

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

Reserved on: October 11, 2012

Pronounced on: November 05, 2012

+ (i) **W.P.(C) No. 5175/1998 & CM No. 14513/2010**

GURDAS RAM & ORS. Petitioner

Through: Mr. M.K. Singh, Advocate for
petitioners No.1, 3, 4 & 6
Mr. G.K. Sharma, Advocate
for petitioners no.2 and 5.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Joydeep Mazumdar, Mr.Rohit
Dutta, Ms. Soumya Dutta, &
Ms.Samina Sheikh, Advocates for
respondents No. 1 to 3.
Mr. Saurav Aggarwal, Advocate for
R-4/IRCTC

+ (ii) **W.P.(C) No.4566/2001**

ROSHAN LAL & ORS. Petitioners

Through: Mr. K.C. Mittal & Ms. Anjali Nehra,
Advocates

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Joydeep Mazumdar, Mr.Rohit
Dutta, Ms. Soumya Dutta, &
Ms.Samina Sheikh, Advocates for
respondent - Northern Railways

+ (iii) **W.P.(C) No.2502/2003**

ALL INDIA VENDORS ASSOCIATION ... Petitioner
Through: Mr. Manoj Saxena & Mr. Shwetank
Sailakwal, Advocates

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Joydeep Mazumdar, Mr.Rohit
Dutta, Ms. Soumya Dutta, &
Ms.Samina Sheikh, Advocates for
respondents No. 1 to 3.
Mr. Saurav Aggarwal, Advocate for
R-4/IRCTC

+ (iv) **W.P.(C) No. 9603-14/2003**

MADAN SINGH & ORS. Petitioners
Through: Mr. Samrat K. Nigam, Mr. Kartikey
Mahajan, Ms. Praneeta Vir &
Mr. M.R. Shamshad, Advocates

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Joydeep Mazumdar, Mr.Rohit
Dutta, Ms. Soumya Dutta, &
Ms.Samina Sheikh, Advocates for
respondents

+ (v) **W.P.(C) No.6373/2006**

LEKH RAJ & ORS. Petitioners
Through: Mr. Samrat K. Nigam, Mr. Kartikey
Mahajan, Ms. Praneeta Vir &
Mr. M.R. Shamshad, Advocates

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Joydeep Mazumdar, Mr.Rohit
Dutta, Ms. Soumya Dutta, &
Ms.Samina Sheikh, Advocates for
respondents No. 1 to 3.
Mr. Saurav Aggarwal, Advocate for
R-4/IRCTC

+ (vi) **W.P.(C) No.1398/2010**

NIRANJAN LAL & ORS. Petitioners

Through: Mr. Abhigya, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Joydeep Mazumdar, Mr.Rohit
Dutta, Ms. Soumya Dutta, &
Ms.Samina Sheikh, Advocates for
respondent No. 1 to 3.
Mr. Saurav Aggarwal, Advocate for
R-4/IRCTC

+ (vii) **W.P.(C) No. 7109/2010**

JANAK RAJ CHANDNA & ORS. Petitioners

Through: Mr. M.K. Singh, Advocate for
Ms. Ratna Agarwal, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Joydeep Mazumdar, Mr.Rohit
Dutta, Ms. Soumya Dutta, &

Ms.Samina Sheikh, Advocates for
respondents No. 1 to 3.
Mr. Saurav Aggarwal, Advocate for
R-4/IRCTC

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. In the above captioned first writ petition, the relief sought is to regularize petitioners as commission vendors, whereas in other writ petitions a mandamus sought by petitioners to respondents, is to absorb petitioners as commission vendors in Group 'C' posts and to quash Circulars of 4th February, 2003, 20th November, 2003 and 1st January, 2004 and tender notice (Annexure P-3).
2. A direction is also sought to respondents by petitioner – *Gurdas Ram and others* to strictly implement comprehensive departmental catering at Delhi/New Delhi in accordance with Railway Board's Policy Letter of 29th December, 1979 and to terminate the services of private contractors and their stalls be offered to existing commission vendors, according to seniority.
3. Since in the above captioned writ petitions, identical submissions were advanced by both the sides, therefore, these petitions are being disposed of by this common judgment.
4. In the year 1998, respondents had taken note of decreased sale of snacks on stalls/trolleys at New Delhi Station and had issued notices to some of the commission vendors as to why their service at the

stalls/trolleys should not be terminated on account of decrease in sales and had simultaneously invited applications for deputing two commission vendors at one such stall/trolley to work at existing stalls on the Railway Platform on 12 hours basis and this had brought petitioner – Gurdas Ram and others to court. Respondent's *Comprehensive Departmental Catering Policy* of December, 1979 had mandated that no contract for sale of edibles should be awarded to private contractors.

5. Petitioners rely upon Apex Court decision in *Daily Rated Casual Employees in P&T Department through Bhartiya Dak Tar Mazdoor Manch v. UOI and ors*, AIR 1987 SC 2342 deprecating policy of employment of persons on ad-hoc or casual basis for number of years and has directed the authorities to formulate a scheme for absorption of employees who had put in one year or more of service.

6. Whereas respondents rely upon Apex Court decision in W.P.(C) No. 1670/1987 *T.I. Madhavan vs. Union of India & ors.*, rendered on 8th September, 1987, clarifying that all commission bearers who were registered first and then the commission vendors be absorbed in Railway Catering Service and they would be entitled to salary etc. from the date of their absorption and not from 1st December, 1983. Respondents maintain that all the vendors of New Delhi Railway Station had refused to get absorbed in regular Class IV scale and it is so evident from communication of 18th September, 1989 by Chief Catering Inspector to Area Railway Manager, New Delhi. Thereafter in the year 1992, respondent-Railways came up with a new catering policy for

undertaking privatization in phases in view of various staff problems and to issue licenses for catering/vending units. The existing commission bearers/vendors were to be redeployed/adjusted preferably in the commercial department in various categories including ticket checking etc. or they were to be considered for allotment of stalls/trolleys at roadside station.

7. As per additional affidavit of 12th July, 2001 of General Manager, Northern Railways, in view of the orders of the Apex Court, Delhi Division of Railways had decided to regularize the service of 245 commission bearers working in Northern Railways and out of them, 225 could be absorbed in Railways whereas remaining 20 commission bearers were found to be not suitable and on the basis of recommendations of a Committee, 42 commission bearers of Delhi Division were found to be suitable for absorption. In compliance, to the policy decision of Railway Board and orders of Hon'ble the Supreme Court, 327 commission bearers/vendors had so far been absorbed in Northern Railway and out of them 12 commission vendors had not resumed their duty.

8. Since catering services of respondent-Railways was transferred to IRCTC, so an option was given to petitioners to get absorbed in '*Group D*' posts and vide letters of March, 1999 and June, 2000, applications were called for absorption of commission vendors/bearers working in Northern Railways in '*Group D*' posts, but only three applicants had appeared for screening test and they were found to be not suitable. Again in March, 2004, another chance was given to such commission

bearers/vendors to appear before the Screening Committee for absorption against the existing vacancies in 'Group D' but as per letter of 30th July, 2004 of IRCTC, Delhi Division, only two persons from Delhi Railway Station had given their willingness to get absorbed, whereas 35 commission vendors of Northern Railways had given their willingness to get absorbed.

9. As per Railway Board's Policy decision of 1st December, 2005 *all commission bearers/vendors should retire at an age of 60 years*. In the screening of Commission bearers/vendors for absorption held on 6th February, 2006, none of the commission bearers/vendors had appeared for getting absorbed in the Railways' 'Group D' posts. Respondents rely upon order of 17th March, 2004 in WP No.2089 of 2004 passed by High Court of Andhra Pradesh, wherein it was observed that the Railways have taken all possible steps to absorb the Commission Bearers and Vendors but they have not given their willingness to get absorbed in 'Group D' posts and therefore the Commission Bearers and Vendors cannot complain that they are deprived of their livelihood. It was further observed that the persons who were medically unfit for absorption could not be allowed to continue the business.

10. Respondents also rely upon an interim order of 25th August, 2005, passed in W.P.(C) No. 4566/2001, W.P.(C) No. 9603/2003 and W.P.(C) No. 2502/2003, wherein it was observed as under:-

"If they apply absorption in 'Group D' their request may be accepted to and they may be given duty corresponding to that of a commission vendor. All

these persons, if they apply, may be absorbed in the Delhi Region itself, subject to their being not more than 59 years of age on the date of filing the application."

11. In view of the aforesaid, respondents maintain that the question of absorbing petitioners in '*Group C*' does not arise, as per the existing recruitment rules, Group 'C' posts are selection posts, which are filled up by direct recruitment as well as promotion from '*Group D*' to '*Group C*' after having acquired sufficient experience.

12. According to learned counsel for the petitioners, issue of absorption of commission bearers/vendors is lingering on since the year 1996, when respondent-Railways had promised absorption of such commission bearers/vendors having qualification of passing 8th class in '*Group C*' and of other vendors in '*Group D*'. It is urged that age of retirement was never contemplated as over the years, job of commission bearers/vendors upon their demise had devolved upon their legal heirs and their employment as *khalasis or safai karamchari, i.e.,* in '*Group D*' is contrary to their job profile of preparing snacks upon raw material being supplied by Railways to them and to sell the snacks at a commission. As per learned counsel for petitioners, despite interim directions, respondents have not disclosed the job profile of '*Group C*' and '*Group D*' posts.

13. On behalf of the petitioners, it is asserted that the job profile of petitioners is of cook/salesman and they should be absorbed against identical job profile in Railways and not against '*Group D*' posts which

are meant for *khalasis, safai karamchari, etc.*. It is further urged that since petitioners have been working as commission vendors for a long period of time, therefore their claim for absorption cannot be scuttled by introducing age of retirement by way of a policy decision of the year 2005, as to do so would be *per se* arbitrary and discriminatory as Railway Catering was handed over to IRCTC in the year 2003 and it now stands reverted back to Indian Railways in the year 2010. So, it is urged that most of the petitioners now confine the relief sought to regularization as commission vendors and not to be absorbed in Railways against '*Group C*' posts.

14. To assert that petitioners have no fundamental right to be absorbed in Railway Catering Service and the scheme to absorb them is out of benevolence shown by the Apex Court in W.P. No. 6804 of 1982, *Sital Singh & Ors. Vs. Union of India*, rendered on 13th December, 1983 and *T.I. Madhawan vs. Union of India & Ors.*, 1987 (5) SLR 572 and on absorption, an employee does not have right to a particular grade or post, reliance is placed by respondents' counsel upon decisions in *P.B. Roy vs. Union of India* (1972) 3 SCC 432; *State of M.P. and Ors vs. Ramesh Kumar Sharma*, 1994 Supp. (3) SCC 661; *Fertilizer Corporation Kamgar Union (Regd.), Sindri and Ors vs. Union of India & ors*, (1981) 1 SCC 568; *Avas Vikas Sansthan and Anr. Vs. Avas Vikas Sansthan Engineers Association and Ors.*, (2004) 4 SCC 132; and *Secretary, State of Karnataka and Ors vs. Umadevi & Ors.*, (2006) 4 SCC 1.

15. On behalf of the respondents, the stand taken can be summed up

as under:-

In the compliance affidavit of 14th January, 2005, respondents had disclosed the job profile of vendors as equivalent to waiters and it was disclosed that the Railway Administration is willing to absorb the members of All India Vendors Association in the post of waiters. However, in the subsequent affidavit of 23rd August, 2005, respondents maintained that entire catering work had been transferred to IRCTC and only those commission bearers/vendors can be absorbed who fulfil the conditions imposed in terms of the applicable rules and regulations. In the counter affidavit of 9th September, 2005, respondents had disclosed that Catering Policy - 2000 reveals that there were several loss causing units in the departmentally managed Catering/Vending Service in Railways.

16. Infact, respondents had maintained silence in respect of impugned Tender Notice inviting applications from caterers for allotment of catering/vending license at Lucknow Station. In any case, no worthwhile submissions were advanced by either side at the hearing in respect of tender notice, as the entire catering work was handed over by the Railways to IRCTC in the year 2003, though it reverted back in the year 2010.

17. The prayer made in one of the writ petitions is to restrain the respondents from introducing multinational companies in the line of commission bearers/vendors but at the hearing, much emphasis on behalf of petitioner was on their regularization as commission vendors instead of seeking absorption due to the introduction of retirement age.

18. Respondents resolutely maintain that initial appointment of

vendors is in *Group 'D'* as khalasi etc. and later on they are promoted to *Group 'C'* posts like waiters/cook, etc. The precise stand taken by respondents is that the commission vendors should have first opted for their absorption in Railways only then they can be promoted to '*Group C*'; and '*Group B*' is a gazetted post and on one hand vendors are not coming forward for absorption and on the other hand, it is alleged that Respondent- Railways is not complying with the directions issued by the Court and the vendors who are seeking absorption are in the age group of 40 to 70 years.

19. The categorical stand of respondents in their counter affidavit of 21st July, 2011 in the above captioned writ petition of *Madan Singh and others*, is based upon its circulars of 1st December, 2005 and 7th June, 2007, i.e., all commission bearers/vendors would be regularized with complete relaxation of educational qualification in '*Group D*' staff and the widow/ward of such vendors/bearers would be provided compassionate appointment as per the rules, in case of their death or medical incapacitation before their retirement and that commission bearers/vendors have to retire at the age of 60 years.

20. The respective stand taken by both the sides, the material on record and the decisions cited have to be considered while keeping in view that there is no challenge to the policy decision of 1st December, 2005 providing for age of retirement as 60 years for those commission vendors who opt for absorption in the Railway Catering Service, as retirement age of Indian Railways staff is 60 years. The consistent stand of respondents right from the beginning is that in view

of the directions issued by Apex Court in *Sital Singh* (Supra), respondents are willing to absorb commission bearers/vendors but as per the applicable Rules and Regulations.

21. The controversy raised is not regarding absorption but about category of post in which absorption is to be done. Respondents had offered to absorb commission bearers/vendors in '*Group D*' posts whereas petitioners assert that they are entitled to be absorbed in '*Group C*' posts, as their job profile is equivalent of that of waiters/cook, etc. and they cannot be put at par with *khalasis and safai karamcharis*. This court is conscious of the legal position regarding absorption or regularization in service, as redefined by the Apex Court in *Secretary, State of Karnataka and Ors vs. Umadevi & Ors.*, (2006) 4 SCC 1, which is as under:-

"High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no

prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

22. Pertinently, in the compliance affidavit of 14th January, 2005, respondents had disclosed the job profile of vendors as equivalent to waiters and it was disclosed that the Railway Administration is willing to absorb the members of *All India Vendors Association* in the post of waiters. Having taken aforementioned stand, respondents cannot be allowed to back track to assert in their later counter affidavit of 21st July, 2011 that absorption of commission vendors would be in '*Group D*' posts. Once having conceded that the job profile of petitioners, i.e., commission vendors is equivalent that of waiters, respondents cannot be allowed to wriggle out of it, because the stand taken in compliance affidavit of 14th January, 2005, regarding job equivalence appears to be correct. Respondents do not offer any worthwhile justification to treat commission vendors as *khalasis etc.*. So, the decisions relied upon on behalf of Respondents do not advance their case.

23. At the hearing, attention of this Court was not drawn to any rule or regulation to show as to why commission vendors cannot be treated at

par with the waiters in catering wing of Respondents. So, absorption of petitioners in '*Group C*' posts would depend upon their qualifying minimum eligibility conditions while relaxing age bar, if any. The real question is not of petitioners having any right to seek absorption in particular cadre but is whether respondents can violate the concept of equality to treat petitioners differently, when their job profile entitles them to be treated at par with waiters of the catering wing of respondents. The measure of economy and the need for streamlining its staffing pattern or administration is the domain of the respondents, wherein this Court would not tread but it is the bounden duty of this Court to ensure that concept of equality is not violated by respondents, by deliberately ignoring the job equivalence in providing absorption in service.

24. In the considered opinion of this Court, there is no rationale or justification to permit respondents to wriggle out of its stand taken in compliance affidavit of 14th January, 2005 conceding that job profile of commission vendors is equivalent to that of waiters in the Railway Administration. Therefore, a mandamus is issued to the respondents to absorb eligible petitioners who have not crossed age of 59 years in '*Group C*' posts against vacant posts of this category after such eligible petitioners formally make an application to seek absorption in '*Group C*' posts.

25. However, so far as claim of petitioners to seek regularization as commission vendors is concerned, the same cannot be acceded to, as a Constitutional Bench of Apex Court in *Secretary, State of Karnataka*

and Ors vs. Umadevi & Ors., (2006) 4 SCC 1 has declared that High Courts acting under Article 226 of the Constitution of India should not, ordinarily issue direction for regularization of service unless the recruitment itself was made in terms of the Constitutional Scheme. The predominant view is that appointments made without following the due process or the rules for appointment do not confer any right on the appointees and that the Court cannot direct their regularization or make them permanent. So, in the instant matter, absorption of eligible petitioners ought to be considered by respondents subject to availability of vacant '*Group C*' posts and in view of respondents aptly conceding in their compliance affidavit of 14th January, 2005 that job profile of commission vendors i.e., petitioners herein is equivalent to that of waiters, who indisputably hold '*Group C*' posts.

26. In the final analysis, prayer of petitioners seeking quashing of circulars of 4th February, 2003, 20th November, 2003 and 1st January, 2004 and the tender notice is found to be infructuous as from the year 2010 the catering service of respondents stands reverted back to Indian Railways. The prayer of petitioners for regularizing them as commission vendors stands declined in view of the afore-noted dictum of the Apex Court in *Uma Devi* (Supra). However, these petitions succeed only to the extent of directing Respondents to consider the case of eligible petitioners for being absorbed against vacant posts in '*Group C*', provided such eligible petitioners, i.e., who have not crossed the age of 59 years, seek absorption within two weeks from today and the respondents are directed to consider the case of such petitioners with

expedition, i.e., within twelve weeks or so. Needless to say, if absorption on compassionate basis is sought by any of the eligible petitioners in terms of Respondents' Circulars of 1st December, 2005 and 7th June, 2007, the same would be considered in terms of aforesaid Circulars.

27. These petitions are disposed of in the aforesaid terms, while leaving the parties to bear their own costs. Pending applications are disposed of as infructuous.

(SUNIL GAUR)
Judge

05 November, 2012
rs/pkb