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UNION OF INDIA AND ORS.

v.

RABIA BIKANER ETC.

JULY 7, 1997

B

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

*Service Law :*

C

*Family Pension Scheme for Railway Employees, 1964—Casual labourer—Obtaining status of temporary workman after putting six months service—Death of workman before appointment to temporary post—Widow claiming family pension—Held, respondent-widow not entitled to family pension—However, if any amount has been paid to her pursuant to orders of Tribunal, the same may not be recovered.*

D

*Ram Kumar v. Union of India, [1988] 2 SCR 138 and Union of India v. Sukanti & Anr., 97 (5) SCALE 494, relied on.*

*Prabhavati Devi v. Union of India, [1996] 7 SCC 27, held inapplicable.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal NO. 4373 of 1997 Etc.

From the Judgment and Order dated 8.3.96 of the Central Administrative Tribunal Jodhpur in O.A. No. 474 of 1994.

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A.M. Singhvi, Additional Solicitor General, H.L. Aggarwal, A.D.N. Rao, Arvind Kr. Sharma, Anubha Jain, S.W.A. Qadri, Indra Sawhney, D.P. Mukherjee, B.K. Gupta, Nandini Mukherjee, S.K. Srivastava, K.L. Janjani, Sumant Bhardwaj, Devender Kr., G.L. Deveney and Mridula Ray Bhardwaj, for the appearing parties.

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The following Order of the Court was delivered :

Leave granted.

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The question of law that arises for determination is: whether the widow of a casual labourer in Railway Establishment, who died after putting in six months' service and obtaining the status of a temporary workman but before his appointment to a temporary post after screening

is entitled to family pension under the 1964 Family Pension Scheme? This question was considered by a Bench of this Court in *Ram Kumar v. Union of India*, [1988] 2 SCR 138 at 144. This Court had held thus : A

"It is the stand of the learned Additional Solicitor General that no pensionary benefits are admissible even to temporary railway servants and, therefore, that retiral advantage is not available to casual labour acquiring temporary status. We have been shown the different provisions in the Railway Establishment Manual as also the different orders and directions issued by the Administration. We agree with the learned Additional Solicitor General that retiral benefit of pension is not admissible to either category of employees." B C

The Railway Board in its letter bearing S. No. 3214-Circular No. 720-E/0-IX (Pension) dated October 26, 1965 after examining the question, had stated that "the Family Pension Scheme for Railways employees, 1964 is applicable in the case of regular employees on pensionable establishment. Since the casual labourers will be brought on to the pensionable establishment only on their absorption against regular temporary posts, it follows that they will come under the purview of the scheme from the date of their absorption against the regular temporary posts. In other words, the benefits of the Family Pension Scheme for Railway Employees, 1964 will be admissible in the case of death of such an employee while in service, only if he had completed a minimum period of one year's continuous service from the date he was absorbed against a regular temporary post". D E

It is contended by the learned counsel for the respondent-widows that under paragraph 2511 - "Rights and Privileges admissible to the casual labourers who are treated as temporary after completion of six months continuous service" - of the Railway Establishment Manual, they are entitled to family pension. We find it difficult to give acceptance to the contention. It is seen that every casual labourer employed in the railway administration for six months is entitled to temporary status. Thereafter, they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On their appointment, they are also required to put in minimum service of one year in the temporary post. In view of the above position, if any of those employees who had put F G H

- A in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his widow would be eligible to pension under the Family Pension Scheme, 1964. In all these cases, though some of them have been screened, yet appointments were not given since the temporary posts obviously were not available or in some cases they were not even eligible for screening because the posts become available after the death. Under these circumstances, the respondent-widows are not eligible to the family pension benefits.

- C The learned counsel strongly relied upon the judgment in *Prabhavati Devi v. Union of India*, [1996] 7 SCC 27. Therein, the facts were that from the year 1981 to April 27, 1993, the husband of the appellant had worked as casual worker and obtained the status of substitutes who were working, as defined under Rule 2315 of the Railway Establishment Manual, in a regular establishment on a regular scale of pay and allowances applicable to those posts in which they were employed. Since he died while working in the regular post, his widow became eligible to claim the benefits of the pension scheme. Thus, in that case, the appellant's husband was a substitute working in a regular scale of pay in the railway establishment. Obviously, he was screened and was also appointed to the temporary status but instead of being given appointment to a temporary post, he was treated as substitute and appointed to the vacancy when the regular candidates went on leave. Under these circumstances, this Court had held that widow of such employee is entitled to the benefit of the family pension. The above ratio is inapplicable to the cases referred to hereinbefore. The question also was considered in a recent judgment of this Court in *Union of India v. Sukanti & Anr.*, SLP (C) No. 3341/93 etc. decided on July 30, 1996 wherein relying on the ratio in *Ram Kumar's* case this Court held that no retirement benefit was available to the widow of the casual labour who had not been regularised till his death. Thus, we hold that the view taken by the Tribunal in granting the pensionary benefits to the respondents is clearly illegal.

- G The appeals are accordingly allowed and the O.As. stand dismissed, but in the circumstances, without costs. However, if any amounts have already been paid pursuant to the orders of the Tribunal, the same may not be recovered from them.

R.P.

Appeals allowed.