REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2811 OF 2022
(Arising from S.L.P(Civil) No. 6526/2022 @
Diary No. 27620/2020

Union of India and others …Appellants

Versus

Munshi Ram …Respondent

WITH
CIVIL APPEAL NO. 2812 OF 2022
(Arising from S.L.P(Civil) No.6530/2022 @
Diary No. 27618/2020
CIVIL APPEAL NO. 2813 OF 2022
(Arising from S.L.P(Civil) No.6531/2022 @
Diary No. 27616/2020
CIVIL APPEAL NOS. 2814-2815 OF 2022
(Arising from S.L.P(Civil) Nos. 5043-5044/2022

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 21.11.2019 passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No. 4535/2019 and other allied writ petitions, by which the High Court has allowed the said writ petitions preferred by the respective private respondents herein and has set aside the orders passed by the Central Administrative Tribunal and thereafter

directed the appellants – Northern Railway to count 50% of their service as Commission Vendors, prior to their absorption, as “qualifying service” for grant of pensionary benefits, the Union of India (Northern Railway) and others have preferred the present appeals.

2. Catering service in Northern Railways prior to 1955 were being managed through private contractors. Subsequently, the departmental catering and vending services were started and the erstwhile staff of the private contractors was taken as Commission Vendors. All Commission Vendors were paid commission on sales turn over achieved by them instead of paying regular salaries. Thereafter, a memorandum dated 13.12.1976 was issued by the Railway Board suggesting that the Commission Vendors may be absorbed as Railway Employees. It was stated therein that action would be taken to progressively absorb the Commission Vendors/Bearers in regular vacancies.

2.1 There have been a series of litigations on the issue of absorption of the Commission Vendors in the Railways. On 13.12.1983, this Court disposed of Writ Petition (Civil) No. 6804-05/1982 (***Saital Singh v. Union of India***) wherein a direction was issued for progressive absorption of the Commission Bearers/Vendors in term of para 3 of Memorandum dated 13.12.1976. Subsequently, in an order dated 8.9.1987 passed in Criminal Miscellaneous Petition No. 1670/1987 in Writ Petition No. 31364 of 1986 and other allied writ petitions in the case

of ***T.L Madhavan, General Secretary, AIRCS Workers Union v. Union of India, reported in 1988 Supp SCC 437***, a further direction was issued regarding the progressive absorption of all persons working as Commission Bearers/Vendors on various railway platforms belonging to the Central Railway and South-Central Railway in terms of the same memorandum dated 13.12.1976 “as and when vacancies to the posts of bearers in the Railway Catering Service occur”. It was further reiterated that as already directed the Railways would first absorb all the Bearers registered in accordance with the aforesaid memorandum and thereafter the Vendors who are registered and until all the Bearers and Vendors are accordingly absorbed, the Railway Administration shall not recruit or appoint any person either as a Bearer or Vendor on permanent basis in the Railway Catering Service from any other source.

2.2 Learned Single Judge of the High Court in Writ Petition (Civil) No. 5175/1998 (***Gurdas Ram & Others v. Union of India***) was dealing with a batch of writ petitions by Commission Vendors, who sought the relief of regularization, and in the alternative, absorption in Group ‘C’ posts. By judgment and order dated 5.11.2012, the learned Single Judge negatived the plea of regularization, however, the other relief, viz., absorption against vacant Group ‘C’ posts was allowed, provided they had not crossed the age of 59 years. The respective original writ

petitioners – respondents herein all were absorbed pursuant to the above order of the learned Single Judge in Group ‘C’ posts in 2015.

2.3 They then approached the Central Administrative Tribunal with O.A. No. 219/2016 praying for further consequential relief of grant of pensionary/retirement benefits. It was their case before the CAT that the total service of each of the applicants rendered prior to their absorption in the Railways should be counted towards “qualifying service” for the purpose of such retirement/pensionary benefits. By judgment and order dated 12.02.2016, the CAT dismissed the said OA by holding that since the earlier judgment of the learned Single Judge declined the prayer of regularization, it was not possible to entertain the plea for counting the past service without questioning the absorption orders, even for pensionary benefits.

2.4 However, thereafter another Bench of the Tribunal in O.A. No. 4079/2016 filed by one Munshi Ram (respondent in Civil Appeal No. 2811/2022), after following the decision of the Ernakulam Bench of the CAT dated 4.6.2014 in OA No. 417/2013 and one other decision of the same Bench, where identically situated applicants were granted the relief of pensionary benefits, allowed the said OA 4079/2016. The judgment and order passed by the CAT dismissing the OA and refusing to grant any pensionary benefits to the Commission Vendors who were subsequently absorbed by treating their earlier service rendered as

Commission Vendors, the original applicants filed the present Writ Petition Nos. 12073/2016 and Writ Petition No. 3307/2017 before the High Court.

2.5 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned CAT passed in OA No. 4079/2016 granting the relief of pensionary benefits by counting their service rendered as Commission Vendors, prior to their absorption, the Union of India preferred the present Writ Petition No. 4535/2019 before the High Court. All the aforesaid three writ petitions came to be heard together by the High Court. By the impugned common judgment and order, the High Court has allowed the writ petitions preferred by the original writ petitions – Commission Vendors who were subsequently absorbed and has dismissed the writ petition preferred by the Northern Railways on the ground that so far as in the other Railways, namely, Southern Railways and Central Railways pursuant to the various orders passed by the different High Courts/Tribunals, their past service rendered as Commission Vendors have been counted for the purpose of pensionary benefits, there is no reason to deny such relief to the Commission Vendors/Bearers in the Northern Railways.

2.6 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court holding that the services rendered by the Commission Vendors/Bearers in the Northern Railways,

prior to their absorption, should be counted for the purposes of pensionary benefits, the Union of India (Northern Railways) have preferred the present appeals.

3. Ms. Madhavi Divan, learned Additional Solicitor General has appeared on behalf of the appellants – Northern Railway and Shri Sanjay Parikh, learned Senior Advocate has appeared on behalf of the original applicants – private respondents herein.

3.1 Ms. Madhavi Divan, learned ASG has submitted that the short issue in the present case is, whether Commission Vendors who were absorbed into regular service are entitled to reckon 50% of the period of service as Commission Vendors, prior to their absorption, as “qualifying service” for grant of pensionary benefits. It is submitted, in other words, whether Commission Vendors who are subsequently absorbed are entitled to seek parity with regularised casual labourers, who by virtue of Rule 2005 of the Indian Railway Establishment Manual, Vol. II, 1991 (IREM) r/w Rule 31 of the Railway Services (Pension) Rules, 1993 (for short, ‘1993 Rules’), are entitled to include 50% of their service as casual labourers while computing qualifying service for grant of pensionary benefits.

3.2 It is submitted that as such the Commission Vendors have been absorbed into regular service in the Indian Railways pursuant to (i) Memorandum No. 76 dated 13.12.1976 issued by the Railway Board;

and (ii) the orders passed by this Court in various writ petitioners, referred to hereinabove.

3.3 It is submitted that it is an admitted position that the Commission Vendors in the present case have not completed 10 years of service after absorption and before retirement, which is mandatory for receiving pensionary benefits. In the submitted that in fact in the case of one of the appellants/petitioners – Munshi Ram, he has served only for a period of three and half months approximately between his absorption on 16.07.2015 and superannuation on 31.10.2015.

3.4 It is submitted that as such the respective Commission Vendors who are subsequently absorbed in the Railways are claiming parity with Casual Labourers and accordingly are claiming that 50% of their service rendered as Commission Vendors prior to their absorption is to be counted for qualifying service for pensionary benefits which is being provided to the Casual Labourers.

3.5 It is submitted that therefore the question which is required to be considered is, whether can the Commission vendors claim the benefit of their past service at par with the Casual Labourers? It is submitted that to appreciate the above, the difference between the status of Commission vendors and the Casual Labourers is required to be considered. The fundamental difference between the status of

Commission Vendors and Casual Labourers is explained by Ms. Madhavi Divan in the chart which is as under:

	Casual Labourer	Commission Vendor/Bearer
Mode of Appointment	Done by Sr. Subordinate authorized to recruit after sanction of General Manager.	No such provision.
Age Limit	18-28 years relaxable up to 05 yrs.	Not defined.
Wages	Daily rate wages governed by Minimum wages Act.	Work on commission basis after sale of products.
Regularization	Absorption against permanent post after attaining Temporary Status following due procedure of screening by a committee of 03 officers.	No provision for their regularization in railway service. Respondents in this case were absorbed in railway service in compliance of Delhi High Court's Order.
Emoluments	Wages, transport allowance, leave, medical treatment,	Work on commission basis.
	Holidays, travel concessions.	
Seniority	Seniorities are maintained and promotions in higher grade are done accordingly.	No seniority is maintained. They work at different stations on commission basis.
Working hours	Fixed under hours of employment Regulations.	No working Hours fixed.

Termination from service	Disciplinary and appeal rules are applicable on them.	Not applicable.

3.6 It is further submitted that the Commission Vendors were engaged on a purely contractual basis. The relevant terms of the proforma contractual agreement entered into with the Commission Vendors are as follows:

> i. Clause 1: Commission vendors shall work on commission basis *[@Pg. 34 in Application for Addl. Docs. i.e. IA No. 137388/2021]*.
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> xxx xxx xxx
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> ii. Clause 8: Open to either party to determine this agreement by giving one month's notice without assigning any reason and without any compensation *[@Pg. 35 in Application for Addl. Docs. i.e. IA No. 137388/2021]*.
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> iii. Clause 9: Commission vendors are not entitled to any remuneration except commission on sale of articles *[@Pg. 35 in Application for Addl. Docs. i.e. IA No. 137388/2021]*.
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> xxx xxx xxx
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> iv. Clause 13: Administration/Railways shall supply the articles to be sold by commission vendors to the public travelling by train *[@Pg. 35 in Application for Addl. Docs. i.e. IA No. 137388/2021]*.
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> xxx xxx xxx
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> v. Clause 16: Commission vendors shall not be treated as Railway servant for any purpose *[@Pg. 36 in Application for Addl. Docs. i.e. IA No. 137388/2021]*.

It is submitted that from the above, it can be seen that there was no master-servant relationship contemplated between a Commission

Vendor and the employer – Northern Railways. The remuneration was only in the form of commission and further on no count was a Commission Vendor was treated as a railway servant.

3.7 It is submitted that on the other hand, the Casual Labourers stood on different footing. The provisions relating to Casual Labourers found in a separate Chapter XX in the Railway Manual (IREM) show the difference in status, which are as under:

i) Rule 2001 *[@page 30 in Application for Addl. Docs. i.e. IA No. 137388/2021]*:

2001: (I) Definition of Casual labour - Casual labour refers to labour whose employment is intermittent, Sporadic or extends over short period or continued from one work to another. Labour of this kind is normally recruited from the nearest available source. They are not ordinarily liable to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour.

Casual labour on Railway should ordinarily be employed only in the following types of cases

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(a) Casual Labour (Open Line).- Casual labour are primarily engaged to supplement the regular staff in work of seasonal or sporadic nature, which arises in the day to day working of the Railway system. This includes labour required for unloading and loading of materials, special repair and maintenance of tracks and other structures, supplying drinking water to passengers during summer months, (recoupment of man-days lost on account of absenteeism) patrolling of tracks, etc. casual labour so engaged in the operation and maintenance of railway system is referred to as open line casual labour, as distinct from project Casual Labour, described in para (b) infra.

(b) Casual Labour (Project)- Casual Labour are also engaged on Railways for execution of Railway projects, such as new lines, doubling, conversion, construction of building, track Renewals, Route Relay interlocking Railway Electrification, Setting up of new units etc. Casual Labour so engaged are referred to as “Project Casual Labour”.

Such of those casual Labour engaged on open line (revenue) works, who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as

temporary (i.e. given “temporary status”) on completion of 120 days continuous employment.

Casual Labour on projects who have put in 180 days of continuous employment on works of the same type are entitled for 1/30th of the minimum of the appropriate scale of pay plus Dearness allowance…

(ii) Grant of temporary status to project casual labour is regulated by instructions separately issued by the Railway Board. As far as possible, casual labourers required for new projects must be taken from amongst those casual labourers. Who have worked on the open line/projects in the past in preference to outsiders?

(ii) Seasonal labour sanctioned for specific works of less than 120 days duration. If such labour is shifted from one work to another of the same type and the total continuous period of such work at any time is more than 120 days duration, they should be treated as temporary (i.e. granted “temporary status” after the expiry of 120 days continuous employment.

(emphasis supplied)

ii. Rule 2002 *[@page 31 in Application for Addl. Docs. i.e. IA No. 137388/2021]*:

2002. Entitlements and privileges admissible to Casual Labour.—Casual Labour are not eligible for any entitlement and privileges other than those statutorily admissible under the various Acts, such as. Minimum Wage Act, Workmen's Compensation Act, etc. or those specifically sanctioned by the Railway Board from time to time.

iii. Rule 2005 *[@page 32 in Application for Addl. Docs. i.e. IA No. 137388/2021]*:

xxx xxx xxx

2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 day or 360 days of continuous employment (as the case may be). — (a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in 'Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D&A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/ screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. This is however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

> Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits.
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> (emphasis supplied)

iv. Rule 2006 *[@page 32 in Application for Addl. Docs. i.e. IA No. 137388/2021]*:

> **2006. Absorption of Casual Labour in regular vacancies. —** Absorption of casual labour in regular Group 'D' employment may be considered in 'accordance with instructions issued by the Railway Board from time to time. Such absorption is, however, not automatic but is subject, inter-alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway Administration.

It is submitted that therefore the Commission Vendors cannot claim the benefits at par with the absorbed Casual Labourers.

3.8 It is further urged that the Casual Labourers are being granted the benefits pursuant to the decision of this Court in the case of ***Union of India v. Rakesh Kumar, (2017) 13 SCC 388***. That on an interpretation of concerning Rule 31 of the 1993 Rules which provides for counting of service paid from contingencies, this Court held that period of Casual Labourers prior to grant of temporary status by virtue of note on Rule 31 has to be counted to the extent of 50% for pensionary benefits. It is submitted that Rule 31 which fell for consideration before this Court reads as under:

31. ***Counting of service paid from contingencies***.—In respect of a railway servant, in service on or after the 22nd day of August, 1968, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, subject to the following condition, namely—

(*a*) the service paid from contingencies has been in a job involving whole-time employment;

(*b*) the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned such as posts of malis, chowkidars and khalasis;

(*c*) the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though not analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments;

(*d*) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break:

Provided that the weightage for past service paid from contingencies shall be limited to the period after 1-1-1961 subject to the condition that authentic records of service such as pay bill, leave record or service book is available.

Note.—(1) The provisions of this Rule shall also apply to casual labour paid from contingencies.

(2) The expression "absorption in regular employment" means absorption against a regular post."

It is submitted that insofar as the Commission Vendors are concerned, Rule 31 of the 1993 Rules shall not be applicable at all.

3.9 It is further submitted that so far as the Commission Vendors are concerned, there are no commensurate rules and therefore, Rule 31 of the 1993 Rules which formed the basis of the judgment in ***Rakesh Kumar's case (supra)*** cannot be applied to the Commission Vendors who occupy an altogether different status.

3.10 It is submitted that as such Rule 14 of the 1993 Rules provides the period which shall not be treated as service for pensionary benefits. It is

submitted that as per Rule 14(v) of the 1993 Rules, the period under a covenant or a contract which does not specifically provide for grant of pensionary benefits and/or the period on contract basis except when followed by confirmation are not to be counted for pensionary benefits. It is submitted that the respective Commission Vendors have been rendering service under the contract which do not provide for grant of pensionary benefits. They are not even paid regular salaries and they were paid on the basis of the commission. It is submitted therefore by applying Rule 14(v) of the 1993 Rules, service rendered as Commission Vendors which are rendered under the contract and which do not provide for grant of pensionary benefits, prior to their absorption, cannot be counted for the pensionary benefits, otherwise the same shall be hit by and/or contrary to Rule 14(v) of the 1993 Rules.

3.11 It is submitted that insofar as Rule 14(xiv) is concerned, the expression “confirmation” indicates beyond any manner of doubt that the said sub-rule applies only in cases where there was a substantive post in which a contractual employee was confirmed at a later stage. It is submitted that however, this is not the case insofar as the Commission Vendors are concerned. It is submitted that upon harmonious interpretation of Rule 14(v) and Rule 24 it becomes clear that period of employment as Commission Vendors will not constitute service for pensionary benefits. It is submitted that the aforesaid Rules, namely,

Rule 14(v) and 14(xiv) have not been considered in any of the judgments that have been passed by the Tribunals or the High Courts in its correct perspective. It is submitted that the contractual terms between Commission Vendors and the Railways specifically omits to mention any entitlement to pension.

3.12 It is submitted that the aforesaid fundamental differences between Casual Labourers and Commission Vendors which relate to the mode of appointment, nature of work, conditions of service, the applicable law, the disciplinary proceedings etc. show that there can be no parity between the two.

3.13. It is further submitted by Ms. Madhavi Divan, learned ASG that it is required to be noted that some of the Commission Vendors insisted for being absorbed in Group 'C' posts, rather than Group 'D' posts. Even, these persons in particular including the respondents herein are seeking selective parity with casual labourers as and when it suits their convenience. Such Commission Vendors were granted Group 'C' posts, pursuant to the order passed by the learned Single Judge. Such absorption was not a matter of right, but rather a concession granted to them which cannot be used as a platform to seek benefits which were never intended to be extended to them. It is submitted that this was the precise basis for the learned CAT Delhi's order dated 12.02.2016 in another case concerning similarly situated Commission Vendors wherein

it was held that the Commission Vendors absorbed prospectively pursuant to the High Court's order dated 05.11.2012 were not entitled to seek consideration of past service because seeking such a relief amounts to seeking review of the High Court's order directing their absorption.

3.14 It is vehemently submitted by Ms. Madhavi Divan, learned ASG that in none of the judgments of the High Courts and the Tribunals which have held against the Railways, considered the aforesaid differentia between the casual labourers and the commission vendors and the law on unequals not being treated equally. Ms. Madhavi Divan, learned ASG has relied upon the decisions of this Court in the cases of ***Haryana State Electricity Board v. Gulshan Lal, (2009) 12 SCC 231; Uttar Pradesh Power Corporation Ltd. v. Ayodhya Prasad Mishra, (2008) 10 SCC 139;*** *and* ***Union of India v. Muralidhara Menon, (2009) 9 SCC 304*** in support of her submission that as observed and held by this Court in the aforesaid decisions that unequals cannot be treated as equals.

3.15 Now so far as the reliance placed upon the dismissal of the special leave petitions by this Court on earlier occasions, it is submitted that the orders of dismissal passed by this Court on earlier occasions are either on delay or are in any event summary dismissals. These are not reasoned orders which tantamount to precedents under Article 141 of the Constitution. In this regard, reliance is placed upon the decision of this

Court in the case of ***Union of India v. M.V. Mohanan Nair, (2020) 5 SCC 421 (****paras 48 & 49****).***

3.16 Now so far as the findings recorded by the High Court that orders in some cases have become final insofar as the Southern Railway and Central Railway are concerned, it is submitted that merely because orders in some cases have become final is no ground for seeking parity in the present case. It is submitted that an illegality cannot be compounded or perpetuated merely because it has been condoned or committed in other cases. It is not open to the respondents to seek a misplaced parity by seeking a perpetuation of an erroneous position in law as laid down by the Tribunals and upheld by the High Courts. It is submitted that there exists no right to negative equality. Reliance is placed on the decision of this Court in the case of ***Gulshan Lal (supra) (****paras 31 to 35 and 43 to 47****)***. Reliance is also placed on the decision of this Court in the case of ***State of Odisha v. Anup Kumar Senapati, (2019) 19 SCC 626 (****para 39****).***

3.17 Ms. Madhavi Divan, learned ASG has further submitted that if the impugned judgment and order passed by the High Court is not interfered with, there shall be huge financial liability upon the Railways. On the huge financial burden, Ms. Madhavi Divan, learned ASG has taken us to the relevant paragraphs in IA No. 137388/2021, which are as under:

Financial implications

15. If the 50% of past service rendered as commission vendor/ bearers were to be counted for computing the qualifying service for grant of pensionary benefits, huge financial burden would fall upon the shoulders of the public exchequer.

16. For Delhi Division alone, where only 57 commission vendors/bearers are there at present, the financial burden would be more than Rupees 10 crores approx. For instance one Mr. Om Prakash (Respondent party in SLP (C) Diary No. 27616/2020) was engaged as Commission Vendor on commission basis on 17.02.1977 whose date of birth is 12.01.1956 and absorbed in Railway on 27.07.2015. He was superannuated on 31.01.2016 when was drawing basic pay 18000 in Level 1 of 7th CPC.

As per the impugned Order, 50% of period from 17.02.1977 to 26.07.2015 comes to 19 years 02 months and 19 days if computed in compliance of the judgment and order impugned in the present SLP. So the total qualifying service would be 19 Years 8 months and 23 days. His total pension would be Rs. 9000/- per month with admissible DA and Rs. 5000/- family pension per month after demise of the retired employee. Furthermore, the persons, so absorbed in regular service, who have already retired without completing 10 years of service after their absorption would also now become eligible for pensionary benefits which lead to huge monetary expenditure to the public exchequer. It is therefore clear that an employee who rendered only 6 months service after absorption is to be paid Rs. 1,76,940/- lump sum and Rs. 9000/- per month as pension for at-least 15 years (considering the life span of retiree as 75 years). As per this illustration, Rs.16,20,000 as on average excluding Dearness relief has to be paid to an employee who rendered only about 6 months service after absorption.

17. In southern Railway itself, 1265 Commission Vendors/Bearers have been regularized on the basis of direction issued by this Hon’ble Court till 2004. The Commission Vendors/Bearers, who are still in service after their absorption into regular service, if given benefit of counting 50% pre absorption service, would become entitled for MACP benefits which will result in the pension and allied benefits also.

This financial impact shall be huge as it will apply to such Commission Vendors/Bearers in all zones of Indian Railway across the country. There are more than 1000 of such Commission Vendors/Bearers covered under absorption scheme excluding those who had already retired from service without completing 10 years of minimum qualifying service.

18. Zone wise status of the Commission Vendors/Bearers, number of cases (pending and disposed) involving issues regarding computation of 50 % past service and its financial implication are being given below: -

Sl No.	ZONE	No. of court cases	No. of Court cases decided	No. of Employee	Financial implication

					(Subject to final computation)
1	Northern Rly.	13	7	57	Rs. 9 crores approx. Plus future pension
2	East Coast Rly.	3	Nil	Nil	At present Nil. Future Financial implication will be determined on basis of the decision
3	Central Rly.	4	1	69	Rs. 9,06,38,400 + future pension with DR
4	South Eastern Rly.	43	Not Known	86 (70 absorbed)	Rs. 30 Lakhs (approx) + future pension with DR
5	Southern Rly.	36	3	1265 and out of them, 282 have been given benefit as per order of the Court.	Rs. 15 Crores + future pension with DR
6	South Western Rly.	24	Not Known	32	Rs. 55,00,000 Approx + future pension with DR
7	South Central Rly.	3 (Pending)	Nil	180	Rs.85 Lakhs (Approx.) + future pension with DR
8	Eastern Rly.	10	1	32	After impl. Of court orders the difference is about 50202 (approx)
9	Western Rly.	7	5	62	Not ascertained yet. However Future Financial implication will be determined on basis of the decision
10	North Central Rly	NIL	NIL	NIL	NIL
11	North	Nil	Nil	Nil	Nil

	Frontier Railway				
12	West Central Railway	Nil	Nil	Nil	Nil
13	Soutj East Central Railway	Nil	Nil	Nil	Nil
14	North Western Railway	Nil	Nil	Nil	Nil
15	North Eastern Railway	Nil	Nil	Nil	Nil
16	East Central Railway	3	Nil	Nil	Not ascertained Future Financial implication will be determined on basis of the decision
				1783	

3.18 Making the above submissions, it is prayed to allow the present appeals by reiterating and emphasising that the Commission Vendors are not entitled to seek parity of treatment with Casual Labourers insofar as counting their past service before absorption is concerned for grant of pensionary benefits.

4. All these appeals are opposed by Shri Sanjay Parikh, learned Senior Advocate appearing on behalf of the respective employees – Commission Vendors.

4.1 Shri Sanjay Parikh, learned Senior Advocate appearing on behalf of the contesting respondents – respective Commission Vendors has submitted that the employer in this case is the Railway Board under the

Ministry of Railways. There are 16 zones and 68 divisions in the Railways. Employees working in different zones/divisions being under the same employer - Railway Board, ought to be treated similarly. There cannot be any discrimination, *inter se,* as it will violate Articles 14 and 16 of the Constitution.

4.2 It is submitted that in the present case, the appellant – Union of India – Railways has repeated the very same arguments, which were earlier raised before various Tribunals, High Courts and before this Court and which have been rejected. It is submitted that therefore it is not fair and permissible in law to raise and repeat the same arguments every time in pending litigations, when it has been given a quietus having attained finality up to this Court.

4.3 It is submitted that the respective respondents were recruited as Commission Vendors on different dates between 1970-1989 in Delhi based on non-statutory canteens after completion of all the required formalities.

4.4 Referring to the earlier D.O. letter dated 16.02.1974 from the Railway Board, it is submitted that the names of the Commission Bearers and Vendors should be registered in order of the length of their service for their absorption in the permanent vacancies of bearers and vendors in various departmental catering units to afford the main avenue for absorption in the permanent order. It is submitted that in addition, it

was also mentioned in the D.O. letter dated 16.02.1974 that if there are casual labourers/substitutes to be considered for regular absorption in other Class IV categories, the Commission Bearers / Vendors should also be considered along with them.

4.5 It is submitted that as there was a delay in absorption, by letter dated 13.07.1976 in paragraph 3, it was directed that action should be taken to absorb progressively the Commission Bearers/Vendors in regular vacancies. It is submitted that both expressions “regularization” and “absorption” have been used in paragraph 3. It is urged that therefore it was decided by the Railway Board to give the Commission Bearers/Vendors the status of Railway employees by taking /absorbing them on permanent vacancies.

4.6 It is submitted that when the above D.O. letter dated 16.02.1974 read with letter of 13.07.1976 were not given effect to, a Writ Petition (C) No.6804 of 1982 was filed before this Court under Article 32 of the Constitution. It is submitted that the said writ petition came to be allowed by this Court *vide* judgment and order dated 13.12.1983 and it was directed that until all the bearers and vendors are absorbed as per D.O. letter dated 13.07.1976, “the Railway cannot appoint any person either as bearer or vendor on permanent basis in Railway service from any other source”. It is submitted that this Court expressed hope that steps to absorb bearers/vendors would be taken as early as possible. It is

submitted that the meaning and purport of the order was that all vacancies of bearers/vendors in Railway shall be allocated for absorption of Commission Bearers/Vendors and till that process is completed, no appointment on permanent basis from any other source shall be carried out.

4.7 It is submitted that the issue again came up before this Court in the case of ***T.L. Madhavan (supra).*** That this Court again reiterated what was stated in the earlier order in Writ Petition (C) No.6804 of 1982. That in paragraph 3, it was also clarified that the vendors and bearers so absorbed in the "Railway Catering Service" shall be entitled to salary from the date of their absorption.

4.8 It is submitted that however, the process of absorption was inordinately delayed and therefore, the Member Staff – Railway Board wrote a letter dated 12.01.2004 to the General Manager - Northern Railway about inordinate delay in absorption of Commission Vendors/Bearers. The attention of the General Manager, Northern Railway was also drawn to the Orders passed by this Court. The Board also referred to the letters dated 20.08.1996 and 06.11.2000 which were written to expedite the process of absorption. In the letter dated 31.07.2001, the Railway Board had written to all the General Managers to absorb the Commission Vendors/Bearers "in the Commercial Department as well as in other departments", in view of the fact that

catering department on zonal railways had been frozen resulting in very few vacancies arising therein.

4.9 That the Railway Board issued another letter dated 02.08.2005 whereby it was decided that “all Commission Vendors/Bearers to be absorbed, subject to medical fitness with age cut off as 59 years as on 01.04.2005 with education qualifications as read and write only”. It is submitted that due to delay in absorption of the Commission Bearers/Vendors, the Railway Board provided that even if the Commission Bearers/Vendors have attained the age of 59 years but had not superannuated, they will be absorbed.

4.10 It is contended that from the aforesaid facts and the various orders passed by the Railway Board and this Court, it would show that the Commission Vendors/Bearers were taken in the Railway services by way of absorption in view of the facts and circumstances prevailing then and these Commission Bearers/Vendors were discharging duties similar to those discharged by the vendors/bearers of the Railway canteen. It is submitted that as such the delay in absorption by different zones/divisions of Railway was in violation of this Court's orders.

4.11 That in view of the delay and negligence of the Northern Railway in not implementing the Railway Board's Order dated 13.12.1976 and the orders passed by this Court, a number of Writ Petitions were filed by the Commission Vendors/Bearers, which can be seen from the Judgment

given by the Delhi High Court dated 05.11.2012 in ***Gurdas Ram & Others Vs. UOI & Others*** in W.P. (C) No.5175 of 1998 & CM No.14513 of 2010. It is submitted that it is pursuant to the judgment of the Delhi High Court in the case of ***Gurdas Ram & Others (supra)*** that the respondents herein were absorbed in Class III.

4.12 It is submitted that the learned Single Judge in the case of ***Gurdas Ram & Others (supra)*** issued a madamus to the respondents (Northern Railway) to absorb eligible petitioners who have not crossed age of 59 years in 'Group C' posts against vacant posts of this category after such eligible petitioners formally make an application to seek absorption in 'Group C' posts. It is submitted that the judgment of the learned Single Judge in ***Gurdas Ram & Others (supra)*** was accepted by the Northern Railway and the appointments were given to the respondents herein as well as to the others in the post of "Catering Waiter" in Grade Pay of Rs.5200-20200+GP 1800/-.

4.13 On the issue whether the Commission Vendors/Bearers after their absorption on a permanent sanctioned post in the Railways are entitled for pension, Shri Sanjay Parikh, learned Senior Advocate has made the following submissions: -

(i) Initially, these Commission Vendors/Bearers were working on contractual basis and thereafter they were absorbed and became permanent Railway employees on different dates.

That Rule 14 of the Railway Services (Pension) Rules, 1993 provides that periods of employment in the capacities mentioned from (i) to (xiv) shall not constitute service for pensionary benefits. That clause (xiv) of Rule 14 contains an exception, namely, that "when employment on contract basis is followed by confirmation". That the meaning of confirmation will be absorption in Railway service or taking them permanently in Railway service or confirmation in Railway service by absorption/appointment etc. It is submitted that the nomenclature may not be relevant. That the respondents' case is covered by the said provision because their contractual period was followed by their confirmation/ absorption in the Railway services. That Rule 24 clarifies the situation further as it provides that if a person is initially engaged by Railways on a contract (as Commission Vendor/Bearer) and subsequently appointed to the same or another post in a substantive capacity (as Catering Waiter) in the present case, such contractual period of service shall be treated like any other permanent service in the Railway and be taken into account for calculating the pensionary benefits.

(ii) That the said Rules were considered by the Kerala High Court and by other High Courts in several Judgments and the SLPS filed by the Railway Departments were dismissed, even on merits. Therefore, various Tribunals/High Courts have accepted 50% of the service rendered on contractual basis before absorption for grant of pension. That the said issue has attained finality as on this legal basis and the Railways have implemented it.

(iii) Reliance is placed on the decision of this Court in the case of ***Rakesh Kumar's case (supra)***. It is submitted that in the said judgment, this Hon'ble Court had considered the grant of pension to the casual labours who were granted temporary status and subsequently regularized for determining the qualifying service and for grant of pension. Reliance is placed on the final conclusion in paragraph 53.

(iv) Thus, according to the said judgment, a casual worker is entitled to reckon 50% of causal service before obtaining temporary status. That however, the Railway Board is taking a contrary position and they are asserting that "only 50% of temporary status service would be counted for pensionary service after regularization" and that the period prior to

temporary status would not be counted for pensionary benefits.

(v) That various orders passed by the respective High Courts/Tribunals with respect to the Western Railway, Eastern Railway, Southern Railway taking the view that the Commission Vendors/Bearers are entitled for counting 50% of the period for the purpose of pensionary benefits.

4.14 It is also submitted that therefore to deny the benefit of 50% of earlier service rendered as Commission Vendors/Bearers for the purpose of pensionary benefits only in one zone of the Railways namely, Northern Railway, would be discriminatory and violative of Articles 14 and 16 of the Constitution.

4.15 It is further submitted that even on the Doctrine of Stare Decisis, the respondents are entitled to the benefit of counting of their 50% service/period rendered as Commission Vendors/Bearers for the purpose of pensionary benefits. Reliance is placed on the decision of this Court in ***Waman Rao and Ors. Vs. Union of India and Ors., (1981) 2 SCC 362*** *(para 40);* ***Narinder Singh and Ors. Vs. State of Punjab and Anr., (2014) 6 SCC 466*** *(para 22)*.

4.16 Now, so far as the submission on behalf of the Railways on the financial liability/implication is concerned, it is submitted that the said plea would violate Articles 14, 16 and 21 of the Constitution besides the

Rule of Law. It is submitted that the argument of financial implication which is primarily been raised to deny equal treatment to the Commission Vendors/Bearers now Catering Waiters may not be accepted as the same is wholly unsustainable.

4.17 It is submitted that in the case of ***All India Judges' Association and Ors. Vs. Union of India and Ors., (1993) 4 SCC 288*** *(para 16)*, this Court had considered the uniformity in the service conditions of judicial officers and the question of financial burden raised by Union of India was rejected as being misconceived. That in the said decision, this Court has said that if a decision has financial implications, the Government is obligated to loosen its purse.

4.18 It is submitted that in the case of ***Ashoka Kumar Thakur Vs. Union of India and Others, (2008) 6 SCC 1***, it is observed and held by this Court that the State cannot avoid constitutional obligation on the ground of financial inabilities.

4.19 It is further submitted by Shri Sanjay Parikh, learned Senior Advocate that the concept of negative equality raised by learned ASG shall not be applicable in the present case. It is submitted that the judgment of this Court in the case of ***Anup Kumar Senapati (supra)*** relied upon by the appellants is not applicable to the facts of the present case. It is submitted that facts of the present case clearly establish the right for being absorbed on the vacant posts and that the High Courts

have granted relief on the basis of the provisions of the Rules, 1993, which has been confirmed by this Court. It is submitted that there are admissions/concessions of the Railway Board and acceptance of the series of judgments that the Commission Vendors/Bearers are entitled to claim 50% of their service for the purpose of pension. That this is not a case of either the decisions being wrong or there being any illegality or fraud or that it is not even a case where the relief/benefit has been granted inadvertently or by mistake. It is a case where different zones and divisions under the Railway Board are granting pension whereas it has been denied to other similarly situated persons in violation of Articles 14, 16 and 21 of the Constitution. It is submitted that therefore, the present case is clearly covered by the decision of this Court in the case of ***G.C. Ghosh and Ors. Vs. Union of India and Ors., 1991 Supp (2) SCC 497***.

4.20 Making above submissions and relying upon above decisions, it is prayed to dismiss the present appeals.

5. We have heard learned Additional Solicitor General of India appearing on behalf of the Union of India and others and Shri Sanjay Parikh, learned Senior Advocate appearing on behalf of the respondents.

At the outset, it is required to be noted that the issue in the present case is with respect to Commission Vendors working in the Northern

Railway and the issue is whether the Commission Vendors who were absorbed in the regular service are entitled to reckon 50% of the period of service as Commission Vendors, prior to their absorption, as qualifying service for grant of pensionary benefits, at par with the casual labourers whose services were regularized by virtue of Rule 2005 of the Indian Railway Establishment Manual, Vol. II, 1991 (IREM) r/w Rule 31 of the Railway Services (Pension) Rules, 1993.

At the outset, it is required to be noted that so far as the Commission Vendors working in the Western Railway, Eastern Railway, Southern Railway and South-Eastern Railway are concerned, pursuant to different orders passed by the Central Administrative Tribunals and High Courts, which have been confirmed by this Court, the issue is held against the Union of India/Railways, the particulars of which are as under:

i) By a detailed judgment and order in OA No. 238/2004, the Central Administrative Tribunal allowed the said OA filed by the Association/Trade Union of the employees of the Railways filed on behalf of the Commission Vendors/bearers working in the Western Railway, relying upon the earlier order passed by the CAT in OA No. 538/1996 and the order passed by the Bombay High Court in Writ Petition No. 499/2002, and held that the Commission Vendors/bearers are entitled to 50% of the services rendered by them as Commission Vendors/bearers for the purpose of pension along with the services rendered by them as

regular employees of the railways. The judgment and order passed by the Tribunal in OA No. 538/1996 came to be confirmed by the Bombay High Court, by judgment and order dated 21.04.2008 passed in Writ Petition No. 190/2006. The said judgment and order dated 21.04.2008 passed by the High Court was the subject matter of the special leave petition before this Court. This Court initially issued notice in the special leave petition and thereafter by order dated 14.03.2011 passed in SLP(Civil) No. 24166/2009, dismissed the special leave petition on the ground of delay as well as on merits;

ii) With respect to the Commission Vendors/bearers working in the Eastern Railway, there was a decision against the Railways by the Calcutta High Court, which was the subject matter of Special Leave Petition before this Court being Special Leave Petition (Civil) No. 25730/2009. In the case of eastern railway, the CAT, Calcutta Bench held in favour of the Commission Vendors/bearers. The writ petition filed by the Railways came to be dismissed by the Calcutta High Court against which the aforesaid special leave petition came to be filed before this Court, which was dismissed by order dated 14.03.2011;

iii) With respect to Commission Vendors/bearers working in the Southern Railway, the High Court of Kerala at Ernakulam held in favour of the similarly situated Commission Vendors/bearers. In the case of Southern Railway, the CAT, Ernakulam Bench vide order in OA No. 440/2003 decided in favour of the Commission Vendors/bearers. The Railway Board and others filed a writ petition before the High Court being Writ Petition No. 15756/2006. The High Court affirmed the order passed by the tribunal directing that the 50% of the services rendered on

contract basis be counted for pension. Against the order passed by the Kerala High Court, the Railways filed a special leave petition before this Court, which came to be dismissed on the ground of delay;

a. By another judgment, similar order was passed by the High Court of Kerala, confirming the judgment and order passed by the CAT, Ernakulam Bench, which was decided in favour of the Commission Vendors/bearers. The said judgment and order passed by the High Court has attained finality.

b. There were similar judgment(s) and order(s) passed by the CAT, Ernakulam Bench which were in favour of the Commission Vendors/bearers, which have attained finality.

iv) With respect to the Commission Vendors/bearers working in the South-Eastern Railway, the CAT, Calcutta Bench vide order dated 06.12.2010 in OA No. 758/2007 declined the claim of the Commission Vendors/bearers. However, by a detailed judgment and order dated 30.08.2012 in Writ Petition No. 28/2011, the High Court of Calcutta held that the Commission Vendors/bearers are entitled to 50% of the services rendered prior to their regularization to be counted for pensionary benefits. The special leave petition against the judgment and order passed by the High Court of Calcutta came to be dismissed by this Court being Special Leave Petition No. 25019/2013.

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.

8. The Railways/UOI/Railway Board cannot be permitted to repeat the same arguments which were raised before different Tribunals, High Courts and also before this Court. Under the circumstances, the respondents – Commission Vendors/bearers working in the Northern Railway shall also be entitled to the same benefits which the other Commission Vendors/bearers working in different Zones/Divisions are held to be entitled to. There cannot be discrimination among the similarly situated Commission Vendors/bearers. To deny similar benefits would tantamount to discrimination and in violation of Articles 14 and 16 of the Constitution of India.

9. Now so far as the submission on behalf of the appellants - UOI/Railways that there shall be huge financial burden on the Railways is concerned, it is required to be noted that the issue is with respect to pensionary benefits. Once it is found that the respondents – Commission Vendors/bearers working in the Northern Railway are also entitled to similar benefits which are given to the similarly situated Commission Vendors/bearers working in different zones/divisions and since they are already being paid the pensionary benefits by counting the benefit of 50% of their services rendered prior to their regularization, there is no reason to deny the similar benefits to the respondents – Commission

Vendors/bearers working in the Northern Railway being similarly situated.

10. Even the concept of negative equality submitted on behalf of the appellants also shall not be applicable in the facts and circumstances of the case, more particularly when the decisions of different High Courts which are held against the appellants have been confirmed by this Court and the special leave petitions have been dismissed on the ground of delay as well as on merits.

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 appeals are accordingly dismissed. No costs.

……..J.
[M.R. SHAH]

NEW DELHI;
OCTOBER 31, 2022.

……J.
[B.V. NAGARATHNA]