

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.7396/2008**

% **Date of Decision: 19.05.2010**

Dhiyan Singh Petitioner
Through Mr.U.Srivastava, Advocate.

Versus

Union of India & others Respondents
Through Ms.Geetanjali Mohan, Advocate for the
respondent/UOI.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

The petitioner has challenged the order dated 28th November, 2007 passed by the Central Administrative Tribunal, Principal Bench in O.A.No.2368 of 2006, titled as 'Dhiyan Singh v. Union of India through The Chairman, Railway Board & others', dismissing the application of the petitioner seeking quashing of the order dated 12.4.2005 declining absorption/regularization of the petitioner and also declining the relief for relaxation of age for the purpose of granting appointment in regular Group D service.

The petitioner had contended that he was engaged as a Casual Labour, Gangman in Civil Engineering Department of Moradabad Division on 26th august, 1978. He alleged that he completed 298 days of work on 14th January, 1985 with artificial breaks. The petitioner was, however, discharged on completion of work.

The petitioner on the basis of various circulars of the Railway Board submitted an application on March 23, 2001 and May 18, 2001 for his absorption/regular appointment on the basis that his name was entered at serial No.28 in the Live Casual Labour Register of PWI/Hapur. The petitioner also sought regular appointment on the ground that the persons having lesser number of days and junior to him from the date of initial appointment and who were older than 45 years of age, had been regularized. The petitioner was however, declined regularization on the ground that he is over 45 years of age and he did not fulfill other requirements. The petitioner also gave particulars of some of the persons who were alleged to be 45 years or more and having lesser service than the petitioner and juniors to him who had been regularized. The petitioner had relied on R.B.E. No. 42/2001 as well as on para 179 of IREM.

The petition was contested before the Tribunal by the respondents contending, inter-alia that no person junior to the

petitioner has been re-engaged as a casual labour in the Unit of PWI/Hapur and that the name of the petitioner at serial No.28 in the Live Casual Labour Register only entitled him for re-engagement, but that does not entitle him for appointment to the regular post of Group D service. According to the record of the respondents, it was asserted that his date of birth is January 1, 1960 and he was over 47 years, whereas as per instructions, contained in relevant notification the candidates of Scheduled Caste/Scheduled Tribe Category could be re-engaged up to the age of 45 years and since the petitioner was 47 years, he was not eligible even for re-engagement. Relying on Railway Board's instructions dated November 27, 2001, it was contended that the recruitment to all Group D posts was to be done by Railway Recruitment Board only, and therefore, the name of the petitioner could not be screened.

During the pendency of the Original Application, an application filed by the petitioner being M.A.No.1269 of 2007, the Central Administrative Tribunal, Principal Bench, New Delhi by order dated July 23, 2007 had directed the respondents to pass the appropriate order looking into the record of the petitioner. The respondents had, therefore, passed an order dated October 9, 2007 stipulating that the age relaxation in the case of Scheduled Caste/Scheduled Tribe Category candidates was 45 years, which was also subject to the casual labour having put in three years of service at one stretch. It was held that the

petitioner had completed only 298 working days as a casual labour and therefore, on both the counts he was not eligible.

Reliance was also placed on RBE No.230/2001 dated November 27, 2001 holding that the recruitment to all Group D posts was to be done through the Railway Recruitment Board. The order dated October 9, 2007 also stipulated that the petitioner had not applied for recruitment to Group D posts which were notified from time to time which is apparent from the fact that no such averments were made by the petitioner in O.A.No.2368 of 2008. Reliance was also placed by the respondents on 'Secretary, State of Karnataka v. Umadevi and others', 2006 (4) SCALE 197, holding that it would not be appropriate to jettison the Constitutional Scheme of appointment and to take the view that a person who is temporarily or casually employed should be continued permanently. It was also held that though the name of the petitioner was at serial No.28 of the Live Casual Labour Register of PWI/Hapur, however, even seniors to the petitioner have not been alleged juniors who had been permanently absorbed, it was stated that the matter was got examined and those persons whose names had been given by the petitioner had initially worked as a casual labour under PWI/Bijnore and were re-engaged as per their priority in that Unit and that those persons who had worked for more working days than that of petitioner and who were engaged prior to petitioner had been absorbed. In the circumstances, the plea of the petitioner that the persons who

are juniors to him and who had worked for lesser number of days have been given regular appointment was negated.

The petitioner had challenged the order dated April 12, 2005, September 15, 2005, August 22, 2005 and November 25, 2005, however, the Tribunal noted that since the age of the petitioner was about 47 years, he was not entitled for age relaxation contrary to the circulars of the respondents, nor the petitioner was entitled for absorption as he had only worked for 298 days, whereas the recruitment could be of those casual labors who had put in three years of service at one stretch or in broken period as stipulated in para 11.8 of Master Circular No.48 of Casual Labour. The Tribunal also noticed that the allegation that the juniors to the petitioner had been engaged was incorrect, as no persons below the applicant at serial No.28 have been re-engaged. Consequently, the Tribunal did not find any merit in the claim of the petitioner and dismissed the petition, which is challenged before this Court.

Learned counsel for the petitioner has again reiterated the pleas and contentions raised before the Tribunal. Learned counsel for the petitioner is unable to show any circular or any rule which would entitle a candidate belonging to Scheduled Caste/Scheduled Tribe Category for age relaxation beyond 45 years. The learned counsel has not denied that the date of birth of the petitioner is January 1, 1960 and therefore,

his age being more than 45 years, he is not entitled for any age relaxation. It also cannot be denied that even according to the allegation made by the petitioner, he had worked only for 298 days as on January 14, 1985. Para 11.8 of Master Circular No.48 of Casual Labour contemplates three years of continuous work as casual labour or in broken period, whereas the petitioner has only worked for 298 days, and therefore, even on these counts the petitioner is not eligible for the relief claimed by him.

Therefore, the conclusion and interference of the Tribunal that the petitioner cannot be appointed to the regular post cannot be faulted. Reliance of the Tribunal on *Secretary, State of Karnataka v. Umadevi* (Supra), also cannot be faulted in the circumstances especially in view of the decision of the Railway Board to fill up all the posts of Group D through the Railway Recruitment Board in consonance with the propositions of law as laid down in the said judgment. There cannot be recruitment to the regular post de hors the recruitment rules and therefore, the petitioner cannot claim that he is entitled for regularization.

In the circumstances, learned counsel for the petitioner has failed to show any such illegality or irregularity or perversity in the order of the Tribunal which will necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition, in the facts and circumstances is without any merit,
and is therefore, dismissed.

ANIL KUMAR, J.

May 19, 2010

'vk'

MOOL CHAND GARG, J.