

ITEM NO.201

COURT NO.7

SECTION XVI

S U P R E M E      C O U R T   O F      I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).20041/2008

(From the judgement and order dated 12/12/2007 in      CWJC No.9604/2006  
of The HIGH COURT OF PATNA)

UNION OF INDIA &amp; ORS.

Petitioner(s)

VERSUS

SARJU

Respondent(s)

(With prayer for interim relief and office report )  
(for final disposal)

WITH SLP(C) NO. 13709 of 2009

SLP(C) NO. 14690 of 2010

(With appln. for c/d in filing SLP and office report)

SLP(C) NO. 35934 of 2009

(With appln. for c/d in filing SLP and office report)

SLP(C) NO. 35936 of 2009

(With appln. for c/d in filing SLP and office report)

Date: 30/09/2011      This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s)      Mr.    B.Bhattacharya,ASG.  
                                 Mr.    K.K.Sharma,Sr.Adv.  
                                 Ms.    Praakriti Purnima,adv.  
                                 Mr.    Arvind Kumar,Adv.  
                                 Mr.    J.K.Mishra,Adv.  
                                 Mr.    A.K.Sharma,Adv.  
                                 Mr.    Ajay Sharma,Adv.  
                                 Mr.    Judy James,Adv.  
                                 Mr.    Ajay Singh,Adv.  
                                 Ms.    Nimisha Swarup,Adv.  
                                 Mrs    Anil Katiyar,Adv. on Record(NP)  
                                 Ms.    Sushma Suri,Adv. on Record (NP)

For Respondent(s)      Mr. Abhishek Vikas,Adv.for  
                                 Mr. T. Mahipal,Adv.

2

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

Four      of      the      above      noted      five      special      leave

petitions are directed against the orders passed by the

different      Division      Benches      of      the      Patna      High      Court

dismissing the writ petitions filed by the petitioners

against      the      directions      given      by      the      Central

Administrative Tribunal, Patna Bench (for short, 'the Tribunal') for counting the service of the respondents with effect from the date they were given temporary status till the date of superannuation for the purpose of calculation of pension and other retiral benefits. SLP(C) No.35934 of 2009 is directed against the order of the High Court which upheld the direction given by the Tribunal for counting of casual and temporary service for the purpose of payment of retiral benefits.

Sarju (respondent in SLP(C) No. 20041/2008) was engaged as casual labour on 17.1.1960. He was given temporary status with effect from 1.1.1981 and regularised with effect from 1.4.1988. On attaining the age of superannuation, he was retired from service on 30.11.2001. The application filed by him under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act') for counting his temporary

3

service as part of qualifying service for the purpose of calculation of the retiral benefits was disposed of by the Tribunal vide order dated 1.3.2006, the operative portion of which reads as under:

"In view of the law laid down by the Hon'ble Andhra Pradesh High Court as well as C.A.T., Cuttack Bench, there is no basis/ground to take different view. In the result, the O.A. is allowed. The respondents are directed to recalculate the pension with arrears from due date (the date of superannuation) with all incidental benefits after counting the full service from the date of grant of temporary status i.e. 1.4.1981. These exercises should be completed within a period of four months from the date of receipt of a copy of this order. There shall be no order as to cost."

Ishwar Nand Mishra (respondent in SLP(C) No. 13709/2009) was engaged as casual labour in 1966. He was granted temporary status with effect from 10.3.1971 and was regularised with effect from 27.5.1981. After

attaining the age of superannuation, he filed an application for counting his past service for the purpose of pension etc., which was disposed of by the Tribunal vide order dated 16.1.2008, the operative portion of which reads as under:

"In view of the law laid down by the Hon'ble Andhra Pradesh High Court as well as CAT, Cuttack Bench, and Patna bench there is no basis/grounds to take a different the pension with arrears from due date (the date of superannuation) with all incidental benefits after counting the full service from the date of grant of temporary status i.e. 15.3.1971. The exercise should

4

be completed within a period of four months from the date of the receipt of a copy of this order, No order as to the costs."

Mani Kant Jha (respondent in SLP(C) No. 35934/2009) joined service as casual labour on 30.7.1973. He was granted temporary status with effect from 1.1.1981 and was absorbed on regular basis with effect from 1.4.1988. After attaining the age of superannuation with effect from 30.6.2005, the respondent filed O.A. No. 505/2005 for issue of a direction to the petitioners herein to count his past service as part of qualifying service for the purpose of calculation of retiral benefits. The same was disposed of by the Tribunal vide order dated 29.11.2006, the operative portion of which reads as under:

"In the result, this application is allowed. The respondent No.2 and 3, namely the Chief Administrative Officer [Con] E.C. Railway, Mahendrughat, Patna and the Chief Personnel Officer, E.C. Railway, Hazipur, are hereby directed to get the qualifying period of service of the applicant, for the purposes of pensionary benefits, calculated afresh adding thereto the entire period of service undergone by the applicant under temporary status and half period of service undergone as casual labourer and then to have the pensionary benefits calculated thereupon afresh. This should be done within three months of the receipt of a copy of this order whereafter the arrears of retiral benefits including of the

pension, should be paid within one month, eligible failing which the amount of unpaid arrears would be payable with interest @9% per annum starting from the date of expiry

5

of the period of four months after receipt of a copy of order, till the amount is paid."

Chanarik and 4 others (respondents in SLP(C) No.

35936/2009) were initially engaged as CPC/Gangmen. They were given temporary status with effect from 26.12.1985, 25.1.1986 and 14.2.1986 respectively.

After superannuation from the service, they filed O.A.

No. 260/2005 for issue of a direction to the petitioners herein to count their total service as part of qualifying service for the purpose of payment of retiral dues. The same was disposed of by the Tribunal

vide order dated 2.9.2005, the operative of which reads as under:

"In the result, this OA is allowed. The respondents are directed to grant pension with arrears from due date (date of superannuation), with all incidental benefits, after counting the full service from the date of grant of temporary status i.e. 26.12.1985, 25.1.1986, 26.12.1985, 14.2.1986 and 26.12.1985 respectively."

Ram Barai (respondent in SLP(C) No. 14690/2010)

was initially engaged as Casual Labour/Gangman on 17.4.1967. He was granted temporary status with effect from 11.11.1990 and was regularised with effect from 18.9.1995. After superannuation from service, he filed

O.A. No. 97/2006 for counting his total service for the purpose of retiral benefits.

The same was disposed of by the Tribunal vide order dated 31.8.2007, the

6

relevant portion of which reads as under:

"I have considered the rival view points carefully. In view of the judicial pronouncements of Hon'ble Andhra Pradesh High Court and the Divisional Bench of Central Administrative Tribunal as well as or single Bench of Central Administrative Tribunal, I agree that the applicant is

entitled to get pension treating the entire period of service of temporary status as pensionable and the period of service rendered as cast labour as 50 per cent pensionable. The respondent are directed to give these benefits as and when the applicant retires."

The writ petitions filed by the petitioners questioning the legality and correctness of the orders passed by the Tribunal were dismissed by the High Court.

We have heard learned counsel for the parties and perused the record. We have also gone through the judgment of this Court in Union of India and others vs. K.G.Radhakrishnan Panickar and others [(1998) 5 SCC 111]. In our view, the directions given by the Tribunal in the matter of counting of past service of the respondents for the purpose of calculation of the retiral benefits did not suffer from any legal infirmity and the High Court rightly declined to interfere with the same. The judgment of this Court in Union of India vs. K.G. Radhakrishnan Panickar (supra) on which reliance has been placed by learned counsel for the petitioners is clearly distinguishable. In that

7

case, the Court was called upon to consider whether the services rendered by the employees as Project Casual Labour can be treated as part of the qualifying service for the purpose of calculation of the retiral benefits and whether the cut off date fixed in the policy framed by the Railway Administration for counting half of the service rendered as Project Casual Labour was discriminatory and violative of Article 14 of the Constitution. After advertng to the relevant policy decisions, this Court held that the policy of the Railways does not suffer from any constitutional infirmity. That judgment has no bearing on the decision of the issue whether temporary service, which was

followed by regularisation should be counted as part of the qualifying service for the purpose of retirement benefits. As a matter of fact, if the respondents had prayed for counting half of the service rendered by them as Project Casual Labour as part of qualifying service, we may have examined the issue in detail and decided whether the said prayer should be granted. However as they did not challenge the orders of the Tribunal before the High Court, we refrain from expressing any opinion on the issue.

The special leave petitions are accordingly dismissed. The petitioners are directed to calculate the pension and other retirement benefits payable to the respondents keeping in view the directions given by the Tribunal and pay the arrears within next three months with interest at the rate of 12% from the dates of their retirement on attaining the age of superannuation.

A report showing compliance of this order shall be filed in the Registry of this Court within four months and the matter be posted before the Court in the 3rd week of February, 2012.

[SUMAN WADHWA]  
COURT MASTER

[PHOOLAN WATI ARORA]  
COURT MASTER