IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 4774 of 2010

Union of India through Deputy Chief Engineer (Construction) E.C. Railway, Dhanbad, P.O., P.S. & District-Dhanbad.

Murli Manohar Prasad s/o Narayan Jee, resident at Quarter No.678, Ranga Tand, Filter House Road, Dhanbad.

……. Petitioner

Versus

Nand Lal Mahto, s/o Late Murat Mahto, resident of Village-Jitpur, P.O. & P.S. Gomoh, District-Dhanbad. … … Respondent

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CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Petitioner : Mrs. Nitu Sinha, Advocate
For the Respondent : Ms. Aakansha Mittal, Advocate

04/Dated: 05th February, 2024

1. The instant writ petition has been filed under Article 226 of the Constitution of India by the Union of India through the Chief Engineer, Eastern Central Railway directed against the order dated 13.12.2007 passed by the Central Administrative Tribunal, Patna Bench Circuit Court, Ranchi in O.A. No. 219 of 2006, whereby and whereunder, the learned Tribunal while allowing the original application allowed the prayer made by the applicant for counting half of the service rendered as casual labour, i.e., 04.02.1974 to 31.12.1980 and full of the service on temporary status instead of half, i.e., 01.01.1981 to 26.01.1994 for the purpose of qualifying service and revise the entire pensionary benefits accordingly and also to grant all consequential benefits including A.C.P.

2. The brief facts of the case as per the pleading made in the writ petition reads as under:

The Respondent was initially appointed as causal labour on 04.2.1974 and posted under PWI (Con), Eastern Railway, Gomoh now E.C. Railway, Gomoh. He was granted temporary status w.ef 01.1.1981 and posted as store-chaser and regularly absorbed on 26.1.1994. During his service he was given only one promotion in the scale of Rs. 225-308-2750-4400/- w.e.f. 01.6.1983. As such, he was entitled to get the benefit

of ACP w.e.f. 01.10.1989 in the next higher scale of Rs. 3050-4590 upto completion of 12 years of service 24 years of service and the same had been approved vide order dated 21.7.2006, but the same was not granted till now, due to account objection for the reason that the applicant's service of temporary status is being counted as half and as such the period comes less than 24 years whereas for the second ACP for the period should have been 24 years and if the service of temporary status from 01.1.1981 to 26.1.1994 is counted on full, then the Respondent's total service from 01.1.1981 to 31.7.2006 comes more than 24 years which makes entitlement to the benefit of ACP in the scale of Rs. 3050-4590. Subsequently, the respondent superannuated from service on 31.7.2006.

The Railway has filed the reply before the CAT in which it was admitted that the applicant was initially appointed as casual labour on 04.2.1974 and subsequently he was granted temporary status w.e.f. 01.1.1981. The applicant was absorbed in regular Group-D Category of Engineering Department of DRM, Dhanbad w.e.f. 27.1.1994. The Railway Board's order dated 28.11.1996 in Para-2005 (a) of IREM deals with the said counting of service.

The Railway has also stated that pension has been regulated and calculated on the basis of his total service from 01.1.1981 to 31.7.2006 till his retirement i.e. half service of his temporary period (01.1.1981 to 26.1.1994) has been taken into account and full service w.e.f. 27.1.1994 to 31.7.2006 has been considered for his qualifying service as per procedure.

The pension has been regulated and circulated on the basis of his total service from 01.1.1981 to 31.7.2006 till his retirement i.e., half service of his temporary period (01.1.1981 to 26.1.1994) has been taken into account and full service with effect from 27.1.1994 to 31.7.2006 has been considered for his qualifying service as per procedure. The qualifying service of the applicant has rightly been calculated as per existing rules mentioned in Para-20 of R.B.E. No. 14/94 (Master Circular No. 54) and all settlement dues to him have already been paid. Hence the demand of continuing of half of the service of the causal period for pensionary benefit is not justified.

The learned CAT allowed the O.A. vide order dated 13.12.2007 of the Respondent in the light of decision reported in 2004 (2) ATJ Page 23

passed by Andra Pradesh High Court without considering the very fact that there is an existing rule for the counting of service period for the purpose of pensionary benefit and same has not been declared ultra vires by the said Hon'ble Court as such the existing rule will prevail.

3. It is evident from the pleading made as referred hereinabove that the respondent was initially appointed as causal labour on 04.2.1974. He was granted temporary status w.ef 01.1.1981 and was regularly absorbed on 26.1.1994. The grievance was that he has been given only one promotion in the scale of Rs. 225-308-2750-4400/- w.e.f. 01.6.1983, as such, he is entitled to get the benefit of ACP w.e.f. 01.10.1989 in the next higher scale of Rs. 3050-4590 upto completion of 12 years of service/24 years of service.

It was the case of the respondent that the said grievance has also been approved by the respondent vide order dated 21.7.2006, but the same was not granted due to objection raised by the accounts department for the reason that the applicant's service of temporary status is being counted as half and as such the period comes less than 24 years whereas for the second ACP, the period should have been 24 years and if the service of temporary status from 01.1.1981 to 26.1.1994 is counted on full, then the respondent's total service from 01.1.1981 to 31.7.2006 comes more than 24 years which makes entitlement to the benefit of ACP in the scale of Rs. 3050-4590. Subsequently, the respondent got separated from service on attaining the age of superannuation w.e.f. 31.07.2006.

The respondent having not been extended with such benefit, has approached the learned Tribunal praying therein for the following reliefs:

> *"(i) That Your Lordships may graciously be pleased to direct/command the respondents to count half of the service rendered in casual labour i.e., w.e.f 4.2.1974 to 31.12.80 and full of the service of temporary status instead of half i.e. 1.1.81 to 26.1.94 for the purpose of qualifying service and revise the entire pensionary benefits accordingly.*
>
> *(ii) That the respondents be further directed to pay the interest also and grant all consequential benefit including ACP Benefit due to the counting of said period referred in para 8(A) above"*

4. The learned Tribunal after calling upon the respondent and on going through the master circular no.54 dated 30.03.1994 which contains a clause as under Clause 20 and basing upon the order passed by the Andhra Pradesh High Court in Writ Petition No. 10837 of 2001 against which no SLP was preferred before the Hon'ble Apex Court. Thereafter, the original

application was allowed by granting the said prayer as was made by the petitioner before the Tribunal, which is the subject matter of the instant writ petition.

5. Mrs. Nitu Sinha, learned counsel for the writ petitioner has assailed the order passed by the learned Tribunal on the ground that clause 20 of the Master Circular No.54 has wrongly been interpreted by the Tribunal since according to her, the period which has been counted treating the service rendered from 01.01.1981 to 31.07.2006 till his retirement, i.e., half service of his temporary period (01.01.1981 to 26.01.1994) has been taken into account and full service w.e.f. 27.1.1994 to 31.7.2006 has been considered for his qualifying service as per procedure.

   According to the learned counsel that there is no error in the decision taken by the authorities but without appreciating the aforesaid fact, the original application has been allowed and therefore, the instant writ petition under the power of judicial review.

6. While on the other hand, Ms. Aakansha Mittal, learned counsel for the respondent has defended the order passed by the learned tribunal on the ground that the master circular no.54 which contains a clause being clause 20 is very specific that the same is only by way of mechanics to count the service of casual labour subject to the condition that such casual labour has been taken under the temporary status followed by his absorption in service and if these two conditions if available then the half of the period of service of a casual labour, other than casual labour employed on projects, is to be counted.

7. It has been submitted that the aforesaid circular is for the purpose of counting the period of temporary status or the absorption in service rather is the mechanism made only for counting the half of the period of service of a casual labour if the service is followed by temporary service and the absorption.

8. Learned Tribunal, after taking into consideration the aforesaid clause has allowed the original application which cannot be said to suffer from error.

9. We have heard the learned counsel for the parties and gone across the finding recorded by the learned Tribunal in the impugned order.

10. This Court, before entering into the legality and propriety of the impugned order, deems it fit and proper to refer the jurisdiction of this Court which this court is exercising under Article 226 of the Constitution of India. The Constitution Bench of the Hon'ble Apex Court in ***L. Chandra Kumar vs. Union of India, (1997) 3 SCC 261*** has laid down the proposition that the High Court in exercise of power as conferred under Article 226 of the Constitution of India will have power of judicial review of the order passed by the learned Tribunal if passed under Section 14 of the Administrative Tribunal Act, 1985. The power of judicial review is that if any decision or order passed by any Tribunal or court of law or the authority suffers from patent illegality which is apparent from the face of it, then, the High Court in exercise of power of judicial review is to interfered with the impugned decision of the Tribunal.

11. This Court is proceeding to examine the legality and propriety of the impugned order based upon the aforesaid parameter.

12. The issue which requires consideration is :

    (i) as to whether the half of the period is to be counted only of the service of an employee which he has rendered through his status of a casual labour or;

    (ii) half of service is to be counted from the day when such employee has attained the temporary status till the date of absorption;

    (iii) whether on the basis of clause 20 of the master circular no.54, the period which has been decided to be counted can also be taken into consideration for the purpose of grant of upgradation or only for the purpose of pensionary benefit.

13. The first issue which requires to be considered if answered in affirmative then the order passed by the Tribunal is to be upheld contrary to the same, if the second issue will be answered in affirmative then the order passed by the Tribunal is to be reversed.

14. This Court, in order to answer the aforesaid issue, deems it fit and proper to refer clause 20 of the master circular no.54 as has been appended by way of affidavit being part of the paperbook which reads as under:

> ***"Counting of the period of service of Casual Labour for pensionary benefits.***

> *Half of the period of service of a casual labour (other than casual labour employed on Projects) after attaining of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular railway employee, counts for pensionary benefits. With effect from 1.1.1981, the benefit has also been extended to Project Casual labour."*

15. The said master circular no.54 is having the caption heading "*Master Circular on qualifying service for pensionary purposes*". There are so many heading under the said master circular referring therein the mechanism for the purpose of counting the service period, however, under clause 20, counting of period of service of casual labour has been referred for the purpose of pensionary benefit.

16. It is evident from clause 20 that the same is by way of mechanism to count the period of service of causal labour which is for the purpose of pensionary benefits. It requires to refer herein that the aforesaid master circular no.54 is only for the purpose of providing the mechanism for qualifying service of pensionary benefits and not for other purposes in view of the definition of qualifying service as referred therein.

The qualifying service of a railway servant has been defined therein which shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating capacity. Provided that the officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post. Provided further that the service rendered before attaining the age of 18 years shall not count except for compensation gratuity.

17. Herein, as per clause 20, three conditions are there for the purpose of counting the period of service rendered by an employee as casual labour. The first condition is that if a person as been appointed as casual labur and if it continuous for a period of 120 days, if he has discharged duty of 120 days continuously then his service can be considered for confirmation of temporary status and if concerned employee has been offered with the temporary status and subsequently if he has been absorbed in service as regular employee, then for the purpose of pensionary benefits, the half of the period of service rendered by such an employee as casual labour will be counted for the pensionary benefits leaving apart the service if rendered as casual labour employed on Projects.

18. The original application has been filed seeking therein the relief pertaining to counting the half of the period of service of the casual labour in view of grant of upgradation in pay scale by counting half of the service as casual labour.

19. As we have already referred hereinabove that counting of period of half of the period of service as casual labour subject to fulfilment of the conditions as contained under clause 20 is only for the purpose of pensionary benefits and hence, no benefit is to be given to such employee by counting the half of the period of service of casual labour for the purpose of grant of upgradation in the Assured Career Progression Scheme or Modified Assured Career Progression Scheme.

20. However, the aforesaid benefit of upgradation in pay scale can only be considered by counting the period of service after attaining the status of temporary followed by absorption. The moment the service has been decided to be absorbed by way of absorption then the effect of absorption will be to count the service from the date from which the concerned employee has got the temporary status.

21. Herein, so far as the issue of consideration of upgradation in pay scale either ACP or MACP is to be counted from 01.01.1981 in view of the fact that the respondent-applicant has got temporary status from 01.01.1981 followed by absorption on 26.01.1994 and in that circumstances, the services of the applicant is to be counted from 01.01.1981 for the purpose of upgradation in pay scale and if in that circumstances, such employee has completed 12/24 years of services from 01.01.1981 then he will well be entitled for consideration of upgradation on completion of 12 years or 24 years of service subject to fulfilment of the conditions in the policy decision of the authority concerned.

22. The learned Tribunal has allowed the entire prayer which also include upgradation in pay scale by way of ACP, i.e., on completion of 12/24 years of service but the 12/24 years of service is to be counted from 04.02.1974 or by taking half of the service rendered as casual labour or from 01.01.1981 the day wen the respondent has attained the temporary status followed by absorption on 26.01.1994.

23. Therefore, this court in exercise of power of judicial review, is hereby modifying the order passed by the learned Tribunal to the effect that whereby and whereunder, the learned Tribunal has allowed the prayer made by holding the applicant entitled for upgradation without making any observation in this regard as to whether from which date the period of 12 years or 24 years will be counted.

24. This Court, therefore, is of the view that the authority while considering the case of the applicant-respondent for the purpose of upgradation in pay scale either on completion of 12 years or 24 years of service it is to be counted from 01.01.1981 excluding the half of the period of service which he has rendered as the casual labour.

25. So far as the other direction of counting the half of the period of service rendered by the applicant as casual labour for the purpose of pensionary benefit is concerned, this Court is of considered view that there is no error in the order passed by the learned Tribunal due to the reasons that clause 20 itself provides by way of mechanism how to count the period of service of a casual labour.

26. The condition precedent for counting the period of service of the casual labour is that such employee is to attain temporary status on completion of 120 days of continuous service followed by absorption in service which shall be counted only for the purpose of pensionary benefits, meaning thereby, clause 20 provides to count the period of service as casual labour which will be half in extent if the services of such employee has been converted into the temporary status followed by absorption.

27. The learned Tribunal has taken note of the aforesaid policy decision and based upon that the aforesaid prayer for granting the half of the period of service of the casual labour has been directed to be counted of the respondent, therefore, this Court is of the view that so far as the finding/decision of the learned Tribunal to count the half of the period of casual labour, according to our view suffers from no error.

28. This Court in view of the aforesaid reason, is of the view that the order passed by the learned Tribunal requires no interference so far as it relates to counting half of the period of service as casual labour. However, the

part of the order pertaining to upgradation in pay scale is concerned, the same is modified to the extent as indicated hereinabove.

29. Accordingly, the instant writ petition stands disposed of.

(Sujit Narayan Prasad, J.)

(Pradeep Kumar Srivastava, J.)

Saurabh/-