

(1967) 02 MAD CK 0029
In the Madras High Court

Vijayarangam (T.N.)

APPELLANT

Vs

Southern Railway (by General Manager) and Others

RESPONDENT

Date of Decision : 03-02-1967

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1967) 1 LLJ 802

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Judgement

Venkatadri, J.—In this writ petition, the petitioner raises a question of general importance, which affects the seniority of about 3,000 persons who were directly required for the grainshop establishment in the Southern Railway. The impugned orders of the Railway Board are to the effect that in the case of the persons who are directly recruited in the grainshop establishment their services would not be taken into consideration, when they are absorbed in the other cadres in the railway administration.

2. During the period of the Second World War it was extremely difficult to procure the essential foodgrains.

3. In December 1949, the B.N. Rao Committee suggested the opening of cost-price grain-shop for railway employees. The Railway Board favoured the establishment of such shops not only as possible means of meeting the food shortage but also as an additional cost of living. In April 1943, the Railway Board reiterated the Government's policy to stabilize prices, as far as possible, by supplying the necessities of life to the staff at reasonable prices. The system of grain-shop facilities continued even after the war. But in 1947, concern over the increasing losses incurred by the railway on the grain-shop was expressed in the Parliament. The Government of India, thereupon, set up a committee known as the Santhanam Committee, which recommended the gradual abolition of the grainshop facilities.

4. The grainshop organization was built from scratch to meet the exigencies of a demand, which arose at a period of abnormal difficulty. The organization was kept distinct from other departments and, in course of time, came to be headed by a Deputy General Manager, for each of the railways. As the demand of other war-time activities on railway working increased, it became exceedingly difficult to spare experienced staff for work in the grainshop organization. The Deputy General Manager was, therefore, authorized to recruit candidates directly, sometimes even relaxing the age and educational qualifications. During that period there was neither the Staff Selection Board, nor the Joint Service Commission. Subsequently, some of the posts were filled in by the candidates in other regular departments. Later on, some of the temporary staff working in other departments were also transferred to the grainshop organization. Thus, there were three categories of persons working in the grainshop organization:

- (1) persona directly recruited to the organization;
- (2) persona recruited for a regular department either from a common waiting list maintained for the grainshops and other departments or those recruited through the agency of the Railway Service Commission but straightaway posted to the grainshop organization; and
- (3) persona working in other departments of the railway transferred to the grainshop organization.

All these persons, however, were temporary employees.

5. As I said, the Santhanam Committee decided that there should be no question of retaining the grainshops as a permanent part of the railway administration. Therefore, when the railway administration decided to close the grainshops and wind up the establishments, the question of dealing with the staff who would be rendered surplus by the process of disbanding the grainshop organization came to be considered. The railway administration could not transfer all the persons to the other departments en masse. The administration did not want to send them out of the railways. The Railway Board, therefore, decided to absorb these employees as far as possible in the other cadres in the railway administration, with a view to avoid unemployment to those persons.

6. With this object in view, the Railway Board, in their communication dated 24 August 1948 addressed to all the Indian rail ways, decided that the temporary staff initially appointed to other departments of the railway and working in the grainshop department should be considered as having continued to serve in their parent department and should be confirmed when their turn came. Staff recruited by the Selection Board and kept in the waiting list and subsequently appointed to grainshop department should be distributed amongst other departments and confirmed in their turn, in the same manner as above. The staff recruited directly for the grainshop department by the Deputy General Manager were permitted to apply for the temporary or permanent posts that existed then on railway or likely to be created as a result of an award. It was stated that such

persons should fulfil the minimum educational qualification prescribed for the posts in question, but were, however, allowed to deduct the period of their actual age for purposes of the maximum age-limit. In his letter dated 21 October 1946, the Deputy General Manager of the Southern Railway (Grainshops) pleaded, with regard to the staff directly recruited by him, that, had the Staff Selection Board or the Joint Service Commission existed then, they would surely have been selected by them, and that therefore for all practical purposes those who were directly recruited and possessed the requisite qualification and age-limit were identical with the staff selected by the Board or the Commission and therefore treatment should be given to them as those selected by the Board or the Commission. He also pleaded for the same concession being extended in the case of persons possessing the requisite educational qualifications but over-aged and those within the age-limit but not possessing the minimum educational qualification.

7. While so, on 3 February 1949, the Railway Board issued certain new directives, with reference to the absorption of the employees of the grainshop organization in the other departments of the railways. Superseding the instructions issued in that letter, dated 24 August 1948, the Railway Board directed the grouping of the temporary grainshop staff as

(a) those who were recruited prior to and were in service on 15 September 1945, and

(b) those who were recruited on or after 15 September 1945.

They directed that, in the case of the former, no age restrictions would apply in connexion with considering such employees for absorption in other departments but the minimum educational qualifications should not be relaxed. They were also permitted to apply to the Railway Service Commission for employment in posts advertised by them in which case for the purpose of the maximum age-limit they could deduct the period of their continued temporary service in the grainshop department from their present age. They also specifically stated therein that no employee should be retrenched unless he refused to accept the alternative employment that was offered to him by the railway administration. In regard to those recruited on or after 15 September 1945, the Board desired that those staff also should be absorbed against suitable vacancies on the same lines as the staff recruited before that date, subject to the conditions that neither the restriction regarding minimum age-limit would be relaxed, except in the latter case to the extent of their continuous temporary service rendered by them on the railway. It may be noted here that in their letter the Railway Board stated that with a view to the expeditious absorption of surplus grainshop staff, particularly those who were recruited prior to 15 September 1945, permanent or temporary staff of other departments on lien to the grainshop department, should be returned to their parent departments if unfilled posts existed and if that was found to be administratively convenient, BO as to reduce the number of grainshop staff who would be surplus immediately.

8. It was in pursuance of these communications that the railway administrations were directed to absorb on a permanent basis the employees of the grainshop department if necessary by creating supernumerary posts. The grainshop employees recruited prior to 15 September 1945 were allotted to various regular departments of railway administration for their absorption. But due to exigencies of the situation and continued requirements of experienced hands in the grainshop departments, most of the senior employees were retained in the grainshop department making paper allotments in the regular departments, while junior employees were allotted and released earlier (sic) complexity, especially in regard to the scales of pay. The Railway Board, by their letter, dated 16 October 1952, stated that in the case of the grainshop staff who were officiating in higher grades but were absorbed in other departments in lower grades, the pay should be fixed on their absorption in the regular departments in accordance with the instructions contained in their letter dated 22 July 1946. In all these communications, the Railway Board stressed that, while fixing the seniority, they should be given such seniority which they would have got, had they been absorbed in the establishment absorbing department right from the beginning of their services. In effect, the Railway Board assured all the temporary staff in the grain-shop department that their services in the grainshop department would be taken into consideration at the time of fixing their seniority when they were absorbed in the other departments of the railways. The same was also confirmed in the Southern Railway Gazette dated 25 March 1953. These orders of the Railway Board had the ex post facto sanction of the President of India as intimated in the Board's letter, dated 28 June 1956.

9. While so, the National Federation of Indian Railway men, in their meeting, pressed and passed a resolution to the effect that the seniority of the staff recruited for the grain-shops and absorbed in alternative posts should be regulated on the basis of their joining the alternative posts. Though the Railway Board explained to the Federation that would be undesirable, yet, at the instance of the federation, the principle was accepted, thereby the Board yielding to the pressure of the federation. The Board, therefore, in partial modification of the letter, dated 16 October 1952, decided in their letter, dated 2 November 1957, that the seniority of temporary grainshop staff should be regulated on the basis of the date of their actual absorption in those departments and not on the basis as if they had been absorbed in those departments right from the beginning of service.

10. But, by that time, many of the railways had acted on the instructions already issued to them from time to time by the Board, by absorbing the temporary staff of the grain-shop establishment as and when they were released, and fixing their seniority and pay in accordance with these instructions. Some of them had also been confined to the absorbing department and promoted to higher grades and confirmed in the higher grades.

11. Further, consequent on integration of railways, combined seniority lists had

been drawn up for clerical and other categories. Therefore, the General Managers of the railways addressed communications to the Railway Board pointing out how the implementation of the revised instructions contained in their letter, dated 2 November 1951, would affect the temporary grainshop staff by reversion, promotion or confirmation already made and also recovery of overpayments. They also pointed out another difficulty that would be experienced by persons drawn from the waiting list and posted initially to the grainshop organization, for according to the instructions contained in their letter, dated 2 November 1957, a senior in the waiting list initially posted to the grainshop organization and later drafted to the permanent department would take his place far below his junior in the waiting list who might have been appointed directly in the permanent department. To this, the Board replied that the date of actual absorption should be taken down to mean the actual date of their allotment for absorption in the department and not their physical absorption in the department.

12. The Board also desired that their orders dated 2 November 1957 should be implemented without further delay and directed some adjustments.

13. Again, in their communications, dated 13 January 1961 and 7 April 1962, the Railway Board decided as follows.

14. The temporary staff who were appointed in the permanent departments initially and then transferred to grainshop department for some period will not have this seniority affected by their transfer to the grainshop department for interim period. The temporary staff who were recruited for a regular department prior to 15 June 1945 but initially posted to the grainshop department and on release were absorbed in categories different from those for which they were originally recruited should also be allowed to count their seniority in absorbing department from the date of their appointment in the grainshop department. The inter se seniority of temporary grainshop staff as in the grainshop department irrespective of the date was directed (sic) that similar treatment should also be afforded to the staff recruited through the agency of Railway Service Commission for posts in permanent departments, but who were initially posted to the grainshop department.

15. The Railway Board thus made a distinction between the temporary staff who were appointed in the permanent department initially and then transferred to the grain-shop department and the temporary staff recruited through the Staff Selection Board or the Joint Selection Board on the one hand and the temporary staff recruited directly by the head of the grain-shop organization on the other. The decision of the Railway Board communicated in their letter, dated 3 November 1967, namely, that the seniority of grainshop department staff consequent on their absorption in the absorbing department should be regulated on the basis of the date of their actual absorption in those departments right from the beginning, affected only the temporary staff recruited by the head of the grainshop organization. They could not compute the period of their service in the grainshop department, at the time of their absorption in the other permanent

department, whereas the other categories of temporary employees, namely, those temporary staff who were appointed in the permanent departments initially and transferred to grainshop department for some period and those who were recruited through the Staff Selection Board and the Joint Service Commission and kept in the waiting list for posts in the permanent departments but were initially posted to the grainshop department, were given the benefit of adding the period of service in the grainshop department, at the time of absorption in the other permanent departments of the railways.

16. The petitioner, in the present case, is a person directly recruited by the head of the grainshop organization. He was subsequently absorbed in one of the permanent departments of the Southern Railway. He also obtained promotion. But on account of the order of the Railway Board, dated 2 November 1957, he had to be demoted, in the process of implementation of the policy of the Railway Board that, in the case of a person like the petitioner who was recruited directly by the head of the grainshop organization the period of service rendered in the grainshop department would not count for purposes of promotion and seniority in service. The petitioner submits that he has not only lost his seniority but has also come down many places in rank. He has also submitted that it has resulted in loss of emoluments and future prospects and retirement benefits.

17. It is contended for the petitioner that the distinction made amongst the temporary staff above mentioned offends Articles 14 and 16 of the Constitution, It is also contended that the policy of the Railway Board was to absorb all the temporary personnel of the grainshop department in the other permanent departments of the railway administration, that this policy was also approved of by the President of India, and that, therefore, such a policy should not and ought not to have been disturbed. Having absorbed the petitioner and the other employees of the grainshop department on the specific and definite assurance and undertaking that their service in the grainshop department would count for all purposes, it was no longer open in law to the respondents to effect a drastic change that the period of service in the grainshop department would not count in the case of persons recruited directly by the head of the grainshop organization, whereas such period of service could be counted in the case of the other temporary staff appointed in the other departments but transferred to the grainshop department and persons recruited by the Staff Selection Board or the Joint Service Commission and kept in the waiting list but subsequently posted to the grainshop department, while they are absorbed in the other departments of the railways consequent on the abolition of the grainshop department.

18. It is in times of distress that the grain-shop department was opened to relieve the difficulty of the railway employees in regard to procurement of foodgrains. But, when malpractices and abuses were found in plenty, there was criticism in the Parliament which led to the appointment of a committee to go into the working of the grainshop organization. That committee recommended the abolition of the grainshop in gradual stages. When the grainshop organization

started functioning, it was a huge organization. At that time, there was neither the Staff Selection Board nor the Joint Service Commission. The Railway Board authorized the head of the grainshop department (Deputy General Manager) to recruit hands for running the organization. When the department was expanding in size and stature, temporary staff appointed to other departments of the railways were transferred to the grainshop department. Similarly, persons recruited by the Staff Selection Board and the Joint Service Commission and kept in the waiting list were also posted to grainshop department. Thus, the grainshop department was filled with temporary personnel drawn from three channels. But, as I said, all were temporary personnel. In such a case, it is not proper to dissect and divide the temporary staff into various categories as has been done by the Railway Board in the impugned orders. The personnel might have come from different channels. But one should not miss the fact that all were temporary personnel in the grainshop establishment and were classified as such. When the Santhanam Committee recommended the abolition of the grainshops in stages, the railway administration was faced with the problem of finding suitable alternative employment for those personnel. The administration wanted to choose these personnel in the other departments of the railway administration. The Railway Board, therefore, decided to lay down a policy by which these temporary staff recruited directly could get such seniority which they would have got had they been absorbed in the absorbing department right from the beginning of service. It was a well-thought out policy enunciated by men of integrity and mature experience.

19. The policy has the sanction of the President. The General Manager of the Indian Railways carried out the policy, and made even promotions and confirmations. The policy of the Board was working smoothly. But the policy of the Board underwent a drastic change, when the National Federation of Railwaymen intervened in the matter. In fact, the Railway Board explained that the resolution of the federation, namely, that the seniority of the staff who were directly recruited for the grainshop and absorbed in alternative posts should be regulated on the basis of their joining the alternative posts, would have an undesirable effect. But the Board yielded to pressure and accepted the resolution and even directed its implementation. The union was interested only in the welfare of the section of the railway employees. It would be a dangerous policy if the members of the Railway Board allowed themselves to be influenced by pressure tactics of a railway union which is not interested in the general welfare of the employees. In the interests of the country and the railway administration, the Board should evolve a policy which would provide for the smooth and harmonious working of the railway personnel. It was only with this object the Railway Board took the humane view that all the personnel of the grainshop department should be absorbed in the other departments of the railways and it was provided that the temporary grainshop staff could reckon their period of service in the grain-shop department at the time of absorption in the other departments " right from the beginning of service." But yielding to pressure, the

Railway Board deviated from their original policy and directed that the staff directly recruited by the head of the grain-shop organization could count on their period of service in the grainshop department at the time of their absorption in other departments whereas those temporary persons appointed to other departments and transferred to the grainshop establishment and those recruited by the Selection Board and kept in the waiting list but subsequently posted to grainshop establishment could reckon their service in the grainshop department at the time of their absorption in the other departments. This is certainly an artificial differentiation in classification.

20. If an executive order discriminates in favour of a certain class, it becomes arbitrary, if it is not founded upon reasonable ground, some difference which bears a just and proper relation to the attempted classification (sic). The classification must be a germane classification. The impugned orders have only produced inequality amongst the same temporary personnel recruited through different channels. This classification is palpably unreasonable and arbitrary. When any order is assailed on the ground that it contravenes Article 14, its validity can be sustained only if the tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguished the persons or things grouped together from others left out of the group. The second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the order. There must be some nexus between the basis of the classification and the object intended to be achieved by the order. As I said, the classification made in the impugned orders has introduced only an artificial classification between one group of temporary personnel and another group of temporary personnel, both selected by the railway administration in general. The weeding out of the temporary personnel directly recruited by the head of the grainshop organization from the temporary personnel selected by the Staff Selection Board or the Joint Service Commission and the temporary personnel transferred from the other departments of the railways, and classifying the former as another separate class is only to deny to that class of persons what has been originally laid down as a policy by the Railway Board. This is certainly arbitrary and unreasonable. Such a classification does not rest on any rational basis, having regard to the object which the Railway Board had in view. There is discrimination apparent on the facts of the classification, and the Railway Board had not discharged the onus which lies heavily upon them. If the Railway Board proceeds to classify the temporary personnel on a basis which has no rational relation to their objective or policy, then their action can certainly be annulled as offending against equal opportunity and protection clauses enshrined in our Constitution. On this ground alone, the impugned orders must be held to be ultra vires and unconstitutional. If equality and equal protection before the law have any meaning and if public institutions are to inspire the confidence which is expected of them, I would be failing in my duty even at the cost of considerable inconvenience to the railway administration if I do not quash the impugned orders and therefore I quash the

impugned orders.

21. It is, therefore, unnecessary for me to discuss the other grounds raised by the petitioner in his affidavit.

22. The writ petition is allowed and rule nisi is made absolute. There will, however, be no order as to cost.