CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 124 of 2006

Thursday, this the 12th day of October, 2006

C O R A M :

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

1. M. Balan,
S/o. Chathukutty,
Retired Senior Gate Keeper,
Puthiyottumkandi, Meethal House,
Moodadi P.O., Via. Quilandy.

2. K. Haridas,
S/o. Raman,
Retired Senior Trackman,
Puthanattil House, Panthalayani,
Quilandi P.O.

3. Kelappan,
S/o. Chekkutty,
Retired Senior Gate Keeper,
Menontavalappil, Iringal P.O.,
Kozhikode District. ... Applicants.

(By Advocate Mr. B. Gopakumar)

v e r s u s

1. Union of India, represented by
The General Manager,
Southern Railway, Madras.

2. Senior Divisional Finance Manager,
Southern Railway, Palakkad.

3. Senior Divisional Personnel Officer,
Southern Railway, Palakkad. ... Respondents.

(By Advocate Mr. K.M. Anthru)

The Original Application having been heard on 5.10.2006, this Tribunal on 12.10.2006 delivered the following :

O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMEBR

The Railway Board, by order dated 14-10-1980, took the following decision:

> "As a result of representations from the recognised labour unions and certain other quarters, the Ministry of Railways had been considering the demand that the period of service in the case of casual labour (i.e., other than casual labour employed on projects) after their attainment of temporary status on completion of 120 days' continuous service, should be counted as qualifying service for pensionary benefits if the same is followed by their absorption in service as regular railway employees. The matter has been considered in detail in consultation with the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) and the Ministry of Finance. Keeping in view the fact that the aforesaid category of employees on their attainment of temporary status in practice enjoy more privileges as admissible to temporary employees such as they are paid in regular scales of pay and also earn increments, contribute to PF etc. the Ministry of Railways have decided, with the approval of the President, that the benefit of such service rendered by them as temporary employees before they are regularly appointed should be conceded to them as provided in the Ministry of Finance OM No. F.12(1)-EV/768 dated 14-5-1968. (Copy enclosed for ready reference.)
>
> The concession of counting half of the above service as qualifying for pensionary benefits, as per the OM of 14-5-1968 would be made applicable to casual labour in the Railways who have attained temporary status. The weightage for the past service would be limited from 1-1-1961 in terms of conditions of the OM *ibid*. Past cases of retirements before the date of this letter will not be reopened.
>
> 2. Daily-rated casual labour or labour employed on projects will not however, be brought under the purview of the aforesaid orders."

2. The Apex Court has after citing the above order, in the case of ***Union of India v. K.G. Radhakrishana Panickar***, *(1998) 5 SCC 111* held as under:

> ***"10.** The period of service rendered after attainment of temporary status but before absorption on regular temporary/permanent post was taken into account for the purpose of pensionary benefits for the first time by order dated 14-10-1980 whereby half of the period of service after attaining of temporary status was to be counted for the purpose of qualifying service for pensionary benefits."*

3. The above decision of the Apex Court has thus confirmed the validity of the order dated 14-10-1980.

4. With the above legal position, it has to be seen whether the applicants' case has been correctly dealt with by the respondents in working out the qualifying service for the purpose of pension and other terminal benefits.

5. The admitted facts in regard to casual labour, temporary status and regularisation of the applicants are as under:-

Status	*Applicant 1*	*Applicant 2*	*Applicant 3*
Temporary status	01/03/79	26/7/1977	21/10/1974
Regularization	11/10/79	21/04/1984	06/02/82
Superannuat-ion	30/06/2004	31/01/2005	31/05/2005
Last Pay Drawn	Rs. 6,488/-	Rs. 6150/-	Rs.6,488/-

6. The applicants on their superannuation were issued with P.P.O. fixing their pension, vide Annexures A-1 to A-3. For working out the extent of qualifying service, the respondents have taken into account the admissible

portion of casual labour service from the date of temporary service and the regular service, vide Annexures A-7 to A-9. According to this calculation, the qualifying service of the applicants comes to respectively, 29 years, 24 years and 27 years. The said annexures also contain the working of gratuity under the service rules applicable to the applicants.

7. The grievance of the applicants is that their casual labour service being respectively from 01-03-1977, 26-07-1977 and 21-10-1974, qualifying service should be counted from that date onwards till the date of superannuation in which event, the qualifying service would work out to 33 years, 28 years and 31 years respectively, which would, if taken into account, result in higher rate of pension and other terminal benefits. In support of the same the applicants have relied upon the decision dated 06-08-2003 of the Hon'ble High Court of Kerala in OP 3335/1998, A.P. Hussain vs. Union of India and 3 Others.

8. Another grievance of the applicants is that they have not been paid the gratuity as per Payment of Gratuity Act. And, in support of their claim, the applicants have relied upon the decision dated 10th September, 2002 of the Hon'ble High Court of Kerala in OP No. 24781/2002 (S), The Senior Divisional Personnel officer & 2 Others vs. K. Mariam and Another.

9. The respondents have contested the O.A. According to them, the qualifying service of the applicants has been worked out in accordance with the provisions of Railway Board circular dated 14-10-1980 in respect of casual

labour service, which provides for 50 of such service to be accounted for as qualifying service and the same together with regular service would be the total qualifying services. As regards the decision relied upon by the applicants, the respondents contended that the said decision related to payment of pension to the petitioner therein, which in fact in the case of the applicants has already been made available and thus, the said decision does not apply to the case of the applicants herein. As regards the claim for payment of gratuity under Payment of Gratuity Act, the respondents contend that the said provisions do not apply as the service for which the applicants claim the gruatuity under that Act has already been taken into account for working out qualifying service in accordance with the extant provisions and in any event, the same cannot be agitated against by the applicants in this forum.

10. The counsel for the applicants argued that the impugned orders are diagonally opposite to the decision of the Hon'ble High Court referred to above and the applicants' full service from the date of their temporary status till the date of their superannuation should be taken into account as qualifying service and simultaneously, they should also be granted gratuity under the Payment of Gratuity Act, as held in the other case relied upon by them.

11. Per contra, the counsel for the respondents argued that qualifying service has been correctly worked out in accordance with the provisions of order dated 14-10-1980 and as such, the entire service of casual labour cannot be taken into account. It has also been argued by the counsel for the respondents that

the judgment in OP 3335/1998 relied upon by the applicants was passed when the respondents did not file any reply and hence it may not be appropriate to treat the said judgment as a precedent. As regards gratuity under the Payment of gratuity Act, the counsel submitted that the service of the applicants having already taken into account for working out qualifying service for pension and gratuity and the same having also been paid, the question of gratuity under the Payment of Gratuity Act does not arise and even if there is any right for the applicants in this regard, the applicants have to claim the same from a different forum.

12. Arguments have been heard and documents perused. The legal position is clear. Casual labour service (that too after temporary status) shall reckon only to the extent of 50% for working out qualifying service. Annexure A-7 to A-9 has correctly been worked out in respect of all the applicants and the same cannot be faulted with. In so far as the judgment relied upon by the applicants is concerned, the same too is not of much assistance to the applicants. For, in that case, as the date of temporary status ~~in that case~~ was 01-01-1981, in all probability the petitioner therein must have been a casual labourer in a Project as it was in respect of Project casual labourers, after *Inder Pal Yadav's*, (1985) 2 SCC 648, judgment was pronounced, that the scheme of grant of temporary status was first introduced from 01-01-1981. In this regard reference may be made to the judgment of the Apex Court in the case of K.G. Radhakrishna Panicker (supra) wherein the Apex Court has held as under:-

"As regards Project Casual Labour this benefit of being treated as

temporary became available only with effect from 1-1-1981 under the scheme which was accepted by this Court in Inder Pal Yadav[1]. Before the acceptance of that scheme the benefit of temporary status was not available to Project Casual Labour. It was thus a new benefit which was conferred on Project Casual Labour under the scheme as approved by this Court in Inder Pal Yadav[1] and on the basis of this new benefit Project Casual Labour became entitled to count half of the service rendered as Project Casual Labour on the basis of the order dated 14-10-1980 after being treated as temporary on the basis of the scheme as accepted in Inder Pal Yadav[1]. We are, therefore, unable to uphold the judgment of the Tribunal dated 8-2-1991 when it holds that service rendered as Project Casual Labour by employees who were absorbed on regular permanent/temporary posts prior to 1-1-1981 should be counted for the purpose of retiral benefits and the said judgment as well as the judgment in which the said judgment has been followed have to be set aside. The judgments in which the Tribunal has taken a contrary view have to be affirmed.

13. The above judgment has also referred to taking into account 50% of casual labour service vide para 11 of the judgment. Thus, what was made available to the petitioner in the said petition was that the respondents shall take into account the entire casual labour service plus regular service and work out the qualifying service in accordance with law and grant the pension to the applicant. In that case, the petitioner was engaged as casual labourer in 1974. granted temporary status w.e.f. 1981 and superannuated in 1997. Thus, in his case the period of qualifying service would work out to 50% of the period from 1974 to 1980 and entire service from 1981 till the date of superannuation. In the case of the applicants herein, the qualifying service has been already rightly worked out and as such, the decision in the case of A.P. Hussain (supra) does not help the applicants.

14. In so far as payment of gratuity under the Payment of Gratuity Act is concerned, the applicants have thoroughly misunderstood the judgment of the Hon'ble High Court. The High Court has held, "*If the benefits under the Payment of Gratuity Act is better, they can choose that. If the benefit under the Service Rules with regard to the payment of gratuity is better, they can receive the benefits under the Service rules..... the employees are entitled to get the payment of pensionary benefits and retirement benefits on the basis of the Service Rules* ***or Payment of Gratuity Act whichever is beneficial and they are not entitled to gratuity at the time when their status of casual labourers is changed into regular service." (emphasis supplied).*** In the instant case, the casual labour service having been converted into regular service in the ratio of 2:1, and the applicants ~~have~~ having been paid the pension and other terminal benefits including DCRG on the basis of the qualifying service, the question of payment of gratuity under the Payment of Gratuity Act does not arise.

15. In view of the above discussion, the OA fails and is therefore, dismissed. No costs.

(Dated, the 12th October, 2006)

K B S RAJAN
JUDICIAL MEMBER

cvr.