

(2023) 10 CAL CK 0037
In the Calcutta High Court
Case No : W.P.C.T No. 47 Of 2021

Union Of India & Another

APPELLANT

Vs

Md. Noorul Haque

RESPONDENT

Date of Decision : 11-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 142

Citation : (2023) 10 CAL CK 0037

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Kumar Jyoti Tewari, Biswajit Maity, Arijit Majumdar, Saptanshu Basu, B. Chatterjee, S. K. Datta

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. Union of India has assailed the order dated January 14, 2021 passed by the Central Administrative Tribunal, Kolkata Bench in OA/350/768/2020.
2. By the impugned order, the Tribunal has allowed the original application by directing the DRM, Eastern Railways to issue orders of regularisation of the private respondent with appropriate benefits at par with other Parcel Porters who had been regularised, within a period of 4 weeks from the date of receipt of the order.
3. Learned advocate appearing for the Union of India has submitted that, Parcel Porters had initiated litigation for regularisation in which, from time-to-time, various orders had been passed including those by the Supreme Court. In such context, he has drawn the attention of the Court to 2003 Volume 11 Supreme Court Cases 590 (AI Railway Parcel and Good Porters Union versus Union of India and Others) and 2018 Volume 18 Supreme Court Cases 168 (Ram Bhajan Das and Others versus Union of India and Others).

4. Learned advocate appearing for the Union of India has submitted that, the private respondent is placed in the seniority list which does not entitle him to regularisation. Moreover, at present, there are no post vacant at which, the private respondent can be regularised.

5. Learned advocate appearing for the Union of India has submitted that, the private respondent was not in continuous service for 240 days. Moreover, his services have been terminated and that, there are proceedings pending before the labour Tribunal with regard thereto.

6. Learned advocate appearing for the Union of India has submitted that, the private respondent had been considered with about 120 other candidates and that, the private respondent did not clear the Screening Test. All other candidates who had cleared the Screening Test had been issued the appointment letters. He has referred to AI Railway Parcel and Goods Porters Union (supra) in support of his contention that, the private respondent must pass the Screening Test.

7. Learned advocate appearing for the Union of India has contended that, the Tribunal was guilty of non-application of mind while passing the impugned order. The Tribunal did not take into consideration the relevant facts and circumstances of the case and proceeded to direct regularisation of the private respondent when the private respondent was not entitled thereto.

8. Learned advocate appearing for the Union of India has pointed out that, the private respondent filed a number of proceedings with regard to his claim for regularisation. Prior to the impugned order being passed in the original application of the private respondent, he had filed an original application being OA 1269/2014 which was disposed of by an order dated February 22, 2019. Such order of the Tribunal dated February 22, 2019 had required the DRM to give a personal hearing to the private respondent, consider all the relevant documents and issue appropriate order giving benefits on par with identical circumstanced parcel porters. Pursuant to the order dated February 22, 2019, the DRM had given the private respondent personal hearing on May 8, 2019 and passed a speaking order on December 12, 2019. He has pointed out that, the Railways had already absorbed 47 candidates. He has pointed out that, the private respondent was not a party to the original proceedings which had received the consideration of the Supreme Court in AI Railway Parcel and Goods Porters Union (supra). He has pointed out that, the DRM decided that, the private respondent should be again screened and that such screening should be done in the manner as was done for 47 candidates absorbed in compliance with AI Railway Parcel and Goods Porters Union (supra) and if found suitable to be included in the seniority list amongst the various claimants as per the period of working in compliance with the direction of the Supreme Court and that, persons who worked for longer period as contract labourer should be preferred to those who put in shorter period of work.

9. Learned advocate appearing for the Union of India has contended that, the

private respondent never put in 240 days of work as required under the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme. In support of such contention, he has drawn the attention of the Court to the documents annexed to the supplementary affidavit filed on behalf of the Union of India. Consequently, he has contended that, the private respondent was not entitled to regularisation as directed by the Tribunal in the impugned order.

10. Learned senior advocate appearing for the private respondent has contended that, the right of the private respondent to regularisation stood crystallised on the date of the order of AI Railway Parcel and Goods Porters Union (supra). He has contended that, the private respondent is not governed by the scheme of 1993 as the scheme specifically provides that it will not be applicable to casual workers in Railways.

11. Learned senior advocate appearing for the private respondent has contended that, the private respondent is entitled to the benefit of regularisation as directed by the Supreme Court in AI Railway Parcel and Goods Porters Union (supra) in view of the subsequent decisions passed by the Tribunal and the High Court and in particular the order dated February 22, 2019 passed in OA 1269 of 2014 by the Tribunal and order of the High Court dated October 8, 2013 passed in WPCT 250 of 2010.

12. Learned senior advocate appearing for the private respondent has relied upon 2006 Volume 2 Supreme Court Cases 747 (State of Karnataka and Others versus C. Lalitha) and contended that, the private respondent has been discriminated against unlawfully. The private respondent was entitled to parity in employment with regularisation being granted as the private respondent is similarly situated and should be similarly treated as other parcel porters who had been regularised. He has also relied upon 1987 volume 4 Supreme Court Cases for 31 (KI Shepherd and Others versus Union of India and Others) for the proposition that, excluding some of the employees under a scheme was violative of Article 14.

13. Eastern Railway had a policy of engaging Parcel Porters through contractors. One of such contractors appointed by Eastern Railway had been Shalimar Contract Cooperative Society Ltd under which, the applicant had worked as Howrah Parcel Handling Contract Porter for the period from June 1, 2003 to July 31, 2007 and also from May 1, 2008 to July 31, 2008 and from October 1, 1997 till March 3, 2001.

14. Fate of persons working as parcel porters with the Railways on temporary basis had been decided by the Supreme Court in AI Railway Parcel and Goods Porters Union (supra) where directions had been issued to the Union of India and the Railway Administration for regularisation of parcel porters.

15. The Railways had issued a Railway Board Circular dated April 25, 2005 for the absorption of contract labourers who had worked as parcel porters. The

Railways did not regularise the services of the private respondent despite the private respondent having worked as Parcel Porter. The private respondent made several representations to the railway authorities for regularisation.

16. Since the Railways did not regularise the services of the private respondent, he had applied before the Supreme Court for extension of the same benefit to himself as well as other members of the association. The Supreme Court by an order dated October 29, 2007 had granted liberty to the private respondent to seek appropriate remedy from the appropriate forum.

17. Thereafter, various original applications had been filed before the Tribunal challenging condition number (i) and (vii) of the Railway Board Circular dated April 25, 2005 which was disposed of by an order dated November 20, 2004. Such decision of the Tribunal had been challenged by the Railways before the High Court by way of WPCT No. 75 of 2009. The Supreme Court had decided the same issue in another proceeding and struck down the 2 conditions noted above, as contained in the Railway Board Circular dated April 25, 2005.

18. By the letter dated May 21, 2010 the Railway authorities had rejected the claim of the private respondent of regularisation on the ground that, the private respondent did not work more than 10 years.

19. It would appear from the writing dated August 18, 2010 that, Railways authorities had absorbed 259 contract labourers and it would also appear from such writing that, persons had been absorbed who had never worked as contract labourers even for a single day.

20. The private respondent had approached the Tribunal by way of OA 1674 of 2010 being aggrieved by non-consideration of his case for absorption. The Tribunal, by an order dated August 19, 2010, had dismissed such original application. The private respondent had filed a writ petition being WPCT to No. 250 of 2010 challenging the order dated August 19, 2010 passed by the Tribunal. The High Court had passed an interim order dated October 5, 2010 directing the railway authorities to allow the private respondent to appear before the screening committee. Railway authorities had called the private respondent for screening test in terms of such interim order, on April 20, 2011. High Court had disposed of the writ petition being WPCT No. 250 of 2010 by directing the Railways to take appropriate decision in respect of the private respondent on the basis of the recommendation of the screening committee and after taking specific note of the order dated February 26, 2013 passed by the Hon'ble Supreme Court in IA No. 1 of 2013 in Writ Petition (Civil) No. 390 of 2012.

21. By a writing dated November 29, 2013, Railways had rejected the claim of the private respondent on the ground that he was not a party to Writ Petition (Civil) No. 390 of 2012. The private respondent had challenged the writing dated November 29, 2013 by way of OA No. 134 of 2014 before the Tribunal. By an order dated February 6, 2014, the Tribunal had quashed the writing dated November 29, 2013 and directed consideration of the case of the private

respondent for regularisation. No appeal had been preferred against such order.

22. Railways had passed an order dated April 25, 2014 rejecting the claim of the private respondent and claiming the same to have been passed in terms of the order dated February 6, 2014 of the Tribunal.

23. The order of the Railways dated April 25, 2014 was challenged by the private respondent in OA No. 1269 of 2014. The Tribunal had passed an interim order directing the railway authorities to keep one post vacant till the disposal of OA No. 1269 of 2014. Tribunal had disposed of OA No. 1269 of 2014 by an order dated February 22, 2019 by quashing the order of the Railways dated April 25, 2014. The Railways had filed a review petition which was dismissed on July 23, 2019.

24. The Railways had issued instructions regarding absorption of Parcel Porters in terms of the order of the Supreme Court, on August 14, 2019 which does not specify completion of 240 days, as has been sought to be contended on behalf of the Railways herein.

25. By a writing dated December 12, 2019, the DRM has decided that the private respondent should be screened again so as to find out as to whether, the services of the private respondent can be regularised or not. Railways had called the private respondent for a screening test by a writing dated December 30, 2020.

26. The private respondent had applied under the Right to Information Act whereupon, the Railways stated that, they did not have any attendance register and wage sheet.

27. Whether the private respondent is entitled to regularisation having worked as Parcel Porter is the issue which has fallen for consideration.

28. The request for regularisation by the private respondent has been turned down on the pleas that, the private respondent did not work for 240 days in terms of the relevant scheme, there were no vacancies available, persons senior to the private respondent are yet to be regularised and that, the private respondent was not a party to AI Railway Parcel and Goods Porters Union (supra) and therefore, the same facility cannot be extended to the private respondent.

29. AI Railway Parcel and Goods Porters Union (supra) has directed the Union of India and railway administration units as contained in paragraph 34 thereof which is as follows: –

"34. We have carefully examined the report of the Assistant Labour Commissioner, the findings recorded therein and the counter-affidavits, reply affidavits and rejoinder filed by the respective parties. The facts disclosed in the report and the findings recorded in regard to the perennial nature of work cannot be overruled. Though we have heard at length both the parties, the learned Additional Solicitor General appearing for Railway Administration was not able to point out to us any valid reason as to why the present writ petitions should not

be allowed in terms of the order dated 15-4-1991 made by this Court in similar Writ Petition No. 277 of 1988 [Raghavendra Gumashta v. Union of India, (Reproduced in 1995 Supp (3) SCC 152 at p. 153, para 1)] , particularly in the matter of absorption of contract labour by a public undertaking on a permanent regular basis. We feel, therefore, it is just and appropriate to issue the following directions to the respondent Union of India and Railway Administration units:

1. The Assistant Labour Commissioner, Lucknow is directed to again scrutinize all the records already placed by the petitioners and also the records to be placed by the respective contractors and Railway Administration and discuss and deliberate with all parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for regularization. This exercise shall be done within six months from the date of receipt of this judgment.
2. Subject to the outcome of the fresh enquiry and the report to be submitted by the Assistant Labour Commissioner, Railway Administration should absorb them permanently and regularize their services, the persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the dates of their absorption, the minimum scale of pay or wages and other service benefits which the regularly appointed railway parcel porters are already getting.
3. The units of Railway Administration may absorb on permanent basis only such of those railway parcel porters (petitioners in this batch) working in the respective railway stations concerned on contract labour who have not completed the age of superannuation.
4. The units of Railway Administration are not required to absorb on permanent basis such of the contract labour railway parcel porters who are found medically unfit/unsuitable for such employment.
5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by Railway Administration as railway parcel porters does not disable Railway Administration from utilizing their services for any other manual work for the Railways depending upon its needs.
6. In the matter of absorption of railway parcel porters on contract labour as permanent and regular railway parcel porters, the persons who have worked for longer periods as contract labour shall be preferred to those who have put in shorter periods of work.
7. The report to be submitted by the Assistant Labour Commissioner should be made the basis in deciding the period of contract labour work done by them in the railway stations. The report shall be finalized and submitted after discussions and deliberations with Railway Administration and the contractors and all the representatives of the writ petitioners or writ petitioners themselves.

8. While absorbing them as regular employees their inter se seniority shall be determined department/jobwise on the basis of their continuous employment.

9. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by Railway Administration for its own employees irrespective of any existing contract or agreement between the respondent and the contractors. No claim shall be made by the contractors against Railway Administration for premature termination of their contracts in respect of the contract labourers.

10. Railway Administration shall be at liberty to retrench the workmen so absorbed in accordance with law. This order shall not be pleaded as a bar to such retrenchment.

11. This judgment does not relate to the persons who have already been absorbed.”

30. AI Railway Parcel and Goods Porters Union (supra) has therefore required the Union of India and the Railway administration to absorb Parcel Porters. Railways administration has issued Railway Board circular dated April 25, 2005 for absorption of Parcel Porters in terms of AI Railway Parcel and Goods Porters Union (supra). Condition No. (i) and (vii) of such circular had been struck down by the Supreme Court. Such circular does not require 240 day work.

31. The private respondent is not covered by the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993 since clause 3 of such scheme has provided that, the same shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.

32. As has been noted above, so far as the private respondent is concerned, a number of proceedings took place. In particular, the decision of Railways dated November 29, 2013 rejecting the claim of regularisation on the plea that the private respondent was not a party to AI Railways Parcel and Goods Porters Union (supra) and therefore not entitled to the benefits thereunder was struck down by the Tribunal by an order dated February 6, 2014 passed in OA No. 134 of 2014. No appeal had been carried therefrom. By an order dated October 18, 2013 passed in WPCT 250 of 2010, the High Court had directed the Railway authorities to take appropriate decision in respect of the private respondent on the basis of the recommendation of the Screening Committee and also taking specific note of the order dated February 26, 2013 passed by the Hon’ble Supreme Court in AI Railways Parcel and Goods Porters Union (supra). Subsequent to the orders passed from time to time and the conduct of the railway administration, it cannot now be gainsaid that, the private respondent is not covered by the decision of AI Railway Parcel and Goods Porters Union (supra) or is not entitled to regularisation in service.

33. Our attention has been drawn to the persons who had been regularised by

the railway administration and we find from such chart, which is not disputed that, persons who did not even work for a single day were regularised. Moreover, nothing has been shown to us that there is a prescription of 240 days as erroneously contended on behalf of Union of India.

34. The contention that, no vacancies are available or that, there are persons who are senior to the private respondent has no foundational basis. A post had been directed to be kept vacant in one of the rounds of litigations, by the Tribunal. Nothing has been placed before us to suggest, let alone establish that, there are persons who are senior to the private respondent awaiting regularisation.

35. Ram Bhajan Das and Others (supra) has directed consideration of names of the petitioners therein, in case they were otherwise eligible, ignoring objection on qualification, for appointment. Such directions had been issued under Article 142 of the Constitution. Therefore, it should not be considered as an authority for the proposition as has been sought to be contended on behalf of the Union of India.

36. K I Shepherd and others (supra) has considered the fate of excluded employees from the service in the transferee bank under a scheme for amalgamation under the provisions of the Banking Regulation Act, 1949.

37. C. Lalitha (supra) has held that, all persons similarly situated should be treated similarly irrespective of the fact that only one person has approached the Court.

38. We therefore hold that the private respondent is entitled to regularisation. The issue framed is answered in the affirmative and in favour of the private respondent.

39. In view of the discussions above, we find no merit in the present writ petition. We affirm the impugned order of the Tribunal. The time to comply with the impugned order is extended for a period of 4 weeks from date.

40. W.P.C.T No. 47 of 2021 is dismissed without any order as to costs.

41. I agree.