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O.A. No. 710 of 2006

Order dated: 21.10.2008

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member(J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

The applicant has filed this O.A. with the following reliefs:

- i) To declare that the Estt. Serial No. 239/80, dated 31.10.80 illegal and unconstitutional.
- ii) To declare that the applicant is entitled to regularization with effect from the date of appointment i.e. 24.12.1967 and the entire length of service be reckoned for the purpose of pension and gratuity.
- iii) To pay the consequential service benefits of pension, differential gratuity, EPF dues, CGEIS dues of the applicant."

2. The applicant was initially engaged as a casual Khalasi and thereafter he had <sup>been</sup> assigned the temporary status and got a pay scale w.e.f. 24.12.1967. The service of the applicant was also regularized as a Khalasi in the pay scale of Rs. 2550-3200/- w.e.f. 22.05.1985. His service in the Post of Khalasi was also confirmed subsequently. While he was working as Khalasi, the applicant wanted to retire on voluntary basis as per application dated 30.09.2000 and that was allowed. Subsequently, on calculating the entire period of service, which the applicant had in his account, has been taken into consideration and granted all the pensionary benefits. However, the applicant now submits that he is

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entitled to count the entire period of casual service to reckon for the purpose of pension and other service benefits.

3. Today, we have heard Mr. P.C.Jena, Ld. Counsel appearing for the applicant and Mr. S.K.Ojha, Ld. Standing Counsel for the Respondents.

4. Ld. Counsel for the applicant submits that the applicant is entitled to count entire period of casual service for reckoning his pension purpose and allow such benefits. The counsel also contended that as per the circular dated 31.10.1980, 50% of the casual service has to be counted for pensionary purpose and that is wrong, according to the counsel for the applicant, in the light of the judgment of the Apex Court. However, the counsel for the applicant is not presenting any such judgment of the Apex Court declaring that the circular, allowing 50% of the casual service with temporary status to be counted for pensionary purpose, is wrong.

5. The Ld. Counsel for the Respondents, Mr. S.K.Ojha, on the other hand, relying on the counter affidavit filed on behalf of the Respondents submits that the applicant, though engaged as a casual Khalasi, was assigned the temporary status and all his temporary/casual service have been counted as per the direction contained in the Circular No. 239/80 and hence the entire casual period of service has been counted though only 50% is taken for pensionary purpose. Ld. Counsel for the Respondents further submits that there is no judgment of the Apex Court, which nullifies the circular of 1980 whereas the same circular has

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been upheld by the Apex Court which is being followed by the Department.

6. The question to be considered in this O.A. is whether the applicant is entitled for the claim which he put forward in this Original Application. Admittedly, the applicant was admitted as a casual labourer and his service has been regularized only w.e.f. 1986 and till the period of his regularization, the casual service which he has already been considered, out of which 50% is counted for pensionary benefits.

7. In the above circumstances, we see no ground to interfere in this O.A. Hence the O.A. is dismissed as meritless. There shall be no order as to costs.

  
MEMBER (A)

  
MEMBER (J)