IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11309 OF 2012

K. R. C. Employees Union } Petitioner
versus
Konkan Railway Corporation }
and Ors. } Respondents

Mr. Saikumar Ramamurthy and Mr.Ramesh Ramamurthy for the petitioner.

Ms. Kiran Bhagalia with Mr. B. S. Nayak for respondent no. 1.

Ms. Asha M. Bhambwani for respondent no. 4.

Mr. T. J. Pandian for respondent no. 5.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.
DATED :- FEBRUARY 24, 2017

P.C. :-

1. By this petition under Article 226 of the Constitution of India, the petitioner union seeks a writ of mandamus or any other appropriate writ, order or direction in relation to an order, copy of which is at Exhibit 'H' to the writ petition. That direction is sought so as to not prejudicially affect the chances of promotion and career advancement of the members of the petitioner union.

2. The writ petition was filed by impleading respondent no. 4 together with the Konkan Railway Corporation Limited, its

Managing Director, its Executive Director (Projects) and the General Manager of Northern Railway.

3. It is stated that respondent no. 4 was permanent employee of Northern Railway. His service book and other records are maintained by the Northern Railway on that basis. He was working as Senior Section Engineer (Bridge). Since the Government of India commenced a project of National importance known as Udhampur-Srinagar-Baramulla Rail Project, the Konkan Railway Corporation was awarded the said project. Since respondent no. 4 was working as Senior Section Engineer (Bridge) in Northern Railway, he was taken on deputation by the Konkan Railway Corporation. That was on 6th November, 2006. It is assumed by the petitioner that not only did the Konkan Railway Corporation not relieve respondent no. 4 from its services, though requested by him, but granted him promotion also. Though the promotion is styled as ad-hoc, the apprehension of the petitioner was that the fourth respondent would be absorbed in the services of the Konkan Railway Corporation and promotion would be regularised and that is how the chances of the members of the petitioner union for promotion would be in jeopardy.

4. An affidavit in reply was filed on behalf of the Northern Railway. At page 48 of the paper book, this affidavit appears. It is filed pursuant to an order dated 21st December, 2016 of this court. In this affidavit, it is clarified that the fourth respondent did not join the promotional post in Northern Railway, where his lien exist, but continued to remain in Konkan Railway Corporation. The Northern Railway terms this as an unautorised overstay on deputation period. Eventually, the fourth respondent applied for voluntary retirement from the Northern Railway by making an application dated 3rd November, 2014. That was forwarded through proper channel, namely, through the Konkan Railway Corporation. This request was rejected by the competent authority. The decision was communicated by letter dated 2nd February, 2015 addressed to the Konkan Railway Corporation endorsing a copy thereof to the fourth respondent.

5. Once such an affidavit has been filed in this writ petition on 11th January, 2017 and the contents thereof are confirmed by an affidavit of respondent no. 4, which is tendered today and taken on record, then, in our opinion, presently, we do not see any grievance of the Konkan Railway Corporation employees (petitioner before us) as subsisting. Any discussion, therefore, and in the light of this admitted factual position, between the

Northern Railway and the fourth respondent would be purely academic. In the light of the contents of these affidavits, we dispose of the writ petition. However, we clarify that our order and direction shall not be construed as an expression of opinion on the rights of respondent no. 4 and equally the power of respondent no. 5.

6. Let the Registry de-tag Writ Petition No. 5351 of 2015 together with Civil Application No. 2623 of 2016 in the writ petition and place it separately.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**