
(2021) 02 GAU CK 0032
In the Gauhati High Court
Case No : Writ Appeal No. 2744 Of 2020

Union Of India And Ors

APPELLANT

Vs

Baijnath Mali

RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2021) 02 GAU CK 0032

Hon'ble Judges : Sudhanshu Dhulia, CJ; Manash Ranjan Pathak, J

Bench : Division Bench

Advocate : A. Dasgupta, S.C. Biswas, B. Das, K.N. Choudhury, R.M. Deka

Final Decision : Allowed

Judgement

Sudhanshu Dhulia , CJ

1. Heard Mr. A. Dasgupta, learned senior counsel, assisted by Mr. S.C. Biswas, learned counsel for the petitioners. Also heard Mr. K.N. Choudhury,

learned senior counsel, assisted by Mr. R.M. Deka, learned counsel, appearing for the sole respondent.

2. This writ petition has been filed by the Union of India against the order dated 31. 01.2020 passed by the Central Administrative Tribunal, Guwahati

Bench, Guwahati in Original Application No.040/00444/2019 (Baijnath Mali -Vs- Union of India & Ors.).

3. The Indian Railways had floated a Scheme on 11.09.2010 called "Liberalized Active Retirement Scheme for Guaranteed Employment for Safety

Staff" (popularly called as "LARGESS"). Under the said Scheme, the employees, who were working as Safety Staff in the Indian Railways

and were to retire from service, could take voluntary retirement when they were between 55 to 57 years and on their taking voluntary retirement, the

wards of such an employee got employment in his/her place.

4. The Punjab & Haryana High Court meanwhile had passed orders on 27.04.2016 and 14. 07.2017 asking the Union of India to reconsider its

Scheme, as it was clearly violative of Articles 14 and 16 of the Constitution of India. The Union of India thereafter had put on hold all appointments

under the said Scheme w.e.f. 27.10.2017 and thereafter, took a decision on 6. 03.2019 not to appoint any person under the said Scheme, which will be

effective from 27.10.2017.

5. The present respondent had applied under the said Scheme in August, 2015 and sought appointment of his ward in Group-D post.

6. Since this appointment was not given, the respondent had filed an original application before the Central Administrative Tribunal and the Central

Administrative Tribunal allowed the aforesaid original application vide its order dated 30.01.2020. The Central Administrative Tribunal came to the

conclusion that the Scheme came to an end on 27.10.2017 and since the applicant (respondent herein) had applied under the said Scheme prior to

27.10.2017, i.e. in the year 2015 itself, and his application was in order, it was liable to be considered inasmuch as the Scheme was alive at the

relevant time and the denial of benefit under the said Scheme was wrong. Consequently, the Original Application was allowed with the direction to the

Railway Authorities to allow the applicant (respondent herein) to go on retirement and give appointment to the ward of the applicant. This order is

presently challenged before this Court.

7. Mr. K.N. Choudhury, learned senior counsel appearing for the sole respondent has made a reference of certain interim orders passed by the

Honâ??ble Apex Court, such as order dated 26.03.2019 passed in WP(C) No.219/2019, wherein it was stated as under:-

â??Since the petitioners are claiming benefit under the Scheme which was prevalent when applications were preferred by the petitioners,

we give liberty to the petitioners to approach the concerned authorities with appropriate representation. If such representation is made, the

authorities will do well to consider the matter within two weeks on preferring of the representation.

With these observations, the writ petition stands disposed of.

Pending application(s), if any, shall stand disposed of.â??

8. However, Mr. A. Dasgupta, learned senior counsel representing the writ petitioners has placed before this Court an order of the three Judges

Bench of the Honâ??ble Apex Court dated 29.01.2021, which now puts an end to any controversy in the present Scheme. This order was passed in

WP(C) No.78/2021, where the Honâ??ble Apex Court after taking notice of the Scheme and the benefits being given to certain applicants under the

Scheme came to the conclusion that this Scheme is nothing but a back door entry in public employment and, therefore, clearly violative of Articles 14

and 16 of the Constitution of India. What were stated by the Honâ??ble Apex Court in Paragraphs 6, 7 & 8 are relevant, which read as under:-

â??6. â??â??. The Scheme provided for an avenue of a back door entry into the service of the railways. This would be fundamentally at

odds with Article 16 of the Constitution. The Union government has with justification discontinued the scheme. The petitioners can claim

neither a vested right nor a legitimate expectation under such a Scheme. All claims based on the Scheme must now be closed.

7. In view of the above factual background, we are not inclined to entertain the petition under Article 32. The grant of reliefs to the

petitioners would only enable them to seek a back door entry contrary to the orders of this Court. The Union of India has correctly

terminated the Scheme and that decision continues to stand.

8. Having regard to the above facts and circumstances, the petition is dismissed. A certified copy of this order shall be forwarded by the

Registrar (Judicial) to the Chairman of the Railway Board for intimation and compliance.â??

9. This controversy has thus been brought to an end. It is irrelevant whether the respondent had applied prior to 27.10.2017 or not, for the simple

reason that the Scheme, which was clearly violative of Articles 14 & 16 of the Constitution of India, itself does not exist anymore. We may also note

that in any case, in the present case, the employee of the Railways, Shri Baijnath Mali, had not taken a pre-matured retirement but he has now retired

from service having reached the age of his superannuation on 31.01.2020. Therefore, in any case, the respondent cannot take benefit of this Scheme.

10. In view of the above, this writ petition is allowed. The order dated 31.01.2020 passed by the Central Administrative Tribunal, Guwahati Bench,

Guwahati in Original Application No.040/00444/2019 (Bajnath Mali -Vs- Union of India & Ors.), is hereby set aside.