
(2024) 03 PAT CK 0070

In the Patna High Court

Case No : Letters Patent Appeal No. 465 Of 2022 In Civil Writ Jurisdiction Case No. 21778 Of 2019, Letters Patent Appeal No. 466 Of 2022 In Civil Writ Jurisdiction Case No. 21559 Of 2019, Letters Patent Appeal No. 467 Of 2022 In Civil Writ Jurisdiction Case No. 575

Union Of India

APPELLANT

Vs

Sumitra Devi

RESPONDENT

Date of Decision : 21-03-2024

Acts Referred:

Indian Penal Code, 1860 — Section 14, 21

Citation : (2024) 03 PAT CK 0070

Hon'ble Judges : K. Vinod Chandran, CJ; Harish Kumar, J

Bench : Division Bench

Advocate : Dr. K.N. Singh, Anshuman Singh, Alok Kumar, Bindhyachal Singh, Prashant Kr. Sinha, Smriti Singh, Md. Khurshid Alam

Final Decision : Allowed

Judgement

1. The clamour for a job, in lieu of acquisition of land, in addition to the monetary compensation, is the issue agitated in the above appeals. The petitioners assert that they have lost their lands in the acquisition carried out by the Railways, for the purpose of laying railway lines. Petitioners also rely on a policy of the Railways to claim jobs for each of them, being a member of the displaced families. The Railways had delayed the consideration and when some persons were granted the benefit, others were denied the same. The learned Single Judge directed not only consideration of the candidature of the petitioners, but also required offers of appointment to be made, effective from the date similarly situated persons were appointed. The petitioners were to be granted continuity of service from that date and salary was directed to be fixed notionally; the actual salary being paid from the date of joining.

2. The learned Senior Counsel, Dr. K.N. Singh appeared for the Railways and assailed the impugned judgment. According to the learned Senior Counsel, the

lands of the petitioners were acquired under three different projects; the north side of Ganga Bridge, extension of Ganga Bridge and the Hajipur-Sugauli Railway Line. Except for the first project, there was no stipulation of a job, in addition to the monetary compensation. The date of acquisition was between 2002 to 2003 and as per the guidelines issued, produced along with the writ petition, the jobs were to be given only if the land acquired deprived the family of its livelihood and the member of the family projected for recruitment has the requisite qualification. The recruitment had to be made in the course of the general recruitment with only a preferential weightage given to such candidates. There can be no appointment directly to the posts in the Railways which would violate the equality clause under Article 14 of the Constitution of India. Such appointment could also be made only within two years or in the first recruitment after the acquisition, whichever is later.

3. Insofar as the north side of Ganga Bridge, the acquisitions were made in the year 2003, many were given jobs in the first recruitment and there cannot be any claim raised by the others at this late stage. Insofar as the extension of Ganga Bridge and Hajipur-Sugauli Railway line, there was no stipulation that one member of the family of the land owner would be given employment. As far as the Hajipur-Sugauli stretch is concerned, in 2011 a policy was framed wherein 92 persons were given exemption due to the hardship urged, by reason of the State's delay in making recommendation. As of now, there is no policy in existence to grant jobs. The deprivation of livelihood claimed at this late stage cannot be compensated by the State.

4. The learned Senior Counsel would summarize that there were three different schemes and only one had the stipulation for a job in lieu of acquisition of land. All the claims were considered and when some persons were granted, the others were rejected on valid grounds, which rejection was based on their ineligibility which cannot lead to any ground of discrimination. As of now, appointment can be made only to Group D and prescribed qualification is mandatory. There can be no appointment without a recruitment and the provision is only for preferential weightage. The only compensation payable as per law, is monetary in nature and wherever a job is provided, it is hemmed in with certain conditions of immediate appointment at the first available recruitment and the candidate being otherwise qualified, which conditions even if fulfilled there could only be a weightage granted. There is gross delay in making the applications and the jurisdiction in any event is with the Central Administrative Tribunal. There can be no promissory estoppel based on a policy which was designed on a rough estimate of providing jobs for around thousand persons which now stands at fifteen thousand. The claim made on every piece of land has multiplied on grounds of partition, lease and so on. The impugned judgment has to be set aside argues the learned Senior Counsel.

5. Reliance is placed on *Umesh Kumar Nagpal v. State of Haryana*; (1994) 4 SCC 138 to put forth the principles of compassionate appointment. Butu Prasad

Kumbhar v. Steel Authority of India Ltd.; 1995 Supp (2) SCC 225 held that the right on acquisition is only for monetary compensation and if there is no scheme for provision of a job, there cannot be any claim raised on that count. Union of India v. Shankar Prasad Deep; (2019) 16 SCC 286 is relied on to contend that, even when there is a scheme for providing a job as against acquisition of land, the required qualification has to be fulfilled. A Division Bench decision of this Court in Surya Bhushan Kumar v. The Union of India & Ors.; LPA No. 399 of 2012 is relied on to assert the jurisdiction before the Central Administrative Tribunal.

6. Mr. Bindhyachal Singh, learned Senior Counsel appears for the respondents in LPA No. 465 of 2023 and 466 of 2023. Therein respondents are concerned with the acquisition on the northern side of the river Ganga, the extension of the Ganga Bridge and the Hajipur-Sugauli sector, all combined. Two aspects are highlighted in support of the impugned judgment; being implementation of the policy decision and individual consideration having not been made, in accordance with the policy. The policy was not scrupulously followed and there was a pick and choose adopted resulting in the claim of discrimination. There can be no reliance placed on the policy decision of 2019, which according to the learned Single Judge was prospective in nature. However, those whose claims arose prior to the policy of 2019 and were not given the benefit would be entitled to the revised policy, which though prospective, is retroactive. In the Hajipur-Sugauli section, 280 persons were given employment out of a total of 500 claimants. There has been an artificial segregation of the entitled persons which violates Article 14 of the Constitution of India. The claim of partition, lease etc. can be individually considered which the Railway has failed to do.

7. Mr. Pratik Kumar Sinha, learned Counsel, appears in LPA No. 467 of 2022, wherein the respondents are concerned with Hajipur- Sugauli section alone. It is pointed out from the various documents produced that just prior to the acquisition of the land of the petitioners in the year 2010, a policy was designed which was applicable to the petitioners. For better understanding of the policy, the Government of India Circular was also pointed out to claim that it clearly indicated jobs in lieu of acquisition across the country and the General Manager was the competent authority to make such appointments. There was absolutely no reason why the Railway Board designed a policy, revised it and then cancelled it, frustrating the claim of the respondents and similarly placed persons. There can be no delay alleged against the specific respondents, since they had made applications in the year 2011 and approached this Court; which writ petition was disposed of in the year 2022 directing consideration. Though a speaking order was passed as produced at Annexure- 17, the reasoning is skewed and not in consonance with the policy.

8. From the various documents, it was asserted that the policy was alive and there was rampant discrimination not only in granting jobs to certain persons under the scheme, but also in the other sectors of the Railways the policy having been implemented seamlessly. There can be no discrimination based on the

acquisition made at different Zonal Railways. The learned Counsel would strongly rely on a decision of the Hon'ble Supreme Court in *Anil Kumar v. Union of India*; (2019) 5 SCC 591 wherein it was found that there was a binding policy circular formulated by the Union of India for the Ministry of Railways. Reliance is also placed on the dismissal of Special Leave Petition against a Division Bench decision of this Court on identical fact situation based on *Umesh Kumar Nagpal* (supra).

9. We will first look at the law on the point and then the policy of the Government and we conclude with an application of both these aspects as permissible on the facts of the individual cases. *Umesh Kumar Nagpal* (supra) is the oft-quoted judgment on compassionate appointment, in the context of appointments given to the dependents of employees dying in harness. The decision emphasized the need to make appointments in public services strictly on the basis of open invitation of applications on merit, which was declared to be the only procedure. It was also noticed that there are some exceptions, to the general rule, carved out, in the interest of justice and to meet certain contingencies. One such exception is in favour of such appointments given to the family of employees dying-in-harness to ensure that the dependents are not left in the lurch and in penury, without any means of livelihood. The provision to take in such contingency, which metaphorically is intended to 'keep the wolf from the door' is one of the exceptions. However, while granting such appointments on compassionate grounds, it had to be confined to Class-III or Class-IV posts, at the lowest cadre, since it is not a measure to ensure the same benefits to flow to the family as would have been the case if the earning member was alive, by posting the dependent also in an identical or similar position. This is never the intention of the compassionate appointments, which only ensures that the family is not driven to the streets by reason of the loss of its only earning member. It was also declared that no such appointment can be granted after considerable lapse of time and after the crisis is over, since then the object of enabling the family to get over the immediate financial crisis does not exist.

10. It was emphasized that the provisions for compassionate employment are to be made by the rules or by executive instructions issued by the Government, which rules have to be scrupulously followed. The principles for compassionate appointment on dying in harness equally applies to land acquisition matters. Only if there is a policy to grant such appointments and in that event scrupulously following the conditions laid down and not at all, after a considerable lapse of time.

11. *Butu Prasad Kumbhar* (supra), while reiterating that land acquisition in lieu of monetary compensation for setting up industrial units is not violative of Article 21, also declared that in every such circumstance, the Government was not bound to provide employment to any person displaced, or even ensure preferential treatment in employment to each adult member of the families displaced. However, on the submission of the learned Solicitor General, who

appeared on behalf of the public sector undertaking, that there were persons accommodated on compassionate grounds; despite the Government having taken a policy decision not to give any further employments in the year 1986, there was a direction to enhance the percentage of appointments granted.

12. Shankar Prasad Deep (*supra*) was a case in which similar contentions were taken before the Central Administrative Tribunal, which issued directions substituting the policy formulated by the Government. While setting aside the directions of the Tribunal, finding it to be impermissible, it was also held that rejection of the individual applications cannot be made without sufficient opportunities to the land oustees to comply with the terms and conditions. The said observation was made in the context of many of the applicants having not submitted proof of land acquisition. It was held that the claims should be re-verified, giving opportunity to the displaced persons and the village Sarpanch or the Tahsildar was also directed to be associated with the verification of such claims. It was also laid down that the consideration, in any event, could be only on fulfilling other prescriptions including educational qualifications, appearing at the written test, minimum age requirements and medical fitness.

13. *South Eastern Coalfields Limited v. Prem Kumar Sharma*; (2007) 14 SCC 508 was also a claim for employment in lieu of acquisition. Therein, the claim was denied on the ground of ineligibility due to a small extent of land alone having been acquired, which was below the minimum prescribed in the policy decision. The applicants contended that they were discriminated, since there were cases or instances where owners of lesser extent of land were extended the benefit. The Hon'ble Supreme Court categorically held that there can be no claim raised of discrimination, based on an irregular or illegal grant and in that context, the plea of violation of equality under Article 14 would not survive.

14. *Anil Kumar* (*supra*) was heavily relied on by the respondents particularly as a challenge made to a decision of this Court. Therein, the similar policy of the Railways was the basis of the claim raised. The appellant's father's land was acquired and the entire house was demolished, which demolition was confirmed by the Collector, Bhojpur, Ara. The claim was raised, based on the policy/circular of 19.04.2006. It was found by the Hon'ble Supreme Court that on 01.01.1983, the Railway Board, considering appointment to Group-C and Group-D posts, for members of displaced families, as a result of acquisition of land for establishment of projects, laid down some guidelines. The guidelines were that (i) the claimant should be a person who was displaced or who is the immediate family of such person, (ii) the recruitment can be only in the first recruitment or within a period of two years after acquisition, whichever is later, (iii) the displaced person should not have derived any benefit from the State Government in the form of alternative cultivable land, (iv) the displaced person should fulfill the qualification for the post and (v) should be found suitable by the appropriate recruitment Committee.

15. On 19.04.2006, a further circular was issued by the Railway Board, wherein

it was decided that there shall be no offer of employment to displaced persons when the acquisition is only of a strip of land. Even then it was directed to be considered in Group-D post only wherein large area, house or substantial livelihood has been taken away or snapped in the process. The Hon'ble Supreme Court found that the situations contemplated of acquisition of a large area, deprivation of home and of substantial livelihood, when considered for the purpose of alternative employment; the phrases should be disjunctively understood. Since the entire house of the claimant in that case was demolished, the Hon'ble Supreme Court directed consideration. Having formulated a policy, the failure to implement it would result in failure of social justice, especially since the policy circulars were substantive attempts to enhance social welfare, was the finding of the Hon'ble Supreme Court .

16. The very same circular of the Railway Board dated 19.04.2006 is relied on by the writ petitioners in CWJC No. 21778 of 2019 and CWJC No. 21559 of 2019. Insofar as CWJC No. 5751 of 2021, the learned Counsel for the petitioners took us through the various circulars, to further substantiate the claim on the basis of the policy of the Government and the Railways. Annexure-5 produced in that writ petition is a circular of the Government of India dated 16.07.2010 wherein a broad policy has been laid down for appointment of land losers affected by land acquisition for railway projects. There is no compulsion as we see from the above circular, which enables the Railway Authorities to formulate a policy. The General Manager of the Railway in whose jurisdiction the land acquisition is to be undertaken was also made responsible for ensuring a fair and transparent selection of candidates. The General Manager definitely cannot lay down the policy and it only confers power on such officer to carry out a fair and transparent selection, in case the policy is brought in.

17. Annexure-6 is the policy brought out by the East Central Railway on February 22, 2011, which was followed up with Annexure-7 dated 06.06.2011 by the General Manager, Hajipur. Annexure-8 dated 25.11.2013 reiterated the policy of the Railway Board of 2006 where acquisition of strip of land could not be granted compensation for which further directions were awaited. The learned Counsel after referring to the same, specifically pointed out the order of rejection in the case of the petitioners as produced at Annexure-17, in which it has been observed that the Ministry of Railways, vide letter dated 22.01.2015, issued instructions or guidelines that "the policy of employment of land losers on the railways is under review"(sic). The said extract is made from a letter dated 27.01.2015, which is produced as Annexure-14, wherein after noticing that the policy is under review, it was also specifically stated that till a final review is done, the existing instruction should be followed. The learned Counsel would also refer to Annexure-20 wherein yet another Division of Railway had granted employment to land losers. We would proceed on the basis that the policy was applicable to all the three acquisitions, which gave rise to the claims for employment, agitated in these batch of cases. The policy is also as succinctly delineated in Anil Kumar (supra) of providing employment in three different

contingencies; (i) acquisition of large extents; (ii) acquisition having resulted in complete loss of homestead and (iii) acquisition having deprived substantial livelihood.

18. With the above legal position in perspective and the policy guidelines being explicit, any consideration of the claim shall be based on the individual facts; which unfortunately, the learned Single Judge has not attempted. Before we look into the judgment, we have to observe that we agree with the learned Single Judge that the review effected in 2019 for payment of Rs. 5 lacs in lieu of a job, would not be applicable to any of the respondents whose acquisitions were far prior to that. Neither can they raise a claim for Rs. 5 lacs compensation nor can they be denied an employment on compassionate grounds, if they were so entitled by the policy in existence contemporaneous to the acquisition.

19. The learned Single Judge, as we noticed, merely relied on Anil Kumar (supra) and the decision of a Single Bench of this Court, wherein identical petitioners were before this Court, to issue the directions. The directions of the learned Single Judge in the three analogous writ petitions was only insofar as the State being obliged to follow an uniform policy, avoiding any indulgence of pick and choose so as to mould the policy to suit some and oust others. Insofar as Anil Kumar(supra) is concerned, we have clearly indicated the facts, specifically the demolition of the entire house, which led to the directions therein.

20. The Railway's policy, as held in Anil Kumar (supra), did not enable provision of employment, if the acquisition was only of a mere strip of land. Even then, if it led to deprivation of the homestead or livelihood, it could be granted. The policy was also that persons whose large extents were acquired should also be considered for employment.

21. We have to specifically notice that none of the respondents herein have a case of loss of livelihood or loss of homestead. The extent of land is clearly discernible from the various writ petitions. In CWJC No. 21778 of 2019, the table in the memorandum indicates the land acquired from each, as given at Page 12 to 15. From the area of land acquired, it is seen that area is limited between 0.20 and 0.47 decimals i.e. very small strips of land. In CWJC No. 21559 of 2019, the tabular form is available at Page 5 and 6 and again the area ranges between 0.20 to 0.33 decimals. In CWJC No. 5751 of 2021, the area of land acquired is available in the applications filed as Annexure-1 series, which ranges from 0.10 to 6.286 decimals, which also cannot be said to be large extents. The largest extent is 6.286 decimals, in one individual case, which cannot be, by any stretch of imagination, deemed to be acquisition of a large extent. All the other acquisitions, admittedly are less than one decimal.

22. None of the respondents fall under the policy of the Railways, enabling them to get an employment. Only small strips of land were acquired from each of the respondents, as is demonstrated from the writ petitions. There is no complete loss of homestead or loss of substantial livelihood for reason of the acquisition

nor is it pleaded by any of the respondents. With respect to the submission regarding employment having been given in other Divisions, it is a fact that employment was given, even in the Division, which had acquired the lands of the respondents herein. Insofar as the claim raised of other persons having been given employment, not even one case has been specified wherein an employment was obtained in lieu of acquisition of a strip of land identical to that of any of the respondents. We also have to observe that illegal or irregular grants cannot result in a valid plea of violation of equality or discrimination as held in *South Eastern Coalfields Limited* (supra). We find absolutely no reason to sustain the judgment of the learned Single Judge.

23. We set aside the same allowing the appeals, leaving the parties to suffer their respective costs.

24. Interlocutory application(s), if any, shall stand disposed of.