

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CIVIL APPLICATION (CAW) NO.209 OF 2015

IN

WRIT PETITION NO.1142 OF 2011

(The Senior Divisional Commercial Manager, South East Central Railway, Nagpur ..vs.. The General Secretary, Parcel Porter Sanghatana, South East Central Railway, Nagpur Division, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 08-04-2015

Heard Shri N.W. Almelkar, the learned Advocate for the applicant/respondent and Dr. R.S. Sundaram, the learned Advocate for the petitioner. The respondent has filed this application pointing out that 1328 vacancies in Group 'D' category are existing with the petitioner and inspite of the order passed by this Court on 10-04-2012, 19-10-2013 and 09-07-2014 the petitioner is not accommodating the members of the respondent union as per the Award passed by the Tribunal. The order passed on 10-04-2012 is maintained in Letters Patent Appeal No.298/2012. The petition for special Leave to Appeal (Civil) No.16737/2013 challenging the orders passed on 10-04-2012 and Letters Patent Appeal No.298/2012 is dismissed on 18-04-2013.

2. This Court, by the order dated 10-04-2012, allowed the application filed by the respondent under

Section 17-B of the Industrial Disputes Act, 1947 and directed the petitioner to pay the wages of the members of the respondent union, in whose respect the dispute was filed before the Tribunal. This Court, by the subsequent order dated 19-10-2013, expressed that the petitioner should provide work to 152 persons (members of the respondent union) instead of making them payment without taking any work from them, considering that the burden of payment of these workmen is on the public exchequer.

3. On 09-07-2014 while issuing Rule, the learned Advocate for the petitioner was heard on the point of grant of interim order and accepting the submission made on behalf of the petitioner that the vacancies were not available, the petitioner was directed to absorb the concerned workmen as and when the vacancies of Parcel Porter were available with the petitioner. The petitioner has accepted this order.

4. Now the respondent has pointed out in the present application that 1328 vacancies are existing in Group 'D' category with the petitioner and the petitioner is not absorbing the workmen who are entitled to be absorbed in Group 'D' category as per the impugned Award. Dr. R.S. Sundaram, the learned Advocate for the petitioner has submitted that for absorbing the concerned workmen in different posts available in Group 'D'

category, selection procedure prescribed as per the rules will have to be followed. On this point a query was made to the learned Advocate for the petitioner as to what is the procedure for making appointments of Parcel Porters and it is replied that there are no posts of Parcel Porter available with the petitioner. The facts on the record show that there has been an attempt on the part of the petitioner to deprive the workmen of their legitimate claim and inspite of refusal of the interim order by this Court and inspite of directions issued by this Court, the petitioner is trying to frustrate the legitimate claim of the workmen. If posts of Parcel Porter are not available with the petitioner, the petitioner was under an obligation to point out this fact on 09-07-2014. It is only after the respondent has placed the information obtained by it under the Right to Information Act on the record, now it is being submitted that the posts of Parcel Porter are not available with the petitioner. The order dated 09-07-2014 has to be read to mean that 152 workmen (members of the respondent union) whose rights have been upheld by the Tribunal to be placed in Group 'D' category should be absorbed in the vacancies available with the petitioner in Group 'D' category. The petitioner has filed an affidavit dated 08-04-2015 sworn by Shri D.S. Tomar, Divisional Commercial Manager, South-Eastern Central Railway stating that the workmen to be absorbed are not eligible as per the recruitment rules for the posts of Track Maintainer Group 'IV', as they have

crossed the prescribed age limit. Except this objection the petitioner has not been able to point out any other impediment for absorbing the workmen in Group 'D' category.

5. Considering the facts of the present case and the orders passed by this Court from time to time, the petitioner is directed to absorb the 147 members of the respondent union whose rights are adjudicated by the Tribunal, in Group 'D' category in the vacancies available with the petitioner. It is further directed that none of these vacancies shall be filled up by the petitioner until these 147 workmen are absorbed.

6. The civil application is allowed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

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