

UNION OF INDIA AND OTHERS

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v.

KESHAB LAL ROY AND OTHERS

SEPTEMBER 9, 1996

[J.S. VERMA AND B.N. KIRPAL, JJ.]

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SERVICE LAW :

Railways—Private Railway Company voluntarily closing its operation—Employees thereof appointed as fresh entrants in Railways—Claim for counting past service for pension purposes—Tribunal allowing the claim—On appeal held, appointment and absorption are two different connotations—When appointed afresh, past services can not be taken into account for pension purposes.

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Constitution of India 1950 :

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Article 136—Special Leave Jurisdiction—Plea not raised in courts below—Such plea not allowed to be raised for the first time before the Supreme Court.

The respondents were employees of a Private Railway Company (ASL Railways), which voluntarily closed its operation with effect from 15th February, 1978. In order to mitigate their hardships, these retrenched employees were appointed as "Fresh Entrants" in Indian Railways vide letter dated 17th March, 1978 written by the Ministry of Railways to the General Manager, Eastern Railways. The said letter *inter alia* clarified that these persons will be considered for appointment and not for absorption. Clause V of this letter stipulated that the respondents were to be treated as being recruited for the first time "on the date of their appointment on the Railway as Temporary Employees".

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As per existing Rules of the Indian Railways, pensionary benefits were given only to the persons who had put in ten years of service. The respondents represented that the service rendered by them to the ASL Railways be counted for granting pensionary benefits to them. The representation having been rejected, the respondents approached the Central Administrative Tribunal. The application of the respondents was allowed

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A by the Tribunal, on the ground that the respondents and the erstwhile employees of the K.F. Railways were similarly situated and as the Railway Board had taken into consideration the past service of the employees of K.F. Railways for granting pensionary benefits, the same benefit should also be extended to the respondents. The appellants contended that the status of the ex-employees of ASL Railways and that of the K.F. Railways was different and distinguishable, in as much as while the former was taken over by the Government of India, the latter had gone into voluntary liquidation. The respondents contended that some ex employees of ASL Railways who had joined other private Railway Companies, which later on taken over by the Indian Railways were given the benefits of their previous service with ASL Railways in granting pensionary benefits. This submission was made for the first time in appeal before this Court.

Allowing the appeal, this Court

D HELD : 1.1. It is clear from the letter dated 17th March, 1978 that the Railways did not intend to give benefit to the respondents of their past service and that is why, they, on their selection were regarded as "appointed" and not "absorbed" and their pay was also fixed at the minimum of the relevant pay scale. [615-G]

E 1.2. Clause V of the letter clearly mentions that the respondents were to be treated as recruited for the first time "on the date of their appointment in the Railways as temporary employees". [615-H, 616-A]

F 2. Even though as per clause IX of the letter dated 17th March, 1978, the services of the newly appointed employees was pensionable, the letter contained no stipulation that the services rendered by the employees in the erstwhile private company would be taken into consideration for granting pensionary benefits. [616-B]

G 3. K.F. Railways was purchased outright without any liability and was not taken over by the Government. Some of the employees of K.F. Railways joined other privately owned Railway companies which were subsequently taken over as going concern by the Indian Railways and their employees were given the benefit of their earlier continuous service. So the respondents and the employees of K.F. Railways stand on different footing and are not similarly situated. In the case of ASL Railways, it voluntarily went into liquidation and was not taken over or purchased by the Indian

Railways. [616-C-D; 617-D]

4. The contention that in respect of some employees of the ASL Railways, who had joined other companies, which were subsequently taken over by the Indian Railways, the service of these employees were counted for pensionary benefits and as such the past services of the respondents should also be counted, was not raised before the Tribunal, had it been raised, the petitioners would have got a chance to reply and the Tribunal would have adjudicated upon it. There being no adjudication on the correctness of this contention, it can not be allowed to be raised for the first time in this Court. [617-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5804 of 1994.

From the Judgment and Order dated 16.9.93 of the Central Administrative Tribunal, Patna in O.A. No. 113 of 1989.

P.P. Malhotra, Praveen Swarup and V. Subba Rao for the Appellants.

In-person for the Respondent.

Ms. Rachana Joshi Issar for the Respondents Nos. 2-13 and 15-63.

The Judgment of the Court was delivered by

KIRPAL, J. The respondents herein were originally employees of Arrah Sasaram Light Railways (hereinafter referred to as 'ASL Railways') which was owned by a private party. This company closed down its operation with effect from 15th February, 1978. Termination notices were issued to the employees including the respondents, and the company paid the termination benefits as admissible in law.

With a view to mitigate the hardship to the retrenched employees of the ASL Railways it was decided that these employees may be appointed as fresh entrants in the Indian Railways. This decision was contained in the letter dated 17th March, 1978 written by the Ministry of Railways to the General Manager, Eastern Railways. The said letter contained the terms and conditions on which these erstwhile employees of ASL Railways were to be given appointment.

A The respondents were thereupon appointed in the Eastern Railways pursuant to the aforesaid decision dated 17th March, 1978. According to the prevalent rules at that time an employee in the Indian Railways become eligible for pensionary benefits only after the employee had put in ten years of service. The respondents made a representation to the appellants to the effect that the service rendered by them in the erstwhile ASL Railways should be taken into consideration for the purpose of granting them pensionary benefits. This representation was rejected. Thereupon the respondents filed O.A. No. 113 of 1989 before the Central Administrative Tribunal, Patna Bench, Patna, praying that they should be paid pensionary benefits by counting the entire service or atleast some percentage or some years service rendered by them in ASL Railways so as to entitle them to get the minimum pension. In support of this plea the respondents contended that the Railway Board had allowed counting of previous service rendered by the erstwhile Kalighat-falta Railway (herein after referred to as 'K.F. Railways') for the purpose of pensionary benefits. It was submitted that by not extending the same benefits to the respondents they were being discriminated. The appellants' contention before the Tribunal was that the status of the ex-employees of the erstwhile private company, namely, ASL Railways and K.F. Railways was different. It was submitted that the assets of the K.F. Railways were taken over by the Government of India by making an outright purchase whereas ASL Railways had gone into voluntary liquidation and had not been taken over by the Government of India.

F Vide order dated 16th September, 1993, the application filed by the respondents was allowed. While noticing that there was some difference between the status of the K.F. Railways which had been taken over and the status of the employees of the ASL Railways, which was not taken over, the Tribunal nevertheless held that the employees of ASL Railways had worked with a private company for long period and, therefore, they should have been given the same treatment as the employees of the K.F. Railways and other companies which had been taken over.

G Challenging the correctness of the aforesaid decision it has been contended by Mr. P.P. Malhotra, learned senior counsel appearing for the appellants, that the aforesaid letter dated 17th March, 1978, clearly stated that the appointment of the respondents was a fresh appointment and their past service could not be considered for the purpose of pension.

Respondent No. 1, appearing in person, and Mrs. Rachana Joshi Issar, learned counsel appearing on behalf of the other respondents, however, submitted that their case was similar to the case of the employees of the K.F. Railways. It was not in dispute that on their appointment in the Indian Railways the employees of K.F. Railways were given the benefit of their past service and, it was contended, that there was no valid reason as to why the same benefits should not have been extended to the respondents. In short the submission was that all the ex-employees of different private railways were similarly situate and on their appointment in the Eastern Railways the earlier service rendered by them, in the erstwhile private companies should be taken into consideration for the purpose of pension.

ASL Railways belonged to a private party. Voluntarily it closed down its operation with effect from 19th February, 1978. During the arguments it was admitted that the employees of this company, including the respondents, were paid the provident fund which was due to them by virtue of their being employees of the said ASL Railways. The Government of India was under no obligation to provide any employment to the employees like the respondent. It is only in order to mitigate the hardship to the said retrenched employees that a scheme was evolved for providing employment to them. In the letter dated 17th March, 1978 in paragraph 2 it is stated that it has been decided to appoint such employees 'as fresh entrants' by offering them jobs in the categories for which they are found suitable. A screening committee was set up for the purpose of examining the suitability of these employees. It was clarified that these persons were to be considered for appointment, and not for absorption. Letters of appointment were to be issued only after suitability and medical test and clause - v of the letter dated 17th March, 1978 further stipulated that these persons like the respondents were to "be treated as having been recruited for the first time on the date of their appointment on the Railway as temporary employees. The pay of such employees was to be fixed at the minimum of the relevant revised scales."

From the aforesaid letter it clearly follows that the railway authorities did not intend to give any benefit of past service to the newly recruited erstwhile employees of the ASL Railways. It is for this reason that on their selection they were to be regarded as "appointed" and not "absorbed" and their pay was also to be fixed at the minimum of the relevant scales. To

A put the matter beyond doubt clause - v of the letter clearly mentions that these employees were to be treated as being recruited for the first time "on the date of their appointment on the Railway as temporary employees". Even though in clause - ix of the said letter dated 17th March, 1978 it was stated that the service of these newly appointed employees will be pensionable, the letter contained no stipulation to the effect that the service rendered by these employees in the erstwhile private company would be taken into consideration for the purpose of paying them pension.

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C Faced with the situation that the terms of appointment did not entitle the respondents to claim the benefit of the past service to be counted for pension, the main emphasis on behalf of the respondents was that they were being discriminated against. In short the submission was that ASL Railways was a privately owned light Railway like the K.F. Railways; the erstwhile staff of the K.F. Railways, on their appointment in the Indian Railways, pursuant to the decision taken in this behalf on 4th November, D 1969, were allowed their entire past service to be counted for pensionary benefit and this being so there was no reason as to why the case of the respondents should be dealt with differently.

E This contention can be best dealt with by referring to letter dated 9th September, 1994 written by the then Minister of Railways to a Member of Parliament and a note annexed thereto. It appears that a representation was sent to the Minister on behalf of the respondents herein in which it was contended that the case of the respondents and that of the erstwhile K.F. Railways was similar and, therefore, the respondents should also be granted pensionary benefits by counting their past service. Reply dated 9th F September, 1994 was sent to the Member of Parliament in which it was stated that a note explaining the position of the case was enclosed. The relevant portion of the said note accompanying the aforesaid letter of the Minister is as follows :

G "Shri K.L. Roy and others have pleaded for grant of pensionary benefits on the analogy of similar dispensation given to staff of Kalighat Falta Railway (KF) under Mcleod and Company.

H K.F. Railways was not taken over as a going concern but on the basis of outright purchase of assets without any liability. It was

closed down on and from 1.4.1957 and their employees were appointed afresh on ex-gratia grounds. Some of these employees joined Ahmed Katwa, Baukura Damodar River, and Burdwan Katwa Light Railways under same company viz. Mcleod, which were subsequently taken over as a going concern by the Indian Railways with their employees enjoying benefits of their earlier continuous service. A peculiar situation resulted from these changes. While those rendered surplus from K.F. Railway under the control of Mcleod Company and taken as fresh entrants on Indian Railways could not count their past service, those who joined AK, BK and BDR under the same company, on their being taken over, had their past service on Light Railways counted for pensionary benefits. To eliminate this discrimination, it was decided on 4.11.1969 that K.F Light Railway Staff who were earlier treated as fresh entrants, should also be permitted to count their entire service on K.F. Railways for pensionary benefits.

It is evident from the above that the cases of employees of K.F. and A.S. Light Railway stand on different footing."

The facts stated in the aforesaid note clearly brings out the reason as to why the erstwhile employees of K.F. Railways were given the benefit of counting their past service in the Indian Railways for the purpose of pensionary benefits. This also shows that that respondents and the employees of the erstwhile K.F. Railways were not similarly situated and, therefore, there is no merit in the contention that the respondents had been discriminated.

Mrs. Issar then sought to contend that even in the case of ASL Railways there were some employees who had joined other companies which were then taken over by the Indian Railways and the past service of those employees was being counted for pensionary benefits. This contention was not raised before the Tribunal. No facts in this behalf are stated even in the application which was filed before the Tribunal. Had this contention been raised in the application filed before the Tribunal then the appellants herein would have had an opportunity of giving a reply. There has been no adjudication by the Tribunal as to whether the facts so alleged

A are correct or not. This contention cannot be allowed to be raised in this court for the first time.

For the aforesaid reasons the appeal is allowed. The order of the Tribunal is set aside and the application filed by the respondents before the Tribunal stands rejected. The parties to bear their own costs.

H.K.

Appeal allowed.