

(2010) 05 DEL CK 0246

In the Delhi High Court

Case No : Writ Petition (C.) No. 5812 of 2008

Ram Avtar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 05 DEL CK 0246

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners have challenged the order dated 8th July, 2008 passed by the Central Administrative Tribunal, Principal Bench in OA 1358/2008 titled as Sh. Ram Avtar and Ors. v. Union of India through Ministry of Railways and Ors. dismissing their Original Application challenging the circular dated 1st April, 2008 and seeking direction to the respondent to consider the applicants first for appointment to the regular posts whose names appeared in the live casual labour register before considering the regularization of other categories of employees. The plea of the petitioners was that they had been working as casual labour in C&W Safaiwala and had completed 120 days in Northern Railways.

2. A writ petition No. 252/1994 was filed before the Hon"ble Supreme Court which was disposed of with the direction to the respondents to appoint a high ranking officer for scrutinizing the claims of the petitioners and other similarly placed persons.

3. Pursuant to the directions by the Hon"ble Supreme Court, the cases of the petitioners were scrutinized and it was held that they were not entitled for regularization under the scheme framed as they had worked for less than days contemplated under the scheme. However, their names were put in the list of casual labours. Later on, all the petitioners were re-engaged as a C&W

Safaiwalas and again their services were dispensed with by order dated 1st August, 1997 after giving them show cause notices dated 7th July, 1997.

4. The petitioners had challenged dispensing of their services by filing an Original Application being OA 240/2003 which was dismissed by order dated 17th March, 2003. The Tribunal had held that the petitioner could not claim any benefit from the order of the Supreme Court. The order dated 17th March, 2003 in OA 240/2003 was not challenged by the petitioners and had become final.

5. The respondents thereafter, issued a circular dated 1st April, 2008 deciding to absorb licensed porters as a gangman but those casual labours whose name had been entered in live casual register were not to be absorbed under the said circular which was challenged by the petitioners by filing OA 1358/2008 before the Tribunal. While dismissing the petition, the Tribunal noted that circular dated 1st April, 2008 was issued pursuant to announcement made by the Railway Minister as a one time measure to appoint licensed porters as a gangman.

6. The Tribunal also noted that in *Inder Pal Yadav* (supra), pursuant to directions of the Supreme court in Writ Petition No. 254/1994, the cases of the petitioners were scrutinized and since, it was found that the petitioners had worked for less than 120 days and it was held that one time measure to absorb the licensed porters as a gangman by Circular dated 1st April, 2008 could not be applied to the petitioners and that the petitioners have no right to challenge the policy decision of the Railways with regard to the absorption of other categories of workers. The Tribunal has also held that the petitioner could not claim preference over other categories. Since, the absorption and regularization of the petitioners was declined in OA 240/2003 by order dated 17th March, 2003, which was not challenged by the petitioner, it has been held that they are not entitled for regularization. Reliance was also placed on the State of Karnataka v. Umadevi (2006) 4 SCC 197, holding that it is prerogative of Government to announce the schemes and the scheme for taking care of licensed porter's cannot be extended in case of the petitioners whose relief for regularization has already been declined. Reliance was also placed on Federation of Railway Officers Association and Others Vs. Union of India (UOI), , holding that policy decision or action of Government unless it is inconsistent with Constitution and the laws or is arbitrary or is irrational, is not subject to judicial review.

7. The learned Counsel for the petitioner has again contended before this Court, while challenging the order of the Tribunal dated 8th July, 2008, that since the petitioners were put in the category of live casual labour, therefore, they are also liable to be considered pursuant to the circular dated 1st April, 2008. This, however, has not been denied by the learned Counsel and cannot be denied by him that pursuant to the order passed in *Inder pal Yadav* (Supra), the petitioners were considered and were found not eligible for regularization. The challenge by the petitioners to dispensing with their services was not upheld in OA 240/2003 which was dismissed by order dated 17th March, 2003 which had not been challenged by the petitioners.

8. The respondents are entitled to have different schemes for different categories of workers and the Circular dated 1st April, 2008 is made categorically for the licensed porters as a one time scheme to appoint them as a gangman. Such a policy decision of the respondents as one time measure for licensed porters cannot be extended to the petitioners who had been in live casual labour register and whose services had been dispensed with nor the action of the respondents to have one time measure/scheme for licensed porters can be faulted.

9. The learned Counsel for the petitioner is unable to show that the circular dated 1st April, 2008 is contrary or inconsistent with any rules or decision of the Supreme Court or such a scheme suffers from any such perversity or illegality, which will require interference by the Court in case it is not applied to the petitioners.

10. In the totality of the facts and circumstances, the counsel for the petitioners has failed to make out any such illegality or perversity in the order of the Tribunal, which will necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

11. The writ petition is therefore, without any merit and it is therefore dismissed.