



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 10672 OF 2016

MALA DEVI

...APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

...RESPONDENT(S)

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. The Appellant herein is the widow of Late Shri Om Prakash Maharaj, a temporary employee with the Eastern Indian Railways, who died in harness on 10.07.1996, having completed 9 years 8 months and 26 days of service from the date of his appointment on 15.10.1986.

2. The Appellant had approached the Learned Central Administrative Tribunal vide O.A./050/00276/2014 seeking

family pension from the date of death of her husband with all consequential benefits along with interest at the rate of 18% per annum, which was dismissed by the Learned Tribunal vide Judgment/Order dated 23.12.2015. Vide the said decision, the Learned Tribunal held that the claim of the Appellant was devoid of any merit, inasmuch as in absence of a document for regularization and permanent absorption of the husband of the Appellant, Appellant is not entitled for the grant of family pension. Even though, the deceased husband of the Appellant had reached the stage of screening for regularization of his employment with the Railways, the Learned Tribunal observed that “*the screening will not confer any right to pension.*”

3. Aggrieved thereby, the Appellant preferred a W. P. (C) No. 8524 of 2016 before the High Court of Judicature at Patna, which was ultimately dismissed vide Impugned Order dated 12.05.2016. In drawing reference to the decision in ***Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. v. Surji Devi***¹, the High Court observed that family pension is not admissible to the wife of an employee whose services were not regularized. It was further noted that since the service rendered by the husband of the Appellant is 9 years 8 months and 26 days, it falls short of 10 years, which is the minimum qualifying service for grant of

¹ [2008] 2 SCC 310

family pension. The said Order is under challenge before this Court.

4. The factual conspectus of the captioned Appeal reveals that the deceased, Mr. Om Prakash Maharaj, was appointed “Summer Waterman”, Danapur, vide letter dated 15.10.1986 upon qualifying the medical examinations. Upon completion of more than 7 years of continuous service as a Substitute Porter, he cleared the Screening Test and was deputed at Garhara as a Guard/Shuntman upon instructions of the Dy. Chief Yard Master, Garhara. Unfortunately, on 10.07.1996, the deceased met with a fatal accident while at work and died in harness.

5. The deceased kept working as a ‘substitute’ till his death and had admittedly been in continuous service for 9 years 8 months and 26 days. Upon his demise, the Appellant wife has received *ex-gratia* to the *next kin of deceased* and was subsequently appointed as a Substitute Gangman on compassionate grounds, and the employment was regularized after completion of 120 days. The controversy arose when the Appellant wife sought family pension, which has been denied by the Railways on the premise that since the employment of the deceased had not been regularized, the question of family pension does not arise.

6. It was argued on behalf of the Appellant that Rule 1515 of the Indian Railway Establishment Manual confers upon the Substitutes, certain rights and privileges as may be admissible to temporary railway servants, from time to time, on completion of four (04) months of continuous service. In the same breadth, reliance was also placed on Rule 18(3) Railway Service (Pension) Rules, 1993 which extends benefit of family pension and death gratuity in the event of death in harness of a temporary railway servant on the same scale of a temporary railway servant. The said Rule read in conjunction with Rule 75(2)(a) of the Pension Rules, 1993 also confers upon the family of a railway servant, family pension (hereinafter in this rule referred to as family pension) under the Family Pension Scheme for Railway Servants, 1964, in the event a railway servant dies after completion of one year of continuous service. Indubitably, the deceased was in service for 9 years 8 months and 26 days till the date of his death, and in terms of the said provisions, has also crossed the necessary threshold to be granted the status of a temporary railway servant. The relevant provisions are reproduced as under:

“Indian Railway Establishment Manual-Vol-I”

“1515- Rights and privileges admissible to the Substitutes—Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on

completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

“Railway Pension Rules, 1993”

18. Pensionary, terminal or death benefits to temporary railway servant. - (1) *A temporary railway servant who retires on superannuation or on being declared permanently incapacitated for further railway service by the appropriate medical authority after having rendered temporary service not less than ten years shall be eligible for grant of superannuation, invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent railway servant under these rules.*

Rule 75:

.....

(2) Subject to the provisions of sub-rule (18) and without prejudice to the provisions contained in sub-rule(4), where a railway servant dies,— (a) after completion of one year of continuous service; or (b) before completion of one year of continuous service, provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority

for railway service; or (c) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance, referred to in these rules, the family of the deceased shall be entitled to family pension (hereinafter in this rule referred to as family pension) under the Family Pension Scheme for Railway Servants, 1964, the amount of which shall be determined at a uniform rate of thirty per cent. of basic pay subject to a minimum of three thousand and five hundred rupees per mensem and a maximum of twenty-seven thousand rupees per mensem.”

7. *Per contra*, it was the contention of the Respondents that the deceased had not completed 10 years in service which is the minimum qualifying service for the grant of family pension and as he was also not regularized, the question of grant of family pension does not arise. It was further averred that the deceased had also not been in continuous service as a substitute for more than four (04) months, and the hence the status of a temporary railway servant for the purposes of grant of family pension cannot be extended to him. The Counsel for the Respondents has argued that the argument in reference to Rule 1515 of the Railway Establishment Manual and the Railway Pension Rules, 1993 was not made by the Appellant before the courts below and cannot be taken at this stage of the proceedings.

8. We have heard the submissions on behalf of both the parties. The intervention of this Court is limited to the question

whether in the facts and circumstances of the case, the Appellant is entitled to family pension of her late husband, and whether a denial of such relief is justified.

9. At the outset, we refer to the ratio in the case of ***Prabhavati Devi v. Union of India & Ors.***² whereby this Court had extended the relief of family pension of the widow of the deceased railway servant, who had died in harness. It was held that the orders of the Tribunal to deny family pension to the widow and children of the deceased were unsustainable as the deceased had acquired the temporary status and was already working at his regular post at the time of his death. In the present case however, the deceased was absorbed in service as a substitute in 1986, and served for 9 years 8 months and 26 days, just 3 months short of completing the threshold of a decade in service. After one year of continuous service, clearing his medical examination and screening, and upon being subsequently deputed on a different post, on the instructions of Dy. CYM, Garhara, he acquired the status of a temporary railway servant for the purposes of the Railway Service (Pension) Rules, 1993 and hence became entitled to the benefit of family pension, as any other temporary railway servant. Hence, in light of the decision in ***Prabhavati Devi (supra)***, the petitioner is certainly entitled for grant of family pension.

² AIR 1996 SC 752

10. Rule 75 of Railway Pension Rules, 1993, makes it further clear that the qualifying service for a temporary railway servant to be entitled for the grant of benefit of family pension is a continuous service of one year. More so, this benefit of family pension is accrued to the family of the deceased railway servant who died in harness after completion of one year of continuous service, without any discrimination, whether the post was temporary or had been regularized. On this ground alone, the denial of family pension accrued to the Appellant is unjustifiable.

11. We have further carefully examined the facts, and legal principles applicable in the present case, and we find that the argument canvassed by the Respondents in depriving the Appellant of family pension from her deceased husband for not completing 10 years of qualifying service by falling short of hardly 3 months, is not in congruence with the legislative intent of the Indian Railway Establishment Manual & the Railway Pension Rules, 1993. The salutary purpose of the rules thereunder is to extend the benefit of family pension to the families of those servants who have served for a considerable strength of time. The present case is not a case of a casual labourer being simply accorded a temporary status, without any scrutiny or examination as cautioned against in Clause 4.4. of the Master Circular issued by the Ministry of Railways. The said Circular also gives a clear mandate in clause 5.1 that substitutes who have acquired

temporary status were to be screened by a Screening Committee, a stage which was admittedly passed by the deceased. It is an admitted factum that the deceased had reached the necessary stage of scrutiny/screening for regularization of the post, and had been carrying out his services, literally till his last breath.

12. In the light of above statutory provisions governing the field, this Court is of the considered opinion that the Appellant is entitled for grant of family pension along with arrears of family pension.

13. For the purpose of computation of family pension in the present case, the family pension *qua* the deceased shall be governed as per Rule 75 r/w Rule 18(3) Railway Service (Pension) Rules, 1993 which extends benefit of family pension and death gratuity in the event of death in harness of a temporary railway servant on the same scale of a temporary railway servant. The Respondents shall calculate the arrears of family pension and shall pay the arrears as well as shall pay regular family pension to the Appellant within a period of four months.

14. Resultantly, keeping in view the peculiar facts and circumstances of the case, the plight of the Appellant who has been pursuing the litigation seeking family pension since 2014, and the salient purpose of a family pension to serve dependents tide over the crisis, we further deem it appropriate exercise of our

power under Article 142 of the Constitution of India, and award *ex-gratia* amount of Rs. 5,00,000/- to the Appellant.

15. In light thereof, the Appeal is allowed. The Impugned Order dated 12.05.2016 passed by the High Court of Judicature at Patna, and the Order dated 23.12.2015 passed by the Learned Central Administrative Tribunal, Patna, are set aside. The Respondents are directed to ensure compliance within four months. Applications if any, stand disposed of.

.....J.
[SANJAY KAROL]

.....J.
[SATISH CHANDRA SHARMA]

NEW DELHI
July 16, 2025.