

PRABHAVATI DEVI
v.
UNION OF INDIA AND ORS.

NOVEMBER 16, 1995

[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

Service Law :

Indian Railway Establishment Manual/Manual of Railway Pension Rules:

Paragraphs 2311(3)(b), 2315, 2318/R.801—Family Pension—Grant of to family of ‘substitute’—Husband of claimant died after having worked as ‘substitute’ for more than three years—Claim for gratuity and family pension—Railways granting gratuity but denying family pension—Held, deceased having worked as substitute continuously beyond six months had acquired temporary status before his demise—His wife and children were entitled to family pension.

The husband of the appellant worked with the Railways initially as a casual worker and later as a ‘substitute’ with effect from 27.4.1983 till 5.1.1987 when he died. The Railways though paid the appellant the gratuity, denied to her the family pension. Being unsuccessful before the Central Administrative Tribunal, she filed the present appeal.

Allowing the appeal, this Court

HELD : 1.1. The Tribunal was not right in dismissing the claim of family pension to the wife and children of the deceased. It overlooked the chain in consequence—making the worker acquire a temporary status and on his demise, his wife and children acquiring the right to claim family pension. [423-D-E]

1.2. Appellant’s husband worked as a substitute continuously beyond six months and as such had acquired, before his demise, rights and privileges admissible to a temporary Railway servant, as envisaged by para 2318 of Indian Railway Establishment Manual. Having become a temporary servant in this manner, on his demise, his wife and children became eligible to family pension under the provisions of para 2311(3)(b) of Establishment

A Manual and Rule 801 of the Manual of Railway Pension Rules. The Railways shall work out the pension accordingly. [422-G-H; 423-A-B; E-F]

L. Robert D'Souza v. Ex. Engineer, Southern Railway and Anr., [1982] 1 SCC 645 and *U.O.I. and Ors. v. Basant Lal and Ors.*, JT (1992) 2 SC 459, relied on.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10492 of 1995.

From the Judgment and Order dated 15.1.91 of the Central Administrative Tribunal, Patna in Registration No. O.A. No. 228/89.

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Vidya Bhushan Misra for H.A. Raichura (NP) for the Appellant.

R.R. Misra, A.K. Sharma and V.K. Verma for the Respondents.

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The following Order of the Court was delivered :

Leave granted.

Heard learned counsel for the parties.

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The appellant herein is the widow of late Bipin Kumar Rai who was a temporary Railway servant in this manner : He, initially, was taken in the Railway Establishment as a casual worker; and w.e.f. 27.4.83 he acquired the status of a 'substitute'. According to the definition given in Rule 2315 of the terms and conditions applicable to 'substitutes' in temporary service, they are persons engaged in the Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.

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The deceased kept working as a 'substitute' till 5.1.87 when he died. But, before his demise, he came to acquire certain rights and privileges under Rule 2318 of the Rules applicable to Railway Establishments. The said rule provides that substitutes shall be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time, on completion of 6 months' continuous service. Indubitably, the

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deceased had worked beyond 6 months and that too continuously. Having

become a temporary servant in this manner, he became entitled to family pension under sub-rule 3(b) of Rule 2311; whereunder it is provided that the widow/minor children of a temporary Railway servant, who dies while in service after a service of not less than 1 year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules. Further, in their case the amount of death gratuity admissible will be reduced by an amount equal to the employee's 2 months' pay on which the death gratuity is determined. The Railways have paid to the appellant gratuity under this sub-rule, but have denied to her the family pension. Her claim before the C A T, Patna Bench, Patna, was dismissed which has culminated into this appeal.

On the acquisition of temporary status derived in the manner stated above, it is difficult to sustain the orders of the Tribunal and to deny family pension to the widow and children of the deceased. See in this connection for support *L. Robert D'Souza v. Ex. Engineer, Southern Railway and Anr.*, [1982] 1 SCC 645 and *U.O.I. and Ors. v. Basant Lal and Ors.*, JT 1992 (2) SC 459. We have put the proposition to the learned counsel appearing for the Railways but he is unable to support the orders of the Tribunal; overlooking as it does the chain in consequence, making the deceased acquire a temporary status and on his demise his widow and children acquiring the right to claim family pension.

We, thus, allow this appeal; set aside the impugned orders of the Tribunal and allow the claim to family pension as projected by the appellant. We also direct the railway to work out the pension due within 2 months from today and deliver the pension as also the arrears to the appellant within 15 days thereafter, if not earlier and also pay interest at the rate of 12% per annum from the date it was due till payment.

The appellant shall get her costs throughout.

R.P.

Appeal allowed.