

*Before M. M. Kumar & Jitendra Chauhan, JJ.*

**UNION OF INDIA & OTHERS,—Petitioners**

*versus*

**BRIJ LAL AND ANOTHER,—Respondents**

**CWP No. 16046 of 2009**

9th March, 2010

*Constitution of India, 1950—Art. 226—Railways Services (Pension) Rules, 1993—Rl 31—Appointment as casual labourer—Regularization of services— Superannuation—Retiral benefits— Non-consideration of counting of service rendered as casual labourer as qualifying service—Rl. 31 provides that preceding period followed by regularization is required to be counted to the extent of half service as qualifying service for purposes of retiral benefits— Respondent held entitled to reckon half period of service rendered as casual labourer as qualifying service for purposes of retiral benefits—Petition allowed partially.*

*Held*, that the service rendered by the respondent applicant was being paid from contingency and it involves whole time employment and it was a perennial in nature. It has also remained undisputed that in the matter of pay the respondent-applicant was being paid similar emoluments which were being paid to the staff on regular employment. The respondent-applicant also fulfill the last condition that the service of contingency has been continuous which was followed by regularization as per order dated 15th January, 1977. Accordingly, as per the provisions of Rule 31 of the rules, the respondent-applicant would become entitled to count half of the service from 9th September, 1969 to 14th January, 1977 to be reckoned as qualifying service for the purposes of retiral benefits. It follows that the order of the Tribunal to that extent is liable to be set aside as it ordered counting of the entire period instead of the half period as contemplated by Rule 31 of the rules. Therefore, the writ petition filed by the Union of India is liable to be accepted partially.

(Para 6)

Amit Kumar, Advocate *for the petitioners.*

D. R. Sharma, Advocate, *for respondent No. 2.*

**M. M. KUMAR, J.**

(1) This petition under Article 226 of the Constitution filed by the Union of India is directed against order dated 28th April, 2009 (P-2) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity 'the Tribunal') in OA No. 751 HP of 2007 whereby the Tribunal has issued direction to the petitioners to reckon the service rendered by the respondent as Casual Labourer from 9th September, 1969 to 14th January, 1977 as qualifying service for pensionary benefits.

(2) Brief facts of the case are that respondent was initially appointed as a Project Casual Labourer-Helper on 9th September, 1969 with the Railways in the Constuction Organisation. His services were regularised on 15th January, 1977 as Gangman (Group 'D') and he superannuated on 31st March, 2007. The respondent was given retiral dues in respect of regular service for the period 15th January, 1977 to 31st March, 2007. However, the period of more than seven years spent by the respondent as a Casual Labourer-Helper was not considered as qualifying service. Aggrieved by the refusal to count the service rendered as Casual Labourer-Helper as qualifying service for the purpose of retiral benefits, the respondent-applicant approached the Tribunal with a prayer for issuance of directions that the whole service rendered by him from 9th September, 1969 to 14th January, 1977 be considered as qualifying service. The Tribunal recorded a categorical finding that the instructions dated 11th September, 1986 (R.I) relied upon by the petitioner were not attracted as those instructions were confined to such persons who have retired on or before 1986. It is admitted as a fact that the respondent-applicant was not ever conferred with the temporary status. The Tribunal placed reliance on the Railways Services (Pension) Rules 1993 (for brevity 'the Rules') and recorded the following findings in paras 9 and 10 of its order :

“9. We have given due thought and consideration to the rival contentions raised on both sides. We are of the view that instructions relied upon by the respondents do not apply in the case of the applicant as these are applicable to those who retired

on or before 1986. As admittedly the applicant was regularised as a Gangman in Group 'D' in 1977 in the open line, so he is governed by the pension rules. Under the Railway Services (Pension Rules), no differentiation is made between the Project Labourers and the Open Line Labourers for counting the service rendered by them on casual or work charged basis prior to regularisation. Obviously, applicant in the present case is an appointee of 1969 and the Railway Board instructions dated 2nd August, 1968 would apply in his case which *inter alia* provides that half the service paid from contingencies will count towards pensionary benefits at the time of absorption in regular employment.

10. This Court further finds that the case of the applicant is also supported by the various decisions relied upon by the applicant in which law has been laid down that daily wage work charged/ contingency paid service, rendered prior to regularisation, is liable to be counted for the purpose of pension and gratuity."

(3) It is pertinent to mention that after recording the finding that the petitioners would be entitled to reckon half of the service spent as Casual Labourer-Helper the Tribunal committed an error while granting the relief in para 11 as whole service has been ordered to be considered as qualifying service. The aforesaid para of the Tribunal reads as under :

"11. Consequently, this OA is allowed. The respondents are directed to reckon the service rendered by the applicant as Casual Labourer from 9th September, 1969 to 14th January, 1977 as the qualifying service for pensionary benefits. The respondents are further directed to recalculate his retiral dues by taking into account the aforesaid service rendered by the applicant and shall pay the consequential dues within a period of three months from the date of receipt of a copy of this order."

(4) After hearing learned counsel for the parties, we are of the view that the aforesaid error committed by the Tribunal in para 11 of the impugned order would not be sustainable because any such direction for

counting the whole service paid from contingency would be in violation of Rule 31 of the Rules. It would, therefore, be pertinent to read Rule 31 of the Rules, which is as under :

**“31. Counting of service paid from contingencies.**

In respect of a railway service, in service on or after the 22nd day of August, 1969, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, subject to the following conditions namely :—

- (a) the service paid from contingencies has been in a job involving whole time employment ;
- (b) the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned as posts of malis, chowkidars, and khalasis ;
- (c) the service should have been such for which payment has been made either on monthly rate basis or on daily rate computed and paid on a monthly basis and which, though not analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments ;
- (d) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break.”

(5) A perusal of the above Rule shows that it covers the period after 22nd August, 1969 if the casual labourer has been paid from contingency. The preceding period followed by regularisation is required to be counted to the extent of half the service as qualifying service for the purposes of retiral benefits. There are further conditions imposed if half of the service is to qualify for pension and retiral benefits. Firstly, the service is required to be paid from contingencies and it involves whole time employment. Secondly, the service is required to be of such a nature for which regular posts could have been sanctioned such as posts of malis, chowkidars and

khalasis. The third condition is that the payment for such service has been made either on monthly rate basis or on daily rate computed and paid on monthly basis and should have some relation in the matter of pay to those who have similar job working in the regular establishment and lastly such service is required to be continuous and followed by absorption in the regular employment without a break.

(6) When the aforesaid rule is applied to the facts of the present case it becomes evident that the service rendered by the respondent-applicant was being paid from contingency and it involves whole time employment and it was a perennial in nature. It has also remained undisputed that in the matter of pay the respondent-applicant was being paid similar emoluments which were being paid to the staff on regular employment. The respondent-applicant also fulfil the last condition that the service of contingency has been continuous which was followed by regularisation as per order dated 15th January, 1977. Accordingly, as per the provisions of Rule 31 of the rules, the respondent-applicant would become entitled to count half of the service from 9th September, 1969 to 14th January, 1977 to be reckoned as qualifying service for the purposes of retiral benefits. It follows that the order of the Tribunal to that extent is liable to be set aside as it ordered counting of the entire period instead of the half period as contemplated by Rule 31 of the rules. Therefore, the writ petition filed by the Union of India is liable to be accepted partially.

(7) As a sequel to the aforesaid observations, the writ petition is allowed and the direction given by the Tribunal in para 11 of the impugned order is set aside. It is held that the respondent-applicant would be entitled to reckon half period of service rendered by him as a casual labourer from 9th September, 1969 to 14th January, 1977 as qualifying service for the purposes of retiral benefits. The petitioners are directed to calculate the same and pay to the respondent-applicant within a period of three months from the date of receipt of copy of this order alongwith interest @ 9% per annum as has been held by Full Bench of this Court in the case of **R. S. Randhawa versus State of Punjab (1)**.

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**R.N.R.**