding any lien on any post he is not entitled to any pension. The action would be per se illegal, arbitrary and unreasonable, violating the right of equality before law under Article 14 more so, when the exercise of granting a status in the service was only taken by the employer after the incumbent retired from service and just to confirm him on the lower post notwithstanding that he discharged the duties of the higher post under the orders of competent authority by way of promotion for uninterrupted period of long service of almost 10 years was forgotten. Thus the right of respondent to pension to which he ought to be legitimately entitled has been affected adversely by the petitioners themselves on wholly untenable and unreasonable ground. Such an action denying the retiral benefit merely because of inaction on the part of the employer cannot be countenanced. The order of the Tribunal therefore, is not only in consonance with law but is also just and fair.

12. In the circumstance, no interference is called for and the petition is dismissed. There shall be no orders as to costs.

13. The petitioners shall give effect to directions given by the Tribunal within a period of two months.