

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WA.No. 1436 of 2015

AGAINST THE JUDGMENT IN W.P.(C).NO.8232 OF 2011, DATED 05-06-2015

APPELLANT(S)/RESPONDENTS :

- 1. UNION OF INDIA,
REPRESENTED BY ITS GENERAL MANAGER, SOUTHERN RAILWAY,
HEAD QUARTERS OFFICE, PARK TOWN P.O., CHENNAI-600 003.**
- 2. THE CHIEF COMMERCIAL MANAGER,
SOUTHERN RAILWAY, HEAD QUARTERS OFFICE, PARK TOWN P.O.,
CHENNAI-600 003.**
- 3. THE SENIOR DIVISIONAL COMMERCIAL MANAGER,
SOUTHERN RAILWAY, TRIVANDRUM DIVISION,
TRIVANDRUM-695 014.**

BY ADV. SRI.C.S.DIAS, S.C, RAILWAYS

RESPONDENT(S):/PETITIONERS :

- 1. M.K.SUKUMARAN, AGED 65 YEARS,
SON OF SRI.KRISHNAN NAIR, TRAIN HALT AGENT,
KORATTI ANGADI RS & PO,
SOUTHERN RAILWAY/TRIVANDRUM DIVISION,
TRICHUR DISTRICT, RESIDING AT MATTATHIL HOUSE,
MAMBRA P.O., KORATTI-680 308, TRICHUR DISTRICT.**
- 2. SMT.SHYLA K.V., AGED NOT KNOWN,
WIFE OF SRI.ASOKAN, CHOO LACKAL HOUSE, NEAR RAILWAY STATION,
CHALAKKUDY P.O., TRICHUR DISTRICT, PIN-680 307.**

BY ADV. SRI.T.C.GOVINDA SWAMY

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 07-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.A. No. 1436 of 2015

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Dated this, the 7th day of July, 2015

J U D G M E N T

Shaffique, J

Respondents 1 to 3 in W.P(C) No.8232/11 have filed this appeal challenging the judgment dated 5/6/2015 of the learned Single Judge. The 1st respondent herein is the writ petitioner, who is hereinafter referred to as the petitioner. Writ petition is filed seeking to challenge Exts.P7 and P9 and for a direction to the respondents to allow the petitioner to continue as Train Halt Agent at Koratti Angadi Railway Station subject to such terms and conditions as may be decided by this Court.

2. Short facts involved in the writ petition would disclose that the petitioner was working as a Train Halt Agent of Koratty Angadi Station. The railways issued a notification for appointment of Train Halt Agent at Koratty and other stations in terms of Ext.P7 notification dated 23/4/2010. In the said notification, pass in Xth Standard was prescribed as the minimum qualification. Petitioner

submitted Ext.P8 application in which it is stated that he passed only 8th Standard. By Ext.P9 dated 22/2/2011, petitioner was informed that his extension of the contract stands terminated at the close of 9/3/2011 and Smt.Shyla K.V., the 2nd respondent herein, has been appointed as the new Train Halt Agent w.e.f. 10/3/2011. According to the petitioner, since he had been working as Train Halt Agent for the last several years, since 1982, there was no reason for not considering him.

3. Counter affidavit was filed by the appellants where it is *inter alia* stated that as per Ext.R3(1) dated 24/6/2005, guidelines have been issued by the Ministry of Railways, in which it was specifically stated that the existing halt contractors will be continued to be governed by the earlier guidelines till expiry of the current contract. Further, it was stated that, as per the guidelines, the minimum educational qualification of train halt contractor is stated to be atleast 10th standard pass for “new contractors”. Under such circumstances, it was contended that the appellants were justified in issuing Ext.P9. It was also pointed out that the petitioner was appointed on a contract basis and the period of the contract was being extended from time to time until

30/6/2010. Thereafter, no orders were passed renewing the contract and it is in the said circumstances that it was mentioned in Ext.P9 that the period of contract stands terminated w.e.f. 9/3/2011.

4. Learned Single Judge after taking into consideration the factual issues involved in the matter observed that since the petitioner was working as a Train Halt Agent since 1982, his case will not fall under the guidelines imposed under Ext.R3(1) and under such circumstances, petitioner ought to have been considered for the post of Train Halt Agent notified in terms of Ext.P1 notification. Accordingly, direction has been issued to the appellants to permit the petitioner to apply under notification similar to that issued at Ext.P7. It is also mentioned that the petitioner had to compete with others and lack of qualification would not stand against the petitioner.

5. It is submitted by the learned counsel for the appellants that on account of an interim order passed by the learned Single Judge directing status quo to be maintained, appointment order issued in favour of the 2nd respondent was not finalised and the Railways intend to issue fresh notification

thereafter. It is pointed out by the learned counsel for the appellants that the aforesaid judgment of the learned Single Judge is contrary to the guidelines issued in terms of Ext.R3(1). It is stated that as far as the petitioner is concerned, when his contract period is over, when a fresh notification is issued to appoint a contractor, he will be treated as a new contractor. As far as a 'new contractor' is concerned, pass in 10th Standard is mandatory in terms of Ext.R3(1) guidelines.

6. On the other hand, learned counsel for the petitioner would contend that since the petitioner was working as Train Halt Agent since 1982, he cannot be termed as a “new contractor” and therefore, the eligibility of Xth standard pass has no application to him. We do not think that the opinion expressed by the learned Single Judge by treating the petitioner as a person who cannot be included as a “new contractor” is correct. Ext.R3(1) guidelines itself imposed certain restrictions in the matter relating to the continuance of the contract period. Paragraph IV(a) of Ext.R3(1) reads as under;

“Instructions were issued vide Board's letter No.99/TGIV/Halts/Policy dated 03/04/01 that the

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initial period of contract should be five years and thereafter fresh contracts should be awarded after calling for fresh applications. There was, however, no provision for extension of halt contracts. The matter has been reviewed and it has been decided that after the expiry of the initial contract period of five years, the existing halt contractors may be given an extension for five years (maximum contract period should not exceed $5 + 5 = 10$ years). The extension should be in spells of two and a half years at a time subject to the halt contractor's working being satisfactory and Railways dues being paid in time.

Those halt contractors who also maintain the infrastructure of the station at their own cost including provision of water, electricity etc. may be given another extension of five years i.e. total period of contract may be $10 + 5 = 15$ years.

Action should be taken well in advance before expiry of the contract, to call for fresh applications. The existing halt contractors should also be eligible to apply."

7. Clause XIII (a) clearly indicates, under what circumstances, the person becomes a new contractor. It is provided that the 'existing halt contractors will continue to be governed by the old policy guidelines till expiry of the current contract'. The current contract clearly indicates the existence of a

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contract between the railways and the petitioner. Petitioner does not have a case that the contract between the petitioner and the railway had been extended after 30/6/2010. Under such circumstances, when the contract period has already expired, when there is a new notification issued by the Railways, the petitioner can only make an application for the post, as if he is a 'new contractor' and the eligibility criteria applies. In that view of the matter, we are of the view that the writ petition ought not have been allowed. Writ petitioner should not have been permitted to participate in the process of selection unless there is a change in the qualification criteria. The eligibility criteria in Ext.R3(1) guidelines squarely applies to the petitioner also.

Under such circumstances, we are of the view that the appeal is to be allowed setting aside the judgment of the learned Single Judge to the extend indicated above and we do so.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp