

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 45165 of 2016

ORDER: (Per VRS,J)

Aggrieved by an order of the Central Administrative Tribunal granting more relief than what could have been granted, the Railway Administration has come up with the present writ petition.

2. Heard Mr. P. Gangarami Reddy, learned standing counsel for the petitioners, and Mr. Siva, learned counsel for the respondents 1 to 6.

3. The history of the litigation is at least about 17 years old. The respondents 1 to 6 approached the Central Administrative Tribunal way back in the year 1999 along with others, by filing O.A.No.539 of 1999, praying for a direction to the Railway Administration to continue to engage their services. By a final order, dated 18.06.1999, the Tribunal issued certain directions, which read as follows:

“i) if the Construction Organization has recommended their names in the 1991 list for keeping them in Live Register as a post-81 engaged casual labourers and they are eligible for registration then the applicants are to be considered for re-engagement as casual labourers against the 20

vacancies which were ordered to be kept vacant as per the Interim Order dated 8.4.1999;

ii) The policy decision for re-engagement of casual labour as stipulated in the letter dated 16.6.1995, and also the Establishment Circular of Serial No.187/86 will hold good;

iii) The applicants should be examined for their medically fitness and be properly checked for their identity;

iv) As regards their educational qualification, they should be re-engaged if they possess the educational qualification required for a post-81 engaged casual labourer to be kept on Live Register.”

4. Pursuant to the aforesaid order, the Railway Administration appears to have examined the cases of the respondents 1 to 6 as well as others and rejected their claim for re-engagement, on the ground that their finger prints did not tally. Aggrieved by the rejection of their claim, the respondents 1 to 6 along with others filed a second application in O.A.No.207 of 2000. The said application was allowed by the Tribunal again with the following directions:

“i) The impugned show-cause notice dated 5.8.1999 and the order dated 20/30.9.1999 passed by the respondent No.2 are hereby set aside;

ii) The respondents shall consider the cases of the applicants for re-engagement as they are held to be post-81 casual labourers.

iii) The respondents shall adhere to the directions given in O.A.No.539 of 1999 dated 18.6.1999.

iv) The respondents after fresh exercise, consider the cases of the applicants for re-engagement in accordance with the rules.

v) Time for compliance is four months from the date of receipt of a copy of this order.

vi) No order as to costs.”

5. As against the orders passed in O.A.No.539 of 1999 and O.A.No.207 of 2000, the Railway Administration filed two writ petitions in W.P.Nos.6670 of 2001 and 7499 of 2001. Both these writ petitions were dismissed, by separate orders, dated 27.09.2010. These orders have actually attained finality.

6. Pursuant to the aforesaid orders, the Railway Administration again directed the respondents 1 to 6 to appear before the Screening Committee in November, 2011 and rejected their claim once again by separate orders, dated 08.02.2012. The operative portion of the said order reads as follows:

“You have attended before the nominated screening committee on 24.11.2011 without original record of service for verification of your candidature. It was also observed by the screening committee that your finger print not tallied and could not produce your original service record. Hence you are not eligible to be considered for reengagement in Railways.

This has the approval of competent authority.

Receipt of this letter may be acknowledged.”

7. Challenging the aforesaid order, the respondents 1 to 6 filed a third application in O.A.No.1042 of 2013. This application was allowed by the Tribunal, directing the Railway Administration to re-engage the respondents 1 to 6 and absorb them into service along with all benefits including monetary, seniority, etc. The operative portion of the order of the Tribunal reads as follows:

“From the facts and circumstances narrated above, I call upon to set aside Annex.A-1 order. This Tribunal declared repeatedly that the applicants were post-81 casual labourers. If any other criteria or conditions are to be followed for listing them, the respondents can examine those conditions or criteria including medical fitness and, if found fit, re-engage the applicants by absorbing them into the service of Indian Railways with all benefits including monetary and seniority, if any, on re-engagement. The 3rd respondent is directed to pass appropriate orders on the basis of the findings recorded by me in this order within two months from the date of receipt of a copy of the order. The applicants shall furnish a copy of this order to the 3rd respondent.”

8. It is against the aforesaid order that the Railway Administration is before us.

9. At the outset, it should be pointed out that what the petitioners prayed for in O.A.Nos.539 of 1999 and 207 of 2000, was a direction to the Railway Administration to re-engage their services. The Tribunal as well as this Court granted the relief of re-engagement subject to verification of their identity. But, in the third round of

litigation, the Tribunal has granted certain reliefs, which were completely beyond what the respondents 1 to 6 got in the first two rounds of litigation. To put it in other words, the respondents 1 to 6, who got the benefit of a direction for re-engagement, have now secured the benefit of absorption into service with monetary and seniority benefits, putting the cart before the horse. Therefore, fundamentally, the reliefs granted by the Tribunal were beyond the scope of the reliefs that could have been granted.

10. Insofar as the reliefs given to the respondents 1 to 6 in the first two orders are concerned, they have attained finality. Therefore, it is not fair on the part of the Railway Administration to repeatedly reject their claim even for re-engagement. After having allowed the orders of the Tribunal in the first two original applications to attain finality, the Railway Administration cannot repeatedly deny even the benefit of re-engagement.

11. It is true that on both the earlier occasions, the respondents 1 to 6 were directed to be re-engaged, subject to verification of their identity. But, insofar as the issue of finger prints is concerned, the same has already been set at naught in the second round of litigation. But unfortunately, the Railway Administration has rejected the claim of the respondents 1 to 6, also on the basis of the finger prints not

tallying, apart from the stand that the original records were not produced.

12. Today, the Railway Administration cannot put the issue of finger prints not tallying against the respondents 1 to 6, as the finding given by the Tribunal in the previous round of litigation has attained finality. Insofar as the original record of service is concerned, it may not be possible for daily wage labourers either to have or to preserve any original record of service. A casual labourer will only be called upon to affix his left thumb impression before payment is made. Therefore, calling upon them to produce the original record of service, is only a way of non-suiting their claim.

13. The respondents 1 to 6 have been litigating from 1999. At least, the identity of the litigants is now well established. Therefore, there is no point in again and again calling upon them to prove their identity.

14. Therefore, the Writ Petition is partly allowed, modifying the order of the Central Administrative Tribunal to the following effect:

- i) The direction given by the Tribunal to grant all benefits including monetary and seniority, is hereby set aside.

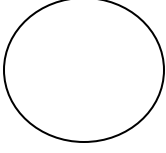
- ii) The Railway Administration shall, without any further ado, re-engage the services of the respondents 1 to 6 herein (except the 3rd respondent, who is now no more) and grant them the benefit of absorption, at least from some date post 2000, depending upon the vacancy position and also depending upon the manner in which the other applicants in the earlier two original applications were considered. We are not indicating any particular date, with the hope that in the best interest of both the Employees and the Railway Administration will choose a date that will put an end to any further litigation on this aspect.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

28th December, 2016
cbs



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN ✓
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