
(2013) 01 GUJ CK 0099

In the Gujarat High Court

Case No : Special Civil Application No. 8361 of 2004

Nilaben Jitendrabhi Desai

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 06-01-2013

Acts Referred:

Citation : (2013) LabIC 3873

Hon'ble Judges : Ravi R. Tripathi, J;R.D. Kothari, J

Bench : Division Bench

Advocate : Y.V. Shah, for the Appellant; Mukesh A. Patel, for the Respondent

Judgement

Ravi R. Tripathi, J.—The present petition is filed by the petitioner, who was aged about 57 years in the year 2004 and had lost her husband. It is really painful to put on record that a limb of the Government i.e. Indian Railways is working more harsh than a Private blood-sucker. A poor lady having no other alternative joined as "Substitute Railway Primary School Teacher" on 06/02/1979. She was granted temporary status w.e.f. 07/10/1984 and at the end of 24 years of services, she has to accept "Discontinuation", as she could not get selected in the process of selection for regularization. This Court is at loss to understand that as to what she was doing for all these 24 years and what was the nature of selection, which she could not pass to get regularized. If she was so worthless that she cannot pass the simple test for regularization, then why she was continued by the railways for long 24 years. At the fag-end of her life and at the stage when she lost her husband, she has to accept discontinuation only because she could not pass the selection for regularization.

2. The matter is having little chequered history. The poor petitioner was constrained to approach the Central Administrative Tribunal more than once, but every time, she could not get any relief due to technicality and super-technicality of the process. Today, she is before this Court being aggrieved by judgment and order passed by the Central Administrative Tribunal, Ahmedabad Bench (herein referred to as the Hon"ble Tribunal") in Original Application No. 519 of 2003

dated 17/06/2004, whereby, the Hon"ble Tribunal has dismissed the petition, taking an approach which can certainly be called technical.

2.1 Learned Advocate appearing for the railways was requested to put the matter before the concerned higher officer, but he deemed it proper to argue on merits rather than putting suggestions of this Court to the concerned higher officer. Learned Advocate for the railways was interpreting the provisions of Indian Railways Establishment Manual, Volume-I. Relevant parts of which are quoted in the petition in a manner which cannot be accepted even if most lenient view is taken in favour of railways.

2.2 This Court is of the opinion that those provisions of Indian Railways Establishment Manual Volume-I are observed more in breach than compliance. The first provision which is referred to in the petition is "Para-1512". For ready perusal, the same is reproduced:--

Para-1512 - "Substitutes are persons engaged in Indian Railway Establishment on regular Scale of pay and allowance applicable to the Post against which they are employed. These posts fall vacant on account of a Railway Servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.

2.3 Now, learned Advocate for the railways submitted that "Substitute" is a person, who is appointed against a "regular post", on "regular pay" and is paid the allowance payable to the person holding that regular post. We are not able to accept the aforesaid interpretation put forward by the learned Advocate for the railways. On careful reading of Para-1512, we find that Para-1512 provides a definition of the word "Substitute". According to Para-1512 - (i) "Substitute" is a person who is engaged in Indian Railways; (ii) He is engaged on regular scale of pay and allowance applicable to the Post against which he is employed; (iii) These posts must have fallen vacant on account of a Railway Servant (regular) being on leave or due to non-availability of permanent or even temporary railway servants; and (iv) These posts are of such a nature which cannot be kept vacant.

2.4 Para-1512 does not mention that "Substitute" is to be appointed against a regular post. It does not mention that he is required to be paid pay and allowance payable to the regular employee. In fact, the definition itself provides that when a person is appointed on regular scale of pay and allowance, applicable to the post on which he is employed, he is "Substitute". It is very clear that every substitute so appointed is entitled to the regular scale of pay and allowance payable to the particular post.

3. At this juncture, it will be appropriate to refer to the first "appointment letter" by which the petitioner was engaged. A copy of that appointment letter is produced at Page-14 (Annexure-"A" Colly.). The date of the letter is 26/11/1984. It is issued by none other than Vice President of Railway Schools and AOS SBI, Sabarmati. The subject is "Engagement of Substitute Teacher" and the first paragraph of that letter reads as under:--

You are hereby informed that "you are appointed as Sub-Assistant Teacher on pay of Rs. 330/- per month" in the grade of Rs. 330-560(R) in Railway Primary School, Sabarmati to work in any class allotted to you.

(Emphasis supplied)

3.1 The Court is of the opinion that appointment letter is in consonance with the provisions of Para-1512 of Indian Railways Establishment Manual, Volume-I.

3.2 Second paragraph of that appointment letter shows that there is dirth of employment in this country, that is why the employer dictated their own terms by writing everything, which is otherwise impermissible in law. Para-2 reads as under:--

You please note that your appointment is made purely on temporary basis on usual terms as a Sub-Assistant Teacher will not confer on you for any claim for appointment either on temporary or permanent post in future and if your work is not found satisfactory, your services are liable to be terminated, without notice.

(Emphasis supplied)

3.3 A poor lady has no other alternative than to accept this letter as it is. She accepted the same and started working and continued to work without any difficulty atleast up to 1991, when there was a move for terminating her services and as the petitioner had no alternative then to approach the Central Administrative Tribunal by filing Original Application No. 312 of 1991 against the apprehended termination.

4. It is really painful that while the petition was pending, her service came to be terminated by communication dated 09/10/1991 and therefore, she filed another Original Application No. 360 of 1991 challenging that actual termination. These two Original Applications came to be disposed of by the Tribunal by judgment and order dated 11/08/2000.

4.1 Learned Advocate for the railways does not have the papers of O.A. No. 312/1991 and O.A. No. 360/1991 as well as the judgment and order dated 11/08/2000. Fortunately, relevant part of that judgment and order dated 11/08/2000, is quoted by the Central Administrative Tribunal in the order under challenge in this petition and the learned Advocate for the railways invited attention of the Court to that portion of the judgment. The same is reproduced for ready perusal.

Mr. K.K. Shah, learned Advocate the applicant has however, pleaded that considering the long service put up by the applicant with the respondents and considering that she is an experienced teacher whose experience can be beneficially utilised by the Railway authorities and also considering the fact that at this age the applicant would not get any other service, the respondents may be directed "not to terminate her services". We appreciate the "fact that the applicant has now put up about 21 years of service" (the petition was filed in the

year 1991 and the same is disposed of in the year 2000, meaning thereby, even if that period of 9 years is taken out, she had put in 12 years of service with the Railway, when her services were sought to be terminated) and if terminated from service, she is not likely to get any other service. "She having served the Railway Establishment for almost two decades", it would be definitely unfair to remove her from the service only on the ground of failure to get herself regularised in the service. We are conscious of our limitation in giving directions against rules but at the same time we felt that on humanitarian considerations the applicant deserves one more chance to get herself regularised in the service. It is obvious that she does not get a chance to get herself regularised in the service, she would be losing all the benefits of the service of two decades put up by her with the Railways. Under the circumstances, as one time exception and purely on humanitarian ground, we direct the respondents to allow the applicant to appear in the selection for the post of assistant teachers and if she clears the selection, she may be regularised in the service as assistant teacher.....

(Emphasis supplied)

5. This Court has no doubt that the teacher who was fighting against the authorities will have no hope of getting selected in a selection, which she was appearing under the order of the Hon'ble Tribunal. The matter requires serious consideration from all concerned. A teacher was allowed to continue to teach students for long 12 years and thereafter, on one fine morning, her services were terminated only on the ground that she is not able to pass the "selection held for regularization". Two things cannot go together. Either she should not have been allowed to continue for long 12 years in service, if she did not have the capacity to teach. Or in the alternative, the selection was so designed that the persons appearing there-in cannot clear such selection. A judicial notice can be taken of the fact that the post of "Assistant Teacher" is not such which will require extraordinary skill specialized knowledge which a teacher did not possess and hence, repeatedly got unsuccessful.

6. Coming to Paragraph-1514 of Indian Railways Establishment Manual, Volume-I, it provides for "emoluments payable to the substitutes". The same is reproduced for ready perusal.

Substitutes should be paid regular scales of pay and allowances admissible to such posts, "irrespective of the nature or duration of the vacancy".

(Emphasis supplied)

6.1. Learned Advocate for the railways refused to give any weightage to this paragraph, which is really surprising. This Court is of the opinion that taking into consideration this Paragraph- 1514, the appointment letter at Page-14 of the petition memo provided that, "you are appointed as Sub-Assistant Teacher on pay of Rs. 330/- per month" in the grade of Rs. 330-560(R) in Railway Primary School, Sabarmati", meaning thereby, Paragraph-1514 was followed in letter and spirit and she was made entitled to receive regular scale of pay of the post of

Sub-Assistant Teacher. Naturally, she must get all allowances admissible to such post.

7. Learned Advocate for the railways submitted that in the prayer clause, the petitioner has prayed that-

14(A) Be pleased to quash and set aside the impugned action of the respondent Railway Administration of withholding (i) increments, (ii) Vacation Pay. (iii) P.F., (iv) Earned Leaves etc. accrued during 24 years of service by quashing and setting aside the impugned decision of the CAT (Annexure-B).

7.1 This Court is at loss to understand as to why the petitioner will not be entitled to Vacation Pay, will not be entitled to P.F. and will not be entitled to Earned Leave, when Railway Administration allowed the petitioner to render service for long 24 years as a "Substitute".

8. Paragraph-1515 of Indian Railways Establishment Manual, Volume-I provides Rights, and Privileges admissible to the "substitutes", which reads as under:--

Substitutes should be afforded "all the rights and privileges" as may be admissible to the Temporary Railway Servants, from time to time on completion of Three months continuous service.

(Emphasis supplied)

8.1 It appears that though there is a provision, somebody, personally was interested to see that the petitioner does not get the benefits flowing from Paragraph-1515. The Court has reason to believe that this may be only due to extraneous consideration on the part of that "somebody", otherwise Paragraph-1515 makes it very clear that Substitute is to be afforded "all the rights and privileges", which are admissible to the Temporary Railway Servants from time to time after he/she completes Three months" continuous service.

9. It is not unknown to this Court that whenever a person like petitioner demands for legitimate rights, the higher-ups gets irritated and then they start taking all sorts of steps so as to see that either she is pushed out of the establishment or is made to surrender to the higher-ups. Otherwise, as per Paragraph-1515, on completion of Three months" continuous service, the petitioner ought to have been paid all the rights and privileges, which are admissible to a Temporary Railway Servant. The Court has reason to believe that the notice issued in the year 1991 was an outcome of demand made by the petitioner for her legitimate rights and privileges.

9.1. Let an impression be not created that the Court is importing its personal knowledge in the case, infact the facts of the case, when appreciated, are giving reason to the Court to reach to such conclusion.

10. In the petition, the petitioner has quoted Modified Para-216 of the Indian Railways Establishment Manual, Volume-I, which supports the aforesaid view of the Court that only because the petitioner was agitating for her legitimate rights

and privileges, that she was subjected to such treatment by the persons in power.

10.1 Para-216 (Modified) provides to hold selection Annually in a regular manner for promotion and in exceptional cases after a gap of Six months. The Railway Administration has not placed any material on record to show that after the petitioner was appointed as a Substitute to the post of Sub-Assistant Teacher on the pay of Rs. 330/- per month in the grade of Rs. 330-560(R), any such selection was held and an opportunity was given to the petitioner to appear.

As against that, the learned Advocate for the railways vehemently submitted that the petitioner has no case and the petition deserves to be dismissed and the same should be dismissed in view of the earlier litigation in the matter. Learned Advocate for the railways invited attention of the Court to Para-7 of the affidavit-in-reply filed on behalf of respondents, affirmed by one Mr. N.H. Dave, son of Natwarlal Dave, holding post of D.P.O., ADI, Ahmedabad, wherein, it is stated in Para-7 that:--

Para-7.....Here the petitioner has not cleared the selection test within the stipulated four chances. The recruitment selection were held on 07/10/1984, 1990, 1994 and 2003.

10.2 The Court does not find any logic in these dates. As contemplated under Modified Para-216 of I.R.E.M. is to be held selection Annually, except the first one the date mentioned as 07/10/1984, in other year, the date is not mentioned. Not only that there is a calculated attempt on the part of the deponent of that affidavit to mislead the Court. The petitioner was appointed on 26/11/1984 and still the selection which was held on 07/10/1984 is mentioned the petitioner could not have appeared in the selection on 07/10/1984, as she was appointed on 26/11/1984. So far as selection held in the years 1990, 1994 and 2003 no dates are given. Again it is required to be noted that the selection held in the years 1994 and 2003 were after a notice for discontinuation given in the year 1991. Not only that she was already terminated by order dated 09/10/1991, meaning thereby, she had only one selection during her service period, prior to having been served with termination (on 09/10/1991) in the year 1990. All this goes to show that the establishment, if not as an institution then the individuals, who were in power, were certainly motivated to see that she does not get an opportunity to appear for selection for being regularised. While referring to Modified Para-216 of the I.R.E.M., the petitioner has referred to the fact that the procedure prescribed for holding selection Annually and in an exceptional case after a gap of Six months and after giving every candidates minimum Three chances to get promoted. This procedure is not followed by the respondent. The petitioner is generous enough to say that it can be on account of administrative difficulties. But thereafter, the fact is mentioned that promotions are given to unselected candidates by incompetent authority though the post is controlled by the Head Quarter. The said important fact-that averments--serious allegation is not replied by the deponent Mr. N.H. Dave, DPO, ADI, Ahmedabad.

11. This Court is of the opinion that the Hon''ble Central Administrative Tribunal has erred in dismissing the Original Application No. 519 of 2003 and therefore, the judgment and order dated 17/06/2003 requires to be quashed and set aside and the same is accordingly quashed and set aside.

12. The respondent-Railway Authorities are directed to consider the case of the petitioner and grant her all the benefits, which are payable to her in light of Paragraph-1515 and Para-graph-1514 of Indian Railway Establishment Manual, Volume-I. Under Paragraph-1515, she is entitled to all the rights and privileges, which are admissible to the Temporary Railway Servants and she being a teacher will be entitled to not only Vacation Pay, but also Earned Leave and other benefits. "Increment" is a matter of right, which must be granted to her and P.F. is also a statutory right, which must be made available to her. As on date, she is a senior citizen as she was 57 years, when she filed petition in the year 2004. To expect a lady to be dependent on others, may be her own children, after having put in more than two decades service with Indian Railways, is violative of her rights and denial of justice. The preamble of the Constitution of India state that the country is "Socialistic State" and therefore, the Indian Railways-limb of State must come forward to adhere to the principle of social justice and social welfare and pay the petitioner all the benefits she is entitled to. The petition is allowed with cost of Rs. 25,000/- (Rupees Twenty Five Thousand Only).

If deemed proper, the Railways may recover the amount of cost from the Officer, who may be ascertained responsible for having made the petitioner to run from pillar to post.

Rule is made absolute.