

(2011) 09 CAL CK 0022
In the Calcutta High Court
Case No : W.P.C.T. No. 124 of 2011

Union of India (UOI)

APPELLANT

Vs

Ganesh Chandra Hari

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 8

Citation : (2011) 5 CHN 548

Hon'ble Judges : Mrinal Kanti Chaudhuri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Ashim Kumar Ganguly, for the Appellant; Asit Kumar Banerjee and Sibnarayan Chattopadhyay, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—The Respondent was engaged as substitute safaiwala (as claimed by him) at Sargachi Railway Station by the Station Master on November 14, 1984. He worked for one hundred eighty nine days within a span of five years. In 1989 he was called to appear before a screening committee. The screening committee approved eighteen candidates. The Respondent was however, unsuccessful in getting his name included in the list. He approached the Tribunal three times. His first application being O.A. No. 72 of 1998 was disposed of by the Tribunal vide judgment and order dated March 3, 2003 appearing at pages 128-132 of the petition. In the said case the Petitioner contested his claim on the ground that he could not produce relevant documents in support of his claim. The Tribunal, upon considering the rival contentions, held that the applicant was eligible to appear at the screening test for absorption as safaiwala. The Tribunal directed the railways to conduct a screening test for the applicant to consider him for absorption as safaiwala. Page 133-134 would depict that the Railway asked the applicant to produce documents in support of his claim including "authority letter of engagement" that the applicant could not produce.

2. His second application being O.A. No. 168 of 2004 was disposed of vide

judgment and order dated July 7, 2005 appearing at pages 141-147 of the petition wherein the Tribunal considered the issue again and observed that one Ram Shobit Shaw being similarly circumstanced, got the benefit of absorption after a screening was done. Hence, there was No. reason why the applicant's case would not be considered on the identical footing. The Tribunal directed the authorities to ignore his inability to produce the authority of engagement and consider him if he was otherwise eligible. The Railway passed a speaking order dated February 1, 2006 appearing at pages 148-149 of the petition. The Railway found that the applicant was not similarly circumstanced with Ram Shobit. The screening committee considered the case of the applicant in 1989 and found him not suitable for the post whereas Ram Shobit worked for four thousand nine hundred sixty nine days up to July 31, 2000 as against the applicant's service for one hundred eighty nine days. The Railway observed that even if the claim was considered ignoring his inability to produce authority of engagement the applicant could not be considered for re-engagement in view of "other lacunae". He approached the Tribunal again for the third time through O.A. No. 485 of 2006. The Tribunal allowed his application vide judgment and order dated July 2, 2010 after considering the factual matrix. The Tribunal set aside the speaking order dated February 1, 2006 and asked the Railway to take his name on roll and pass a fresh speaking order regarding his regularization.

3. Being aggrieved, the Railway approached us by filing the instant application.

4. Mr. Ashim Kumar Ganguly, learned Counsel appearing for the Railway contended that the Petitioner did not work for continuous one hundred twenty days in a year which was prerequisite for being considered to be on the roll to be prepared for onward process of regularisation. He rendered service for one hundred eighty nine days throughout a span of five years whereas Ram Shobit rendered service for about five thousand days. These two cases could not be treated at par. On the issue of authority of engagement he contended that the Station Master did not have the authority to engage any casual staff without the approval of the General Manager. Hence, the very entry of the applicant being the Respondent above named was illegal and his case could not be considered for regular absorption.

5. Per contra, Mr. Asit Kumar Banerjee, learned Counsel appearing for the applicant/ Respondent contended that the Tribunal, at the initial stage, rejected the contention of the Railway on the issue of his locus standi to be considered for regular absorption. The Tribunal, for the second time, directed the Railway to ignore his inability to produce authority of engagement. In both the said orders the Tribunal directed the Railway to consider him on merits. He was asked to be considered at par with Ram Shobit. The Railway did not challenge the said two orders. Hence, the speaking order could not have raised such issue again that would amount to acting contrary to the dictum of the Tribunal. Mr. Banerjee contended that the Tribunal for the third time, very rightly, set aside the speaking order and directed the Railway to consider him for regular absorption

after including his name in the roll. Such order could not be assailed before this Court.

6. The concept of regularisation is unknown in the field of public employment. There is No. law in our country to support such concept. Initially, applying the tool of social justice, the Apex Court in various decisions asked the public authority to consider those who spent their life for decades acting as a casual worker in a perennial post. Such concept has been given a go-bye by the Constitution Bench decision in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, The Railway, initially, framed various schemes for regularisation. Those schemes were propounded in deference to the desire of the Apex Court in various decisions. However, such concept is No. longer existing.

7. Keeping in mind the above, let us consider the issue in hand. The Respondent was engaged as a substitute Safaiwala as claimed by him. As per the record, he served the Railways for one hundred eighty nine days in a span of five years period. He did not have one hundred twenty days to his credit in a particular year to come within the zone of consideration of the scheme as claimed by the Railway. He also could not produce any valid document of his engagement. His claim that the Station Master engaged him even if taken as sacrosanct, does not place him anywhere as the Station Master did not have the authority to give employment to anyone. A temporary or a stop-gap arrangement to clean the station the Station Master might have utilized his service and paid him from the contingency fund. Such piece of evidence would not absolve the railway from their obligation to consider all eligible candidates that too, in a regular recruitment process before engaging any one as a public employee on regular basis. Assuming the applicant was at par with Ram Shobit, the Court of Law could not extend any blessing and compel the administration to repeat such performance which does not have any legal support.

8. Article 14 and 16 would constitute a Fundamental Right given to all eligible candidates to compete for a public post. Such constitutional right could not be infringed by the process of regularisation of any backdoor entrant like the Respondent. The Tribunal, in our view, wrongly approached the problem that does deserve interference by this Court. It is true that on earlier two occasions the Tribunal asked the Railway to consider the Respondent on merit. It is also true that the railway did not challenge the said order before this Court. However, if we closely look to the said two orders we would find that the Tribunal did not give any positive mandate on the Railway to give employment to the Respondent. The Railway was asked to consider his prayer and pass a reasoned order. Accordingly, the concerned authority passed a reasoned order rejecting his claim observing that he could not be placed at par with Ram Shobit. The Railway also observed that he could not successfully pass through the screening test done for the said purpose. The Tribunal was not right in interfering with such decision of the Railway.

9. The application succeeds and is allowed.

10. The judgment and order of the Tribunal impugned herein is set aside.
11. There would be No. order as to costs.
12. Urgent Photostat copy will be given to the parties, if applied for.