

(2013) 01 GAU CK 0013
In the Gauhati High Court
Case No : WP (C) No. 5955 of 2012

Union of India and Others	Vs	APPELLANT
Anupam Mazumder and Another		RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 GLT 308 : (2013) 2 LLN 656

Hon'ble Judges : Iqbal Ahmed Ansari, J; Anima Hazarika, J

Bench : Division Bench

Advocate : B. Devi and Ms. R.R. Bora, for the Appellant; R.C. Paul and Mr. S. Roy, for the Respondent

Final Decision : Dismissed

Judgement

Iqbal Ahmed Ansari, J.—Heard Ms. B. Devi, learned counsel for the petitioners, and Mr. R. C. Paul, learned counsel for the respondent No. 1. Aggrieved by the order, dated 21.8.2012, passed, in Original Application (in short, "OA") No. 78 of 2012, whereby the learned Central Administrative Tribunal, Guwahati Bench, has directed the present petitioners to absorb the respondent No. 1 herein in Group-D post in the Railways within 3 (three) months from the date of receipt of a copy of the presently impugned order, the petitioners have come to this Court seeking, with the help of this application made under Article 226 of the Constitution of India, to get set aside and quashed the order, dated 21.08.2012, aforementioned.

2. The material facts, leading to the present writ petition, may be set out as under:

(i) The respondent No. 1 herein filed, as an applicant, the OA No. 78 of 2012, his case being, briefly stated, thus:

(a) The applicant (i.e., respondent No. 1 herein) had been appointed as a Casual Labourer on 1st April, 1991, in the Railway Employees Consumers' Co-operative Society (in short, "the said Society"), Hijuguri, Tinsukia, and his service had

been regularized, on 01.04.1996, at a fixed pay of Rs. 600/-, per month, with effect from 1.4.1996, as a Scale-man.

(b) Thereafter, the Government of India, Ministry of Railways, decided, as a measure of its welfare activity, to absorb, in Group-D category in the Railways, the persons, who had been working in quasi-administrative Offices/Organizations connected with the Railways, such as, the said Society. In this regard, the Railway Board's Circular, dated 30.05.2000, conveyed its decision that the staff of quasi-administrative Offices/Organizations, who were on roll "for a continuous period of 3 (three) years", as on 10.06.1997, and were still on roll, shall be considered for absorption subject to their satisfying the criteria of age limit and academic qualification prescribed for appointment of a person to a Group-D post.

(c) By a subsequent Circular, dated 26.02.2010, the initial requirement of a person, being on roll "continuously for a period of, at least, 3 (three) years", as on 10.06.1997, was waived and, instead thereof, the Railways decided to absorb the staff of the quasi-administrative Offices/Organizations, who were on roll on 10.06.1997 and were still on roll subject, however, to the fulfillment of other conditions of eligibility, namely, age limit and academic qualification meant for appointment to the post of Group-D.

(d) Notwithstanding the Circulars so issued, since the applicant had not been absorbed in Group-D category of the Railways, though he, according to the applicant (i.e., the respondent No. 1 herein), had satisfied the requisite conditions subject to which absorption had been directed to be made by the Railways by the Circular, dated 30.05.2000, aforementioned read with modification thereof by the Circular, dated 26.02.2010.

(ii) With his case so pleaded, the applicant (i.e., the respondent No. 1 herein) sought for necessary directions to be issued by the Tribunal for the applicant's absorption in Group-D post in the Railways.

(iii) The present petitioners (who were respondents in OA No. 78 of 2012) resisted the OA by filing their written statement, wherein the statements, made at paragraph 4.2 of the OA by the applicant (i.e., the respondent No. 1 herein), to the effect that his initial appointment was on 01.04.1991 had been disputed by the present petitioners by asserting that as per the records available with them, the date of appointment of the applicant was 01.04.1996. There was, however, no specific denial, in the written statement, so filed by the petitioners herein, that the applicant (i.e., the respondent No. 1 herein) had been initially appointed, as a Casual Labourer, by the said Society on 1.4.1991 and that his service was subsequently regularized, on a fixed pay, as mentioned hereinbefore, with effect from 01.04.1996, as a Scale-man. What was, rather, contended by the present petitioner, in their written statement, was, as already indicated above, that as per their records, the date of appointment of the applicants was 01.04.1996. It is one thing to say that as per one's record the date of appointment of the applicant was 01.04.1991, but it is quite another to say that

the applicant was not initially appointed on 01.04.1991 and his appointment was not regularized, on 01.04.1996, on fixed pay, as claimed by the applicant.

(iv) Coupled with the above, the applicant placed, on record, a certificate, issued by the Secretary of the said Society, which mentioned to the effect that the applicant had been working, as a Casual Labourer, in the said Society, since 01.04.1991. The applicant also placed on record a letter, issued by the Secretary of the said Society, indicating that the Managing Committee of the said Society had decided, its meeting held on 31.03.1996, to regularize the applicant's service as a Scale-man, on a lump sum of Rs. 600/- per month, with effect from 01.04.1996. Moreover, the correctness and veracity of the letters, which were so issued, by the Secretary of the said Society indicating to the effect that the petitioner had been working, in the said Society, as a Casual Labourer since 1991 and that his (i.e. the applicant's) service had been subsequently regularized, on fixed pay, as indicated above, were never challenged by the present petitioners in the OA.

(v) When the contents of the letters/certificates, which were issued by the Secretary of the said Society, remained undisputed and unchallenged, the learned Tribunal could not have ignored and brushed aside the contents of the said letters/certificates. Further-more, the petitioners herein also did not apply, orally or otherwise, for calling of the relevant records to examine the correctness or veracity of the letters, which had been issued by the Secretary of the said Society.

3. It was in the above backdrop of the facts pleaded and the materials placed on record that the learned Tribunal, having found the applicant entitled to absorption in terms of the Railways scheme, as notified by the Circular, dated 30.05.2000, read with the modified Circular, dated 26.02.2010, directed that the applicant (i.e., the respondent No. 1 herein) be absorbed within three months as already mentioned above.

4. We do not find, in the face of the pleadings of the parties and the materials on record, that the directions, so given by the learned Tribunal, suffer from any infirmity, legal or factual, particularly, when we notice that in terms of the Circular, dated 30.05.2000, with its modification by the Circular, dated, 26.02.2010, a person, working as a Casual Labourer in the quasi-administrative Offices/Organizations, connected with the Railway, was legally entitled for absorption if he was, on the roll of the administrative Office/Organization concerned, on 10.06.1996 and remained so subject, of course, to fulfillment of further/other conditions with regard to age and academic qualification.

5. In the case at hand, the fact, that the applicant (i.e., the respondent No. 1 herein) was borne on 03.03.1963, had not been in dispute. In the absence of any such dispute, it becomes abundantly clear that if the applicant (i.e., the respondent No. 1 herein) had been appointed on 01.04.1991, then, he was not over aged. In fact, since the date of birth of the applicant (i.e., the respondent

No. 1 herein) was 03.03.1963, it logically follows that that on the initial date of his appointment, on 01.04.1991, as a Casual Labourer, the applicant (i.e., the respondent No. 1 herein) was 28 years old and he was, thus, not over-aged. In short, there could not have been any escape from the conclusion, in the present case, that the applicant (i.e., the respondent No. 1 herein) was not over aged on the relevant date. This apart, and as already noted above, the present petitioners had miserably failed to show that the date of initial appointment of the applicant (i.e., the respondent No. 1 herein) was not 01.04.1991, but 01.04.1996 and as far as academic qualification of the appellant is concerned, he did have, admittedly, the requisite qualification.

6. Situated thus, we are fully satisfied that the learned Tribunal's directions, given to the present petitioners to absorb the applicant (i.e., the respondent No. 1 herein), in the post of Group-D category, are neither illegal nor unjust.

7. Because of what have been discussed and pointed out above, we do not find any substance or merit in the present writ petition. The writ petition, therefore, fails and the same shall accordingly stand dismissed. No order as to costs.