

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

WP(C).No.5268 of 2008 (Z)

AGAINST THE ORDER IN OA 804/2006 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 25-10-2007

PETITIONERS:

1. UNION OF INDIA REP. BY THE
GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS
OFFICE, PARK TOWN P.O, CHENNAI-3.
2. THE SENIOR DIVISIONAL PERSONNEL
OFFICER, SOUTHERN RAILWAY, PALGHAT DIVISION
PALGHAT.

BY ADV. SRI.JAMES KURIAN, SC, RAILWAYS

RESPONDENT:

A.ANGU RAJ, AGED 47 YEARS, S/O M.ARUMUGHAN,
EX.CASUAL LABOURER, SOUTHERN RAILWAY, PALGHAT DIVISION
RESIDING AT KARUPAYI KOIL THERU, KARUR, TAMIL NADU.

BY ADV. SRI.T.C.GOVINDA SWAMY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.5268 of 2008 (Z)

APPENDIX

PETITIONER'S EXTS:-

EXT.P1:- TRUE COPY OF ORDER DATED 19/6/96 OF CAT/ERNAKULAM IN OA NO.1706/06.

EXT.P2:- TRUE COPY OF ORDER DATED 27/1/03 OF CHIEF PERSONNEL OFFICER, SOUTHERN RAILWAY, CHENNAI.

EXT.P3:- TRUE COPY OF LETTER/ORDER DATED 12/03/2003 OF 2ND PETITIONER.

EXT.P4:- TRUE COPY OF OA NO.804/06 ALONG WITH ANNEXURES OF CAT/ERNAKULAM.

EXT.P5:- TRUE COPY OF REPLY STATEMENT FILED IN OA NO.804/06 OF CAT/ERNAKULAM.

EXT.P6:- TRUE COPY OF REJOINDER FILED IN OA 804/06 OF CAT/ERNAKULAM.

EXT.P7:- TRUE COPY OF ORDER DATED 25/10/07 OF CAT/ERNAKULAM IN OA 804/06.

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**P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

W. P. (C) No.5268 of 2008

Dated this the 17th day of August, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The respondent, who belongs to a Scheduled Caste, was engaged as a casual labourer in the Palakkad Division of the Southern Railway, initially, from 21-01-1978 to 20-03-1978. Then, he was so engaged from 13-07-1978 to 05-10-1978. He was re-engaged on 20-05-1982 as casual labourer and he continued as such till 20-02-1983 with intermittent breaks.

2. The Railways have formulated a Scheme for absorbing retrenched casual labourers and submitted the same before the Honourable Supreme Court in **Inder Pal Yadav v. Union of India [(1985) 2 SCC 648]**. The Honourable Supreme Court after considering the matter in detail, modified that Scheme in respect of the date which

should be applicable for eligibility to be absorbed in the regular establishment of the Railways and issued directions accordingly for absorption of such persons. Accordingly, as per the Scheme, the respondent was also entitled to be absorbed in the post of Trackman. But, quite a long time, the Railways did not consider his case. But, belatedly, the Railways, by issuing Annexure-A2 (of Ext.P4) dated 10-02-2005, decided to consider persons similarly placed like the respondent included in the Live Register of Casual Labourers for absorption in the Railway establishment in the category of Trackman (Gangman). Accordingly, those who were included in the Live Register of Casual Labourers were directed to report with Casual Labour Card, Date of Birth Certificate, Photo Identity Card and other related documents on 22-02-2005, 23-02-2005 and 24-02-2005. The Live Register contained 897 names of persons similarly placed like the respondent. But, the respondent was not considered for appointment to the post of Trackman for the reason that

his name was not included in that Live Register. But, his juniors, many in number, were included in that Live Register. Despite his efforts for convincing the Railway authorities regarding the genuineness of the claim for including his name in the Live Register and for absorbing him in the post of Trackman, the Railway authorities did not consider the respondent for such appointment. Therefore, he has preferred Annexure-A3 (of Ext.P4) representation dated 25-05-2005 before the Railway authorities of the Palakkad Division for including his name also in the Live Register of Casual Labourers and for appointing him as Trackman. But, the authorities did not include his name in the Live Register. Therefore, he approached the Central Administrative Tribunal, Ernakulam Bench, for redressing his grievances, by filing O.A. No.804 of 2006. The CAT, after considering the matter in detail, allowed his Original Application and directed to include his name at the appropriate slot in the Live Register and consider him for grant of benefit of

absorption as Trackman, in preference to and on par with his juniors with lesser number of days of service. Also directed that if the respondent was found suitable in terms of the judgment of the Apex Court in **Inder Pal Yadav's case (supra)** and various cases decided by the CAT clarifying the position, he should be absorbed as Trackman within two months. Challenging the order so passed by the CAT, the establishment has preferred this Writ Petition.

3. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

4. Two points have been urged by the learned counsel for the establishment challenging the order passed by the Tribunal. (1) Even though the respondent was engaged as a casual labourer in the Palakkad Division for different spells, he has abandoned his engagement on 27-01-1983 on his own and hence he is not entitled to the benefits of the judgment in **Inder Pal Yadav's case (supra)**. (2) After

leaving the service in 1983, even according to the respondent, he has thereafter approached the Railways claiming absorption based on the judgment in **Inder Pal Yadav's case** only in 2005 by filing Annexure-A3 (of Ext.P4). Therefore, the claim has been affected by inordinate delay of more than two decades.

5. The learned Tribunal has considered the matter in detail. The Tribunal took the position that it was the duty of the establishment to include the name of the respondent in the Live Register of Casual Labourers. The establishment failed in that respect. By failing to discharge its own duty, the establishment cannot raise the contention of delay on the part of the respondent. At the instance of the respondent, the establishment has produced a document which shows the service details of the respondent. That document has proved the fact that the respondent was medically found fit for Bee-One vide DMO/ED.No.C/109 of 06-10-1983. Based on this document, the learned Tribunal

arrived at the conclusion that the argument of the establishment that the respondent abandoned his engagement on 27-01-1983 cannot be accepted.

6. We have carefully considered the records and gone through the detailed order rendered by the learned Tribunal. The relevant portion of the order passed by the Tribunal is reproduced below:

“I have heard Shri T.C.Govindaswamy for the applicant and Ms.Nandini representing Sr.Counsel Smt.Sumati Dandapani for the respondents. Admittedly the applicant is a post 1981 retrenched casual labourer. The respondents on their own have admitted that the list of retrenched casual labourers after 1.1.81 was prepared based on the data furnished by the Unit Offices whereas in the case of pre 1.1.81 retrenched casual labourers, they have to submit their application along with the supporting documents on or before 31.3.1987. The applicant in his rejoinder stated that going by Inder Pal Yadav's decision (supra) implemented by the respondents in terms of RBE Order No.167/86 dated 11.9.1986, the respondents are bound to include the applicant's name on their own and to grant him the benefit of re-engagement and absorption in terms of Para 179(xiii)(c) of the Indian Railway Establishment Manual. In view of the above factual statements made by both the parties, it is more than clear that it was the duty of the respondents to include the name of the

applicant in the Live Casual Labour Register. The LTI Register maintained by the respondents clearly shows that he was a casual labourer retrenched after 1.1.81 and it was the bounden duty of the respondents to include his name in the Live Casual Labour Register on the basis of the information available with the Units where he had worked last. Without verifying the factual position, the respondents ought not have rejected the claim of the applicant totally and denied him the status of a retrenched casual labourer. They have repeated the same mistake while filing the reply affidavit in this O.A. also. Since there is no allegation that the respondents had any malafide intention in rejecting the rightful claim of the applicant, it may be considered as an omission on the part of the respondents to include his name in the Live Register. However, when they have been confronted by the applicant with documentary proof of his service, the respondents should have shown the sagacity and openness to admit the fault and gracefully granted the request of the applicant to include his name in the Live Register and to proceed to absorb him in the regular Group 'D' establishment in accordance with the rules. In the above facts and circumstances of the case, there is no merit in the argument of the counsel for the respondents regarding delay and laches on the part of the applicant in filing the present O.A. I, therefore, allow this O.A.”

In the light of the records before us, we find no illegality or infirmity with the observations made or the findings entered by the learned Tribunal. The learned Tribunal has considered

the matter in its right perspective and issued the directions. Therefore, this writ petition is devoid of any merits and hence, it is dismissed.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE