
(2012) 05 PAT CK 0087

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7978 of 2008

The Union of India

APPELLANT

Vs

Siya Ram Paswan and Others

RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Citation : (2012) 05 PAT CK 0087

Hon'ble Judges : Vikash Jain, J; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Anil Kumar Sinha in CWJC No. 7978 of 2008 Mr. Anil Kumar Sinha in CWJC No. 8052 of 2008, for the Appellant; M.P. Dixit, Mr Aditya Sharan, Sanjay Kr. Dixit and Mr Sanjay Kumar Choubey in CWJC No. 7978 of 2008 Mr. M.P. Dixit, Mr Aditya Sharan, Sanjay Kr. Dixit and Mr Sanjay Kumar Choubey in CWJC No. 8052 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Shiva Kirti Singh

1. Both these writ petitions have been heard together because they relate to the same controversy between the same parties. CWJC No.7978 of 2008 has been preferred against order dated 30.1.2007 passed by the learned Central Administrative Tribunal, Patna Bench in Review Application no.9 of 2007 whereas the other writ petition has been preferred to challenge the main order of the Tribunal dated 27.1.2006 passed in OA No.597 of 2002. We have heard the parties first in respect of CWJC No.8052 of 2008 because relief was granted to the respondent casual labours by the Tribunal by the impugned order under challenge in this writ petition. On behalf of the petitioners, who are Railway and their officials, a strong exception has been taken to the direction of the Tribunal to relax the age limit of the respondents/ applicants who have become overage and then to take steps to regularize their service in Group D posts within two months. According to learned counsel for the petitioners, the Tribunal ignored the policy decision of the Railways apparent from RBE No.190/ 2001 (Annexure-4).

From Annexure-4 it was shown that eligible ex- casual labours borne on the Live/ Supplementary Live Casual Labour Registers and fulfilling other conditions would be given age relaxation only upto the upper age limit of 40 years in the case of General candidate, 43 years in the case of OBC and 45 years in the case of SC/ ST candidates.

2. On this issue which is the main and vital issue, learned counsel for the respondents/ applicants has raised an initial objection that the policy decision in Annexure-4 dated 20.9.2001 was not brought before the Tribunal and, therefore, the respondents had no opportunity to meet the same. He further placed reliance upon statements in the counter affidavit and two documents annexed therewith. Annexure- R/2 is an order of Central Administrative Tribunal, Patna Bench in CCPA No.160 of 2002 dated 7.5.2004. In paragraph 5 of that order the Tribunal has observed that while taking into consideration age of the petitioners in that case, who appeared to be a similar casual labour, the relevant date had to be calculated from the year 1996 when the concerned casual labours had successfully faced the screening test and on that basis it was held that none of the petitioners of that case were overage for the purpose of regularization. The next document Annexure- R/3 is an order dated 7.10.2005 issued from the office of General Manager (P), Hajipur in relation to absorption of 554 screened casual labours for the purpose of absorption in DHN Division. The letter mentions that it is with the approval of General Manager and provides two important informations. Firstly, That the regularization/ absorption was ordered by GM/ ECR and that DRM in the Division has full power to give full age relaxation. Secondly, it was pointed out that upper age limit stands relaxed and hence, there is no question of determination of upper age limitation of candidates.

3. Although opportunity was given to the petitioners to meet the averments in the counter affidavit, there is no reply and although we have some hesitation in accepting the views of the Tribunal in Annexure- R/2 that the relevant date for calculating upper age limit will be year of screening i.e. 1996, we have no hesitation to rely upon policy decision of the Railway mentioned in Annexure- R/3. In view of such clear policy in Annexure- R/3, we find no merit in the submission advanced on behalf of the petitioners that the Tribunal has erred in directing for relaxation of age wherever required for the purpose of absorption. It is not in dispute that the scheme for absorption has sanction of Railways and the Central Government. As a result, both the writ petitions are dismissed.