
(2005) 04 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5316 of 2004

Union of India (UOI) and Others

APPELLANT

Vs

Smt. Santosh and Another

RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 3 RLW 1970 : (2005) 3 WLC 270

Hon'ble Judges : V.K. Bali, J; Harbans Lal, J

Bench : Division Bench

Advocate : M. Rafiq, Addl. AG, for the Appellant; Nand Kishore and Mahesh Vaid, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—The widow of Ram Niwas, petitioner in the original lis and respondent in the present writ petition, is clamouring for grant of family pension ever since her husband Ram Niwas died on 29.12.1988. She succeeded in obtaining the desired relief when she filed O.A. No. 233/2003 before the C.A.T. as the same was allowed vide order dated 7.4.2003. It is against this order passed by the learned C.A.T. that the present writ petition under Article 226 of the Constitution of India has been filed. Hopefully, the tales of woe of a widow would end today after seventeen years of litigation.

2. The bare minimum facts that need necessary mention reveal that Ram Niwas was employed on the post of Helper initially on 8.11.1979 as casual labour. He was granted temporary status w.e.f. 1.1.1983. He was contributing towards provident fund account. Unfortunately, he died on 29.12.1988 while on active service. In the year 1986, list was prepared for screening the casual labour in order to regularise them against Group "D" post.

3. Smt. Santosh widow of Ram Niwas, who died in harness, was even though granted appointment on compassionate ground as a substitute but was not

granted family pension. Thus, she made representation which was rejected on the ground that as per the Rules, casual labour temporary status holders were not entitled to pension vide orders dated 23.4.2003. It is on these basis averments made in the O.A. that widow of Ram Niwas claimed family pension. The relief asked for by the petitioner before the C.A.T. was opposed on the ground that no family pension is payable in case of casual labour temporary status holder employee and therefore, the representation made by her, dated 5.7.2003 had been duly considered and turned down vide communication dated 24.3.2003 and as per Pension Rules she was not entitled to family pension.

4. Learned C.A.T. on the pleadings and contentions raised by the rival parties observed that the controversy had since already been exhaustively dealt by a co-ordinate bench of the Tribunal at Ahmedabad in Smt. Vallam Badia v. Union of India and Ors. 2003 (2) SLJ CAT 271 and therefore the issue was no more res integra. It was also held that the judgment of the Hon'ble Supreme Court in Union of India and Ors. v. Rabia Bikaner and Ors. 1998(1) SLJ (SC) on which reliance was placed by the Union of India, had also been taken into consideration while deciding the controversy in issue in Smt. Vallam Badia (supra). The judgment in Smt. Vallam Badia (supra), had been affirmed by the division bench of the High Court of Gujarat in various appeals decided on 21.7.2003. It was also observed that the Bench at Jaipur had also followed the case of Smt. Vallam Badia in the case of Ram Kanhaiya v. UOI which was decided on 20.11.2003. Learned Tribunal in view of the findings, as mentioned above, refrained in entering into elaborate discussion on this point.

5. Mr. M. Rafiq, learned Addl.AG who represents the petitioner Union of India vehemently contends that the status of Husband of the respondent No. 1 was not of temporary employee. He was in fact only a casual labour with temporary status and case of family pension for such an employee would not be covered by any of the decisions rendered by the Tribunal or the High Court and that in fact, the matter was covered in favour of the petitioner Union of India in view of the decision of Hon'ble Supreme Court in Union of India and Ors. v. Rabia Bikaner and Ors. (supra).

6. Learned counsel representing the respondent widow of Ram Niwas, however, contends that the status of Ram Niwas was that of a temporary employee and not casual labour with temporary status.

7. We have heard learned counsel for the parties and with their assistance examined the records of the case.

8. In the context of the facts of the present case, we, however, find no merit, whatsoever in the only contention of the learned counsel for the Union of India, as noted above.

9. The petitioner, in the rejoinder filed by it in the present petition itself, has annexed copy of Chapter-XX of the Indian Railway Establishment Manual, Vol.2, Para 2005 whereof, in so far as the same is relevant, reads as follows.

"2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be).

(a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D & A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. This is, however, subject to the provision that if the seniority of certain individual employee has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered."

10. Available on records is also an office order dated 24.1.1989 (Anx.3). This document too has been annexed by the petitioner Union of India itself along with the rejoinder filed by it. The office order aforesaid first notices with grief the demise of Ram Niwas. Thereafter, the service particulars of Ram Niwas have been given. It has been clearly mentioned in the office order aforesaid that Ram Niwas was temporary status holder C.S.I. (Construction) and that he was holding pensionable job.

11. Hon'ble the Supreme Court in Inder Pal Yadav and Others Vs. Union of India (UOI) and Others, , after, in brief noting the miserable plight of casual labour employed on various projects by the Railway, referred to the Railway Ministry's circular to all the General managers of Indian Railways, dated June, 1, 1984. This scheme came into being as the Additional Solicitor General had requested the Court not to render judgment because he would like to take up the matter with the Railway Ministry to find out a Just and humane solution affecting the livelihood of unfortunate workmen who were employed as casual labour. It is pursuant to this that the scheme was circulated. The respondent widow of Ram Niwas in the reply filed by her has also annexed office order dated June, 1986 which takes notice of the scheme that came to be framed and mention of which has been made above. It has clearly been mentioned in the office order aforesaid that pursuant to the scheme all those casual workers who had completed three years of service by 1.1.1984 and those who had completed less than five years service would be given status of temporary employee. The name of Ram Niwas in the office order aforesaid has been mentioned at Sl.No. 15. The documents mentioned above would clearly manifest that Ram Niwas was a temporary employee and not a casual labour with temporary status. Even though there was a controversy before the Tribunal as well as to whether Ram Niwas was a temporary employee or a casual labour with temporary status, the Tribunal, it appears, did not settle this controversy on the basis of material placed before it and granted relief to the widow of Ram Niwas by pre-supposing that the status of

Ram Niwas was that of a temporary employee. However, we have done the required exercise on the basis of material placed before us and do record finding in the context of documents mentioned above that the status of Ram Niwas was that of a temporary employee.

12. The controversy with regard to the matter being covered in favour of the petitioner of the respondent widow of Ram Niwas by virtue of judgments either referred before the Tribunal or before this Court in the context of findings given with regard to the status of Ram Niwas, loses all its significance. The said controversy would have been relevant only if it was proved that the status of Ram Niwas was that of a casual labour with temporary status, surely, if such was to be a finding given by us, we would have discussed the matter threadbare on the basis of judgment in *Ram Kumar and Others Vs. Union of India (UOI) and Others*, and the order of review passed by the Supreme Court in the matter of *Ram Kumar and Ors. v. Union of India and Ors.* 1996(1) All I S L J IV 116 We may, however, mention that the counsel defending widow of Ram Niwas vehemently contends that the judgment rendered by the Supreme Court in *UOI v. Rabia Bikaner (supra)* cannot possibly be applied as the same is based upon judgment in *Ram Kumar (supra)* which has been reviewed in view of the introduction of policy of pension to temporary employee by the Railway itself.

13. We do not find any merit in this writ petition and inasmuch as justified claim for family pension has been thwarted by the Union of India on wholly untenable grounds and by pleading facts contrary to the records with regard to the status of Ram Niwas for which the widow of Ram Niwas has been deprived of the legitimate dues ever since 1988, we dismiss the petition with costs quantified at. Rs. 20,000/- (Rs. twenty thousand).

14. We further add that it is this kind of litigation and that too indulged by the Government that results in undue delay in dispensation of justice. We only hope and wish that the Government and in the present case the Union of India, would ensure in future that before resorting to litigation particularly when the orders have been passed against it by court of competent jurisdiction, some one responsible shall have to certify that the case is fit for agitating the matter in higher forum and if finding is returned that it was a case of frivolous litigation, the person who opined in favour of litigation, should be held responsible for paying the costs that may be imposed by the courts.