

(2020) 09 MP CK 0227

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2222 Of 2020

Union Of India And Others

APPELLANT

Vs

Jitendra Mukhariya And Others

RESPONDENT

Date of Decision : 21-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2020) 09 MP CK 0227

Hon'ble Judges : Sanjay Yadav, J;B. K. Shrivastava, J

Bench : Division Bench

Advocate : Sameer Beohar, Megh Nath Banerjee

Final Decision : Dismissed

Judgement

1. This petition under Article 227 of the Constitution of India is directed against the order dated 10.01.2020 passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (referred to as "Tribunal") in Original Application No. 200/239/2015, 200/660/2016 and 200/1050/2016.

2 The Tribunal was in seisin with the issue as to whether the applicants who were empanelled against 20% more posts in Grade Pay Rs.1800 can be deprived from being considered for appointment. The Tribunal finding parity with the petitioners in Civil Appeal Nos. 11360-11363 of 2018 (Arising out of SLP (Civil) Nos. 29668-29671/2017 (Dinesh Kumar Kashyap and others etc. v. South East Central Railway and others etc.), disposed of the Original Application with the direction to consider them in consonance with the judgment by Supreme Court in Dinesh Kumar Kashyap (supra).

3. Relevant facts giving rise to the controversy lies within narrow compass.

4. That, Railway Recruitment Cell, West Central Railway, Jabalpur, issued Employment Notice No. 2/2012 on 22.8.2012 inviting application for filling up 1212 Group D posts, which included the posts reserved under vertical and horizontal category. Written examinations were held on 27.10.2013, 17.

11.2013, 24.11.2013, 1.12.2013, 8.12.2013, and 12.1.2014. Thereafter, 4946 candidates, i.e., 4 times the vacancies were called for physical efficiency test held on 4.3.2014 to 7.3.2014. Thereafter document verification of 1451 candidates to the extent of vacancies and 20% more candidates was held from 28.4.2014 to 28.5.2014 followed by Medical Examination. The Railway recruitment Cell issued 5 panels between 2014 to 2018 for a total of 1084 candidates leaving 128 vacancies. Out of which 100 vacancies were of handicapped persons and remaining 28 vacancies for other reserved categories. That, out of 1084 for which the panel was declared, 106 selectees did not turn up. The R.R.C did not issue the replacement panel, i.e., did not offer appointment to the candidates who were down the list on the pretext that the Railway Board issued a letter No. RBE 06/2014 dt. 10.1.2014 directing that no replacement panels to be made against non joining of selected candidates.

5. Aggrieved respondents, covered under 20% extra candidates who were found suitable and called for document verification filed Original Application before Tribunal seeking direction that the applicants who have applied against O.B.C category with O.B.C certificates may be treated as O.B.C and considered for appointment against O.B.C posts.

6. The Tribunal discarding the contention raised on behalf of Railways that the Applicants have no vested right and that the R.B.E 06/2014 prohibits replacement panels, and by taking into consideration the decision by the Supreme Court in Dinesh Kumar Kashyap (supra) directed for consideration of the applicants alone in terms thereof.

7. Challenging the order, it is urged on behalf of the petitioner that the judgment in Dinesh Kumar Kashyap (supra) being not a precedent, as it was confined only to the applicants therein, the Tribunal grossly erred in following the same in respect of applicants in Original Application who were not applicants before Hon'ble Supreme Court. The submissions are taken note of and rejected at the outset. The judgment in Dinesh Kumar Kashyap (supra) as is evident has been delivered on 27.11.2018; holding its applicability to the applicants. The respondents in present case are not those who filed the Original Application after the delivery of judgment in Dinesh Kumar Kashyap (supra) but had approached the Tribunal in 2015 and 2016, i.e., at the earliest when they were denied consideration. In view whereof the contentions that the decision in Dinesh Kumar Kashyap (supra) has limited application and the respondent/applicants are not benefited therefrom stands rejected.

8. The next contention that in view of the Railway Board's Circular RBE No. 6/2014 no right accrues in favour of the respondent/applicants also deserves to be rejected for the reason that circular RBE No. 6/2014 is made effective from the future date, this will be evident from the said circular which reproduced for ready reference.

"GOVERNMENT OF INDIA (BHARAT SARKAR)

MINISTRY OF RAILWAYS (RAIL MANTRALAYA)

(RAILWAY BOARD)

RBE No. 06/2014

No. E (NG)-II/2008/RR-1/33 New Delhi,

dated:10/01/2014

The General Manager (P),

All Zonal Railways/Production Units

Sub: Recruitment of staff in Pay Band-I of Rs.5200-20200 (Grade Pay: Rs.1800) on Indian Railways - Mode of dispatch of call letters to applicants regarding.

In partial modification to instructions contained in Board's letter of even number dated 29/5/2013 (RBE No. 53/2013) and 19/8/2013 (RBE No. 85/2013), it is directed that henceforth, call letter be issued to successful candidates in written examination for appearing in PET (Physical Efficiency Test), three weeks prior to date of commencement of PET under "Business Post" instead of earlier instructions of one months prior to date of conduct of examination.

2. It is also directed that no replacement panels are to be given against non-joining of selected candidates, as recruitment in Pay Band-1 (Grade Pay : Rs.1800) is now done annually in terms of instructions contained in Board's letter No. E(NG)II/2007/RR-1/58 dated 08.12.2011.

Please acknowledge receipt

(Hindi Version will follow)

(Harsha Dass)

Director Estt. (N)-II

Railway Board."

9. Careful reading of the Circular reveals that the same is in partial modification of RBE No. 53/2013 and RBE No.85/2013 and it states that "henceforth" the instruction therein are made applicable. In Jai Fibres Ltd. vs. Commissioner of Central Excise, Mumbai [(2008) 1 SCC 434] it is held that :

"16. H.M. Bags Manufacturer v. C.C.E [(1997) 11 SCC 696] becomes relevant in view of the terminology used by the Board in issuing the aforementioned circular. Therein this Court clearly held that such a circular will have prospective effect, particularly when the word "henceforth" has been used by the Board. H.M. Bags Manufacturer, therefore, is a binding precedent. If the Board itself did not intend to classify HDPE bags with retrospective effect, in our opinion, no demand for

duty prior to issuance of the said notice could be made."

10. In our considered view paragraph 2 of the circular RBE No. 6/2014, therefore, cannot be read in isolation and be made applicable to the Recruitment undertaken in the year 2012 and continued till 2018. The RRC was thus not justified in not considering respondents.

11. In view whereof since we do not perceive any error in the decision rendered by the Tribunal, we decline any indulgence.

12. Consequently, petition fails and is dismissed. No costs.