

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 23.02.2017

Delivered on :: 03.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. Nos.39592 and 39593 of 2015

- 1 The Union of India
rep. by the General Manager Southern
Railway Park Town Chennai-3
- 2 Union of India rep. by the
Senior Divisional Personnel Officer Chennai
Division southern Railway Park Town
Chennai-3 ... petitioners in both W.P.s
- versus
- M.S.Mahesh ... 1st respondent in W.P.No.39592/2015
- S.Venkatesh ... 1st respondent in W.P.No.39593/2015
- 2 The Registrar
Central Administrative Tribunal
Madras Bench Chennai ... 2nd respondents/in both
Wp's

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the entire records of the 2nd respondent in O.A.Nos.565 and 566 of 2014 and quash the order passed therein dated 14.10.2015.

For petitioners : Mr. V. Radha Krishnan SC for
Mr.A.P.Srinivas

For Respondents : Mr.AR.L.Sundaresan, Senior counsel,
for Mr.Yogesh Kannadasan, for R-1

COMMON ORDER

K.K.SASIDHARAN, J.

INTODUCTORY:-

The then General Manager, Southern Railway, treating the Railways as his private concern, appointed the first respondent in the respective Writ Petitions as substitute helper along with 41 others, without issuing advertisement or notification calling for applications from eligible candidates or holding selection by a committee, constituted for selection or resorting to any other transparent method of selection. The Central Bureau of Investigation (hereinafter referred to as "CBI") found misuse of office in the matter of these appointments through back door. Though the first batch of 28 candidates joined service, the Railways taking into account the serious allegations made against the General Manager, declined to appoint the other 15, including the 1st respondent in both the Writ Petitions. The Central Administrative Tribunal, Madras Bench, directed the railways to appoint the first respondent in the respective Writ Petitions and regularize their services with effect from 2008 on par with the other 28 substitutes, who were selected by the tainted officer. In short, the Tribunal wanted the railways to follow "Equality in illegality" and perpetuate illegality.

Brief Facts :-

2. The General Manager, Southern Railways, collected 80 applications and approved the appointment of 43 substitutes in Chennai Division. The Divisional Railway Manager, pursuant to the direction given by the General Manager, engaged 28 candidates. Before engaging the remaining 15, Writ Petition was filed in the High Court to direct the CBI to register a case against the General Manager under the Prevention of Corruption Act on account of the illegal appointments made by him for personal gain. The CBI found merit in the allegations. The first respondent in the present Writ Petitions filed O.A.No.448 and 449 of 2017, claiming appointment. The Tribunal by order dated 12 July 2013, directed the Railways to consider their case for appointment in the existing or future vacancy in the post of Substitute Helpers or equivalent category subject to eligibility and in accordance with law.

3. The General Manager, Southern Railways, by order dated 2 October 2013, negated the prayer for appointment on the ground that engagement in question was made in violation of the guidelines and norms governing such appointments. The said order was challenged in O.A.No.310 of 2014 and 566 of 2014. The Tribunal directed appointment solely on the ground that the other selected candidates were engaged and their services were

regularized later. Feeling aggrieved, Southern Railway is before this Court.

Submissions :-

4. The learned counsel for the petitioners contended that the then General Manager without issuing a notification and in total violation of the procedure for appointment, collected applications from the first respondent in these two Writ Petitions and directed the Personnel Office to appoint them in Chennai Division. According to the learned counsel, there were allegations against the then General Manager regarding large scale illegal appointments and the same resulted in conducting enquiry by CBI and Central Vigilance Commission. When a direction was issued to the General Manager to consider the case of the first respondent in the respective Writ Petitions on merits, a decision was taken to reject the claim in view of the finding recorded that the appointments were made without resorting to the prescribed procedure. The learned counsel contended that the Tribunal erred in directing the petitioners to appoint the first respondent in the respective Writ Petitions notwithstanding the earlier order in the original applications directing such appointments only in case there were no illegality in the earlier selection process. The learned counsel submitted that the appointments of 28 employees would not give a right to the first respondent in the respective Writ Petitions to claim employment by taking up a plea of equal treatment.

5. The learned Senior Counsel for the first respondent in the respective Writ Petitions justified the impugned order. According to the learned Senior counsel the private respondents are similarly placed like the 28 appointees and as such, the Tribunal was correct in directing their appointment.

Discussion :-

6. The factual matrix shows that the then General Manager, Southern Railways, without issuing vacancy notification, collected applications through his source and engaged 43 substitutes. While making engagements, the General Manager failed to adopt a transparent process giving opportunity to all the eligible candidates. It is found from records that 28 selected candidates managed to join the service and only thereafter the illegality and favoritism was exposed. Though no specific direction was given by the Division Bench in W.P.No.22071 of 2008, the Court made remarks and observations regarding the irregularities committed in the engagement of substitutes by the then General Manager. The preliminary investigation conducted by CBI confirmed the irregularity and illegality.

7. The first respondent in the Writ Petitions earlier filed

O.A.No.448 of 2011 and 449 of 2011 for a direction to appoint them. The Tribunal issued the following direction :-

"11. The two original applications bearing Nos.448 and 449, both of 2011, together with MA bearing Nos.116, 117 of 2013, stand disposed of accordingly in the following terms: If there is no irregularity in the earlier appointments, and specifically in the selection of the Applicants in the two OAs. While offering them appointment as Substitute Helper, and there is nothing adverse against the applicants like using unfair means or influence in trying to secure their appointment, the respondents are directed to consider the case of the applicants against any existing or future vacancy of Substitute Helper or equivalent category subject to eligibility and in accordance with law and pass order within a period of three months from the date of receipt/production of a copy of this order. No order as to costs."

8. The observation made by the Tribunal very clearly shows that the direction was to make appointment if there was no irregularity in the earlier appointment. The first respondent has not challenged the said order. The order has therefore become final.

9. The General Manager considered the representation pursuant to the order dated 12 July 2013 in O.A.No.448 and 449 of 2011 and having found that there were serious irregularities and violation of guidelines and rules in the appointments made earlier, negatived the request to appoint the first respondent in the respective Writ Petitions.

10. The order passed by the General Manager was in accordance with the liberty given by the Tribunal in the earlier order in O.A.No.448 and 449 of 2017. The Tribunal by directing the petitioners to appoint the first respondent and regularize their service, omitted to consider the vital fact that the earlier appointments were made in violation of the guidelines and it was a secret affair. Merely because the other 28 candidates managed to join, it cannot be said that the first respondent is entitled to be appointed, notwithstanding the proved illegality and irregularity committed by the then General Manager in the matter of appointment of substitutes. In view of the order dated 12 July 2013 in O.A.No.448 and 449 of 2017 and the finding given by the General Manager with regard to the

illegality and irregularity, the first respondent is not entitled to an order for appointment.

11. The Supreme Court in *State of Haryana vs. Piara Singh*, 1992 (4) SCC 118 observed that before making appointment, appropriate method consistent with Article 16 must be followed.

47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

12. In *Union Public Service Commission v. Girish Jayanti Lal Vaghela* [(2006) 2 SCC 482], the Supreme Court underlined the need to adopt a transparent procedure for public employment.

The Supreme Court said.

"12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words 'employment' or 'appointment' cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the

advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."

13. The Supreme Court in *Secretary, State of Karnataka vs. Uma Devi*, 2006(4) SCC 1, indicated the rule of equality in public employment in the following words:-

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee."

14. In *Manoj Manu v. Union of India* (2013) 12 SCC 171, the Supreme Court made the position clear that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. According to the Supreme Court, it is always open to the Government not to fill up the vacancies. However such decision should not be arbitrary or unreasonable. It was held that once the decision is found to be based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies.

15. When we posed a query to the learned Senior counsel for the first respondent in the respective Writ Petitions as to how the applicants before the Tribunal came to know that there were vacancies in the Southern Railways in the post of Substitute Helpers, the learned Senior counsel was not in a position to give a satisfactory reply. It is still a mystery as to how the General Manager received 80 applications from candidates for appointment to the post of Substitute Helpers without issuing a publication.

16. In the subject case, the then General Manager proceeded as if railways was a private establishment enabling the employer to appoint his own men without resorting to a transparent procedure.

17. The select list of 15 shows that one of the selected candidates was living in the outhouse of a railway employee at Chennai (Kaveri Outhouse, Haddows Road, Nungambakkam, Chennai). Therefore, it is clear that the General Manager was engaging his kith and kin in total violation of Articles 14 and 16 of the Constitution.

18. The Tribunal wanted the railways to perpetuate the illegality. The first respondent is not entitled to an order of appointment in view of the irregularities and illegalities in the matter of appointment of substitutes and the suspicious nature of the selection. We are therefore of the view that the Tribunal committed a fundamental error by directing the petitioners to appoint the first respondent in the respective Writ Petitions. The petitioners are therefore entitled to succeed.

19. In the result, the common order dated 14 October 2015 is set aside. The original applications in O.A.Nos.310 and 566 of 2014 are dismissed.

20. In the upshot, we allow the Writ Petitions. No costs. Consequently, M.P.Nos.1 and 2 of 2015 are closed.

Sd/-
Assistant Registrar

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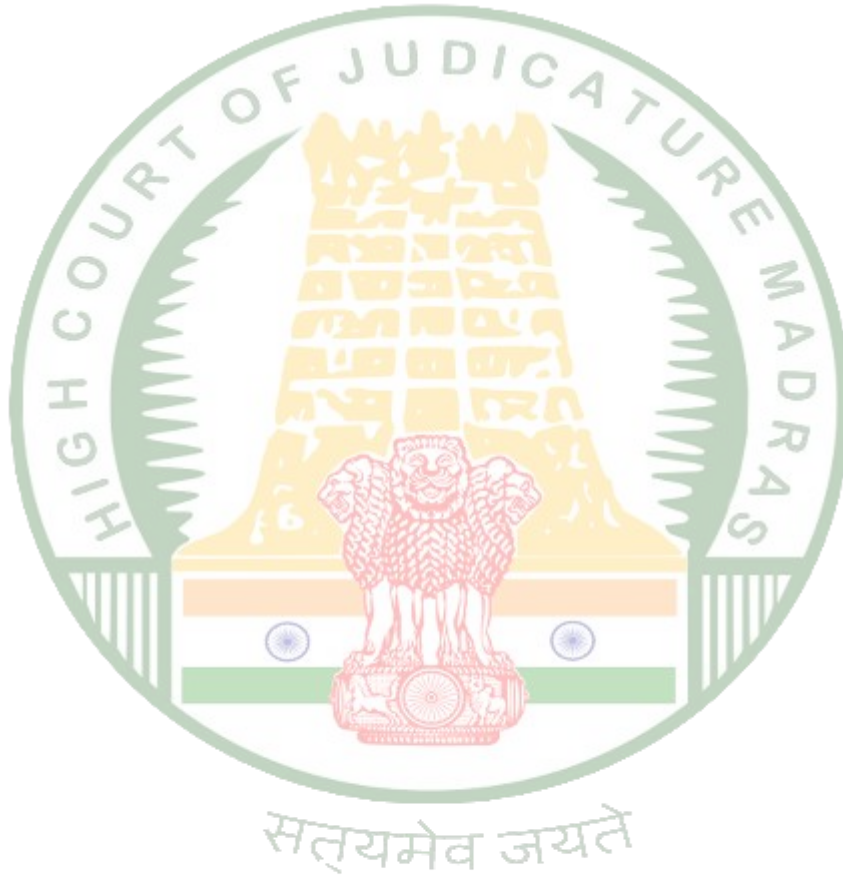
Sub Assistant Registrar

To
The Registrar
Central Administrative Tribunal
Madras Bench, Chennai

+1cc to Mr.A.P. Srinivas, Advocate, S.R.No.14077

rsy(CO)
md(13/03/2017)

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