



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 788 of 2014

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

1. Smt. Bimala Balmiki,
Wife of Late Sarwan Balmiki,
Aged about 45 years,
By Profession Housewife,

2. Shri Bikash Balmiki,
Son of Late Sarwan Balmiki,
Aged about 28 years,
By Profession Unemployed,

Both of them are residing at
33, Eden Hospital Lane,
Service Quarters Block No. 'C',
Room No. 318,
Kolkata - 700 073.

- VERSUS -

1. Union of India,
Service through the Secretary,
Ministry of Minority Affairs,
New Delhi - 110 001.

2. The Deputy Commissioner & HOD,
Office of the Commissioner for Linguistic
Minorities in India,
40, Amarnath Jha Marg,
Allahabad - 211 002.

3. Pay & Accounts Officer,
Ministry of Minority Affairs,
New Delhi - 110 001.

4. The Assistant Commissioner for Linguistic
Minorities (Eastern Zone), 67, Bentick Street,
4th Floor, West Wing,
Kolkata - 700 069.

.. Respondents

For the Applicants : Mr. J.R. Das, Counsel

For the Respondents : Ms. M. Bhattacharyya, Counsel

Order dated: 1.6.16.

ORDER

This application has been filed seeking the following reliefs:-

- i) Leave may be granted to file this application jointly under Rule 4(5)(a) of CAT (Procedure) Rules, 1987.
- ii) An order directing the respondents to cancel, rescind, withdraw or set aside the purported order by the respondents being dated 26.3.2014 holding the case of the applicants being finally rejected and accordingly consider the case of the applicants for pensionary benefits and consequential benefits as admissible under the provision of law.
- iii) An order directing the respondents to release the due family pension along with issuance of PPO for such pension in favour of applicant No. 1 w.e.f. 15.8.2011 being the date of death of deceased employee.
- iv) An order directing the respondents to grant compassionate appointment to either of the sons of the deceased employee in place and stead of their deceased father, since died in harness on 15.8.2011 and already prayed for.
- v) An order directing the respondents to place all the relevant records before the Hon'ble Bench for conscionable justice.
- vi) Any other or further order/orders as to this Hon'ble Tribunal may seem fit and proper.

And your applicant, as in duty bound, shall ever pray."

2. The case of the applicant in a nut shell is that the husband of applicant No. 1 and father of applicant No. 2 late Sarwan Balmiki belonged to Scheduled Caste Community. He was working as Farrash-cum-Sweeper under the Dy. Commissioner of Linguistic Minorities in India and was posted in the office of Assistant Commissioner for linguistic Minorities, Calcutta. He was granted temporary status as a casual labour under the scheme of grant of temporary status and regularisation on and from 1.9.1993. Thereafter the said Sarwan Balmiki applied for regularization on 11.9.1996 and breathed his last on 15.8.2011 after 29 years of continuous service. Applicant No. 1 prayed for death benefits such as P.F, gratuity leave encashment and family pension were disallowed on the ground that the employee was not regularized before his death, by a letter

dated 26.3.2014 which was not only irregular but also in contrary to different orders of Hon'ble Courts including the Hon'ble Apex Court of India that unambiguously held that the widow of Casual labour with temporary status is due for family pension alike the widow of a temporary employee as per rule.

3. The respondents in their reply have dispelled the claim on the ground that the employee being a Casual labour on temporary status, his widow was not entitled to family pension, gratuity, leave encashment etc. Therefore, the question that fell for consideration was whether a widow of a Casual Labour with temporary status was entitled to family pension and other death benefits of the employee?

4. During the course of argument, Ld. Counsel for the applicant strenuously urged that 29 long years of service would make him eligible for family pension in terms of the decision rendered in O.A. No. 284 of 2005 by the Principal Bench in view of **Gita Rani Santra v. Union of India & other reported in (1997-2001) AT FBJ 295**, that a widow of a Casual worker who had served with temporary status for a minimum period of 20 years would be entitled to family pension, and **Ram Kumar & other v. Union of India & others reported in 1996(1) SLJ (CAT) 116** that if a temporary status Casual Labour in Railway was entitled to pension his widow definitely would be entitled to family pension, as also **S.K. Mastan Bee [2003 SCC (L&S) 93]**, following which the Principal Bench had held that family pension could not be denied due to a delay of 11 years.

5. Ld. Counsel further referred to a decision rendered by Hon'ble High Court in **Rukhiben Rupabhai v. Union of India & ors. in Civil Appeal Nos. 4776, 5641 and 5770 of 2004** where the Hon'ble Court formulated the following questions:-

"16. According to the learned Counsel for the parties, the question for determination is whether the widow of a casual labourer with temporary status' is entitled to family pension and whether position in case of

'substitute' is different."

The Hon'ble Court delved indepth into the various provisions of the Railway Manual and the decisions rendered in regard to Casual Labours with temporary status, their rights to pension and the rights of their widows to family pension.

The Hon'ble Court concluded as follows:-

"39. In the backdrop of these circumstances and the submissions advanced for our consideration, the irresistible and legitimate conclusion is that when casual labourer has served for requisite period continuously, he has to be treated temporary. in other words, he is a 'temporary railway servant.' This is incidence of statutory provision and judicial pronouncements. Having acquitted this status, he is entitled to pension, and other consequential benefits on superannuation, and on his demise in harness or after superannuation his widow becomes entitled to family pension. Regularisation against a permanent post made on availability or creation of a permanent post, may be there, but pensionary right do not depend on regularisation/confirmation, of course, whether such posts are available or not, employee should be deemed to have become permanent, since laxity in this regard on the part of the employer should not militate against the right of the employee. Describing of an employee 'casual/temporary status/and depriving him statutory and constitutional rights under Arts. 14, 16, 21, 41 and 42. Therefore, appointment against permanent post along with colleagues as per seniority in the Department, which, he is deemed to be appointed against the available post. Circular dated September 11, 1986 is against decision of Apex Court in Inder Pal Yadav case (supra), therefore, illegal, and cannot be given effect to by the Railways changing the position of 'casual labour' from 'temporary casual labour' to 'casual labour with temporary status'.

40. Substitutes, if absorbed against regular posts, would be entitled to pensionary benefits. In case they were holding temporary status before appointment as substitutes they shall be treated 'temporary railway servants'. The period spent by them as casual labour, before appointment as substitute shall be counted for acquiring status of 'temporary railway servant' thereby, becoming at par with other temporary railway servants for pensionary benefits and his widow to family pension. The contentions advanced by learned Counsel for the petitioners are accepted and those of the respondents rejected. The casual workers attain the status of 'temporary railway servant' and are further entitled to regularisation against available posts would not deprive them of retiral pension. Their widows/widowers, on his/her demise, whether during service or after superannuation, would be entitled to family pension, same would be the position of the substitute, in the circumstances discussed above."

(emphasis supplied)

6. Citing the aforesaid proposition the Ld. Counsel for the applicant would

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argue that the present applicant being the widow of the deceased Casual Labour with temporary status who had served the organisation for more than 29 years would be eminently eligible for family pension and other death benefits.

7. To the advantage of the applicant the respondents have emphatically admitted that the employee "Sarwan Balmiki could not be regularised as no Gr. 'D' post was lying vacant in the office during his tenure".

8. Ld. Counsels were heard and materials on record were perused.

9. In view of the clear finding of the Hon'ble Gujrat High Court in Rukhiben Rupabhai (supra) that "the pensionary right would not depend on regularisation /confirmation and availability of posts and that the employee should be deemed to have become permanent since laxity on the part of the employer should not militate against the right of the employee" which binds this Tribunal and in view of the fact that the applicant admittedly rendered 29 years of service as Casual Labour with temporary status, I am of the considered view that the case of the present applicant inarguably and indubitably squarely fits into the factual matrix of the cited decision and as such she would be entitled to relief identical to that of the widow, Rukhiben Rupabhai and other widow who are parties to the decision.

10. In view of the above enumerations supra the impugned order is quashed.

11. Consequently, the respondents are directed to consider the case of the present applicant in the light of the decision supra for appropriate orders in accordance with the said decision within three months. In regard to prayer (iv) the applicant would be at liberty to file separate application.

12. This O.A. is, accordingly, disposed of. There shall be no order as to costs.

(Bidisha Banerjee)
Judicial Member