

Petition(s) for Special Leave to Appeal (Civil) No(s).28628/2012  
(From the judgement and order dated 10/08/2011 in WPCT No.87/2010 of The  
HIGH COURT OF CALCUTTA)

PUDGI TUDU

Petitioner(s)

VERSUS

UNION OF INDIA & ANR

Respondent(s)

(With prayer for interim relief and office report )

Date: 27/09/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Mr. Bijan Kumar Ghosh, Adv.

For Respondent(s) Mr. Rakesh Khanna, ASG  
Mr. Chiranjiv Kumar, Adv.  
Mr. Anirudh Tanwar, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Having failed to convince the Central Administrative Tribunal and the Calcutta High Court to entertain her claim for pension under the Railway Service (Pension) Rules, 1993 (for short, 'the Rules'), the petitioner has invoked jurisdiction of this Court under Article 136 of the Constitution.

The petitioner's husband was engaged as a casual labour sometime in December 1976 in South Eastern Railway. Later on, he is said to have been decasualized and appointed as temporary Gangman with effect from 20.12.1978. He held that post till 18.4.1983, i.e., the date of death.

The petitioner filed O.A. No.250 of 2006 before the Central Administrative Tribunal, Calcutta Bench, which was disposed of vide order dated 14.5.2004 and a direction was given to the concerned authority to decide the petitioner's claim for pension.

In compliance of the direction given by the Tribunal, Divisional Railway Manager, Howrah passed order dated 19.7.2007 and rejected the petitioner's claim. The relevant portions of that order are extracted below:

"I have considered the above points and the findings are as under:

a) Late Sona Tudu, the deceased husband of the applicant, was a casual Gangman with temporary status. The applicant in her representation dated 30.03.05 and 24.04.07 has mentioned that her husband was a decasualised Gangman. The factual position is as follows:

Casual Labour in the Railway were initially engaged on casual service on daily rate of pay and were not entitled to get regular scale of pay. After the introduction of scheme of de-casualization, the daily rated casual Gangmen were given regular scale of pay. This, however, did not

confer on them right to regular employment. Such Casual Labour, on completion of 120 days service in Open Line and on completion of 180 days on the Construction Organisation were eligible for being screened for gaining temporary status. Regularly posting after gaining temporary status is not mandatory and is dependent on availability of vacancy. Thus, the position remains that Sri Sona Tudu was not posted as a regular employee.

b) Late Sona Tudu was not a pensionable staff as he was not a member of Railway Service or held a post under the administrative control of Railway Board within the meaning of definition of "Railway Servant" of the Railway Services Pension Rules, 1993. A casual labour on attaining temporary status is entitled to certain privileges as specified in Rule 2005 of Indian Railway Establishment Manual, Vol.-I, 1989 Edition which includes payment of wages in the minimum of scale of pay of Group VD' and subscription of PF.

c) Since the ex-casual labour was not a regular Railway servant she is not entitled for family pension."

The petitioner challenged the aforesaid order in O.A. No.757 of 2007. The Tribunal referred to Rule 75 of the Rules as also order dated 15.2.2002 passed in O.A. No.795 of 2001 - Bhadoo Devi v. Union of India and others and observed:

"I carefully examined the facts of the case in Bhadoo Devi's case. The husband of the applicant in the said O.A. No. 795 of 2001 was a regular employee. He was in a pay scale of Rs.200-250/- accordingly he was considered as a Railway servant under the definition of Rule 2 sub-rule 22 of Railway Servants (Pension) Rules. When the employee was a regular employee then he was eligible for pension, accordingly the wife of the said employee was given family pension. In the present case it is the specific contention of the respondents that the husband of the applicant was not a regular employee though the burden lies on the applicant to prove that the husband of the applicant was a regular employee. No documents were produced except only the extract of the registers of the Railways are produced in which Annexure A-1 which clearly shows that Ex-Gangman, page 15 of the O.A. in which the Sr. Divisional Personnel Officer, Howrah has referred that the deceased husband was a de-casualised Gangman. Based on these the Ld. Counsel for the applicant submits that the facts of the present case and the facts of Bhadoo Devi's case are similar. When the applicant is not able to prove that her husband was a regular employee and he was in the pay scale of Rs. 200-250/-, I consider that the husband of the applicant has not fulfilled the ingredients of Rule 725Sub-Rule 2 of Railway Servants Pension Rules, 1993. Accordingly the applicant has not made out a case. The respondents are justified by issuing the impugned order. Accordingly the O.A. is liable to be dismissed."

We have heard Shri Bijan Kumar Ghosh, learned counsel for the petitioner and Shri Rakesh Khanna, learned Additional Solicitor General appearing for the respondents and examined the record.

In our view, the Tribunal had rightly rejected the petitioner's claim for pension under Rule 75(2) of the Rules because her husband was not covered by the definition of the term 'railway servant' contained in Rule 2(23) of the Rules.

The Division Bench of the High Court also referred to the judicial precedent relied upon by the petitioner and negated the petitioner's claim by observing that her husband was not a regular staff of the railway.

In our opinion, the impugned order does not suffer from any legal infirmity which may justify interference under Article 136 of the Constitution.

We may add that the petitioner's failure to produce the document to show that her husband had been regularized or that he had been granted regular pay scale constituted a valid ground for not entertaining her claim for family pension.

With the above observations, the special leave petition is dismissed.

| (Parveen Kr.Chawla)  
| Court Master  
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| | (Phoolan Wati Arora)  
| | Court Master  
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