



2026:AHC:24190-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 16868 of 2025

Union of India and 2 others

.....Petitioner(s)

Versus

Mohd. Shamim

.....Respondent(s)

Counsel for Petitioner(s) : S.P. Singh, A.S.G.I. with Vivek Kumar Singh

Counsel for Respondent(s) :

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. Heard Shri Vivek Kumar Singh, learned counsel for the petitioners.
2. This writ petition has been filed challenging the order dated 20.03.2024 whereby the Central Administrative Tribunal, Allahabad Bench, Allahabad ("the Tribunal") has allowed the Original Application No.301 of 2021 filed by the respondent and directed the petitioners herein to count past services of the respondent towards casual employment (50%) from the date of his engagement till grant of temporary status and thereafter from the date of temporary status till the date of regularization (100%) for the purpose of pensionary benefits including pension; the exercise to be completed within a period of six months. Further challenge has been laid to the order dated 22.10.2024 whereby the review application filed by the petitioners has been rejected.
3. The facts are that the respondent was initially engaged as a Commission Waiter on casual basis w.e.f. 10.11.1975 and on completion of 120 days, he was granted the temporary status. Thereafter, the petitioners conducted screening for regular absorption, approval to the same was granted *vide* order dated 01.03.1983 and result was declared on 02.03.1983 indicating the name of the respondent in the list.
4. The case of the respondent before the Tribunal was that though all the persons similarly situated to him had been absorbed, he was not absorbed without any reason and though representation was made by him on 17.08.1983 that was followed by reminders, no heed was paid to the

same. After making reference to certain other communications, it was contended on behalf of the respondent that his services were regularized w.e.f. 10.12.2007 on the post of Helper, and, after serving the department for 37 years, he retired on 31.10.2014. The respondent moved various representations with a prayer to count *ad hoc*/temporary service rendered by him till his regularization for the purposes of pensionary benefits but the petitioners did not pay any heed and, therefore, the Original Application ('OA') was filed.

5. The OA was contested by the petitioners taking a stand that as per the service record of the respondent, screening of Commission Vendors of Commercial Department was done on 01.08.2005, 04.08.2005 and 12.08.2005; the respondent was found suitable and brought on provisional penal of Group 'D' by placing him at Serial No.52 in the panel *vide* office letter dated 26.04.2006 and, thereafter, he joined duty as Helper/C & W on 12.12.2007 and as per RBA dated 19.11.2004, grant of temporary status to a casual employee is without reference to availability of regular Group-D post. Further stand of the petitioners was that a casual employee, on grant of temporary status, does not hold any post under the Government and since the respondent had been regularized after induction of New Pension Scheme (NPS), he would not be entitled to be treated under such Old Pension Scheme (OPS).

6. The Tribunal, after considering the case of the parties and based upon the decisions of the Hon'ble Supreme Court in **Habib Khan v. State of Uttarakhand : Civil Appeal No.10806 of 2017** and **Prem Singh v. State of U.P. and others : 2019 0 Supreme(SC) 1044**, arrived at a conclusion that the respondent was casually engaged w.e.f. 10.11.1975 and after rendering about 37 years of service, he retired on 31.10.2014 and though his service came to be regularized w.e.f. 10.12.2007 after a period of more than three decades, he was entitled for benefits under the OPS. The Tribunal accordingly allowed the OA and granted reliefs, as noted hereinabove.

7. Learned counsel for the petitioners has made submissions that reliance placed by the Tribunal on the judgments in **Habib Khan** (supra) and **Prem Singh** (supra) is misplaced, inasmuch as, the facts of those cases were different from the one in hand and since the respondent was

regularized in the year 2007 after the new regime of pension in terms of NPS came in effect, the Tribunal has erred in granting relief to him treating him as covered by OPS. Further submission has been made that as per Chapter XXIII of the Manual governing the services of the respondent, any period of service prior to absorption in temporary/permanent/regular cadre after screening/selection would not count for the purpose of seniority and the date of regular appointment only shall determine seniority and other aspects.

8. We have considered the submissions made and perused the material available on record.

9. The factual position regarding date of induction of the respondent in service, his status in service, regularization, length of service and retirement is not in dispute. The question involved in the present case is as to whether the mere fact that the respondent was regularized on 10.12.2007 after the NPS came into effect, the respondent would not be entitled to the benefits under the OPS.

10. A perusal of record indicates that when the petitioners were not satisfied with the order dated 20.03.2024 passed by the Tribunal allowing the OA, they preferred a review application before the Tribunal annexing therewith a copy of the judgment of Hon'ble Supreme Court in the case of **Union of India and others v. Munshi Ram : Civil Appeal No.2811 of 2022**, however, the grounds contained in the review application indicate that the petitioners sought to distinguish the judgment in the case of **Munshi Ram** (supra) with the facts of the present case. Grounds No. (C) and (D) contained in the review application indicate that not only the submissions made before the Hon'ble Supreme Court in the case of **Munshi Ram** (supra) were extensively reproduced therein, the conclusion drawn was also quoted.

11. For a ready reference, we also reproduce paragraphs 11 and 12 of the judgment in the case of **Munshi Ram** (supra):-

"11. In view of the above and for the reasons stated above and even applying the doctrine of *stare decisis*, on the aforesaid ground alone, the present appeals deserve to be dismissed and are accordingly dismissed, by holding that the respondents-Commission Vendors/bearers working in the Northern Railway are entitled to have 50% of their services rendered prior

to their regularization to be counted for pensionary benefits like other office bearers/Vendors working under the Railway Board, working in different zones/divisions, namely, Western Railway, Eastern Railway, Southern Railway and South-Eastern Railway.

12. All these appeal are accordingly dismissed. No costs."

12. We have also gone through the entire judgment of the Hon'ble Supreme Court in the case of **Munshi Ram** (supra), wherein the controversy involved was identical to the one involved in the present case as to whether in case of the Commission Vendors, 50 % of services rendered by them prior to their absorption/regularization would be counted as 'qualifying service' for grant of pensionary benefits. The Hon'ble Supreme Court extensively dealt with the issue involved and arrived at a conclusion which is recorded in paragraphs 6 and 7 of the judgment. For a ready reference, the same are reproduced hereinbelow:-

"6. From the aforesaid, it can be seen that with respect to Commission Vendors/bearers working in the Western Railway, Eastern Railway, Southern Railway and South-Eastern Railway, they are held to be entitled to 50 % of the services rendered prior to their regularization to be counted for pensionary benefits and all those Commission Vendors/bearers are granted such benefits. Now the dispute is with respect to Commission Vendors/bearers working in the Northern Railway.

7. It cannot be disputed that employees working in different divisions/zones in the Railways are under the very same employer Railway Board which is under the Ministry of Railways. There are 16 Zones and 68 Divisions in the Railways. Therefore, the employees working under the same employer - Railway Board working in different Zones/Divisions are required to be treated similarly and equally and are entitled to similar benefits and are entitled to the same treatment. As rightly submitted on behalf of the respondents, there cannot be any discrimination *inter se*. Under the circumstances, on the ground of parity, the Commission Vendors/bearers working in the Northern Railway are entitled to the same benefits which are held to be entitled to all the similarly situated Commission Vendors/Bearers working under different Zones/Divisions. There cannot be different criteria/parameters with respect to similarly situated employees - Commission Vendors/bearers working in different Zones/Divisions, but working under the same employer."

13. Although learned counsel for the petitioners made attempts to distinguish the case of **Munshi Ram** (supra) with the case of the respondent herein, we do not find any distinctive features in both the cases; rather, after laying our hands on the judgment of Delhi High Court

in the case of **Union of India and others v. Munshi Ram : W.P. (C) 4535 of 2019**, wherefrom the matter had reached to the Hon'ble Supreme Court, we find that the said writ petition was filed by the Union of India and others challenging the order passed by the Tribunal that had granted pensionary/retirement benefits to Munshi Ram, who was absorbed on Group-C post in the year 2015.

14. We further find that Munshi Ram was appointed as Commission Vendor in the decade of 1970 and on 13.12.1976, a circular was issued by the Railways indicating therein that action would be taken to progressively absorb the Commission Vendors in regular vacancies. The result of the said litigation being in favour of Munshi Ram whereby reliefs at all stages were granted to him counting 50 % of the period of his services rendered prior to his absorption/regularization for the purposes of pensionary/retirement benefits, we are of the view that case of the present respondent stands at far better footings as he was engaged as Commission Waiter on casual basis w.e.f. 10.11.1975, thereafter was granted temporary status, thereafter his services were regularized in the year 2007 and he attained the age of superannuation in 2014.

15. In view of the above, there appears to be no good ground to accept artificial difference between the case of **Munshi Ram** (supra) and that of the respondent, as sought to be established before us, rather Munshi Ram who was absorbed in 2015 much after the respondent herein was regularized in service in 2007, got relief up to the Hon'ble Supreme Court and, hence, we are of the view that the judgment in the case of Munshi Ram applies in favour of the respondent in full force.

16. Though the judgment in the case of **Munshi Ram** (supra) was on record of the Tribunal in terms of annexure to the review application, the review application was dismissed for a different reason. This, however, would not change the ultimate conclusion to be drawn by us in these proceedings and we find that once the Tribunal has, after considering the length of service of the respondent, date of his regularization and superannuation, allowed the OA by issuing directions, as already noted hereinabove, we are not inclined to interfere with the order passed by the Tribunal.

17. Consequently, the writ petition has no merit and the same is, accordingly, **dismissed**.

(Kshitij Shailendra, J) (Arun Bhansali, CJ)

February 3, 2026
Jyotsana