

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.29428 OF 2016

ORDER: (*Per Hon'ble Dr. Justice Shameem Akther*)

1. This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of WRIT OF CERTIORARI calling for the records relating to and connected with the orders of the Hon'ble Central Administrative Tribunal Hyderabad Bench at Hyderabad (O.A. No.1166/2015) dated 20.01.2016 and the proceedings Lr.No.SCR/P-BZA/407 Optg. Cadre/PMA/2011, dated 23.12.2013 and procds.No.25.09.2014 issued by the 3rd respondent and quash the same as being erroneous, arbitrary, illegal, contrary to law and also violation of Articles 14, 16, 21 of the Constitution of India and consequently direct the 2nd respondent to consider the petitioner service is more than 33 years while disposing of the representation dt.26.09.2013 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Heard Sri V. Ganesh Bhujanga Rao, learned counsel for the petitioner-applicant, and Sri P. Bhaskar, learned standing counsel for Railways-respondents, and perused the material available on record.

3. The case and the contention of the writ petitioner-applicant, in brief, is that he was appointed as Pointsman 'A' in PB-1, in the Railway Department and his date of joining was 23.10.1978 and the date of birth mentioned in his Service Register was 13.06.1957. According to the petitioner-applicant, he has joined in the Service on 23.10.1978 but, as per the particulars of his Service Register, his date of joining was mentioned

as 20.02.1979, due to which discrepancy, the career of the petitioner has been deviated mainly his case to be considered for Liberalized Active Retirement Scheme for Guaranteed Employees for Safety Staff (LARGESS). Further, as per the proceedings of the D.R.M. Office, dated 23.01.2014, passed in SCR/P-BZA/650/3/LARSGESS/2014/I, the following eligibility criteria is prescribed:

1) The employees in PB with GP of Rs.1,800/- must be between 50-57 years as on 01.01.2014. In other words, only those staff whose DOB is between 01.01.1957 and 31.12.1963 are only eligible to apply in this scheme;

2) The employees in PB with GP of Rs.1,900/- and above must be between 55-57 years as on 01.01.2014. In other words, only those staff whose date of birth is between 01.01.1962 and 31.12.1963 are only eligible to apply in this scheme.

4. From the above eligibility criteria, the petitioner-applicant is very much eligible for the benefit of LARSGESS scheme but the candidature of the petitioner has been ignored on the ground that as per his Service Register, his age is not relevant *i.e.*, due to mentioning of his date of joining in the Service Register as 20.02.1979 instead of 23.10.1978 and, hence, disqualified for the LARSGESS scheme. The pay slip details of the petitioner very much show his date of joining as 23.10.1978 but the respondents issued the proceedings dated 23.12.2013 declining the candidature of the petitioner. Subsequently, the petitioner made a representation dated 26.09.2013 requesting the respondents to consider the candidature of his son Mr. K. Anil, for the eligible post under the scheme of LARSGESS and for availing consequential benefits of the scheme. Subsequently, the petitioner sent a notice under Section 80

C.P.C. to regularize his service from 20.02.1979 and treat him as regular employee in terms of the Railway Board Letter No.E/(NG)/II/78/CL/12, dated 16.10.1990 and E(NG)II/85/CL/12, dated 28.11.1986 and 19.05.1987 and treat his service as more than 33 years; consequently, qualify his son to avail the scheme of LARSGESS. Subsequently, the petitioner's son made a representation dated 24.06.2015 to the respondents but no use. The petitioner approached the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for short, 'the Tribunal'); wherein the Tribunal heavily relied on the order dated 08.07.2015 passed in O.A. No.2578 of 2013 by the Principal Bench of Central Administrative Tribunal and held that the LARSGESS scheme as unconstitutional and *ultra vires* of Articles 14 and 16 of the Constitution of India, dismissed the claim of the petitioner. Aggrieved by the impugned order dated 20.01.2016 passed in O.A. No.1166 of 2015, the petitioner-applicant is before this Court.

5. The case and contention of the respondent Nos.1 to 4-railway authorities is that as per the official records, the date of birth of the petitioner-applicant is 20.02.1979 and his date of joining into service is 20.02.1979 as casual labour with temporary status; as per the rules of the railway authorities, the employees in Grade Pay Rs.1,900/- who are opting for voluntary retirement and proposing for appointment of their children under LARGESS scheme should have completed 33 years of qualifying service, but the petitioner-applicant was not having such requisite qualifying service as on 01.07.2013 (2013-Second Half) or even as on 01.01.2014 (2014-First Half) as stipulated in the notification; the entries made in the service book shall only be the criteria for reckoning date of birth and date of appointment, etc., and not other records, such as, pay slips, etc; the casual labour service period spent prior to regular service or

even for temporary status service *i.e.*, from 20.02.1979 to 15.03.1985 cannot be considered as 100% which is not incognizance to the Railway Rules; and ultimately, prayed to dismiss the writ petition.

6. In view of the contentions put forth by both sides, the points for determination are:

(1) Whether the impugned order dated 20.01.2016 passed in O.A. No.1166 of 2015 by the learned Tribunal is liable to be set-aside? And

(2) Whether the ward of the writ petitioner-applicant can be directed to be appointed by the railway authorities under the LARGEES scheme?

7. **Point Nos.1 and 2:** The material available on record reveals that as per the Lr.No.SCR/ P-BZA/407/Optg.Cadre/PMA/2011 dated 23.12.2013, respondent No.3 examined the eligibility for appointment in the LARGEES scheme for guaranteed employment for safety staff for the year 2013-II HALF–PMA Cadre of Optg. Department and rejected the candidature of the son of the petitioner-applicant holding that he has put up less than 33 years of qualifying service. Vide letter No.SCR/P-BZA/407MA/Optg. Cadre/2013 & 14, dated 25.09.2014, respondent No.3 had once again examined the representation given by the writ petitioner-applicant relating to the required qualifying service put up by the writ petitioner-applicant and held that the writ petitioner-applicant's was reckoned with effect from 20.02.1979 to 01.01.2014 and held that he has put up only 31 years 9 months and 28 days, which made his son ineligible for appointment in the LARGEES scheme – 2014 (First Half) as per the Rules and his service is required to be reckoned from the date of his initial engagement as casual labour instead of from the date of grant of temporary status, in terms of Railway Board's letter Nos.E(NG)II/78/CL/12

dated 16.10.1990. E(NG)II/85/CL/6 dated 28.11.1986 and 19.05.1987. As per the records available as on the date, the writ petitioner-applicant has put up only 31 years 9 months and 28 days of service and this made him ineligible him for the LARGESS scheme – 2014 (First Half).

8. Now the petitioner-applicant is contending that he has put up qualified service of 33 years is without substance and material. It is relevant to state that the petitioner-applicant has been enjoying the full term of his service. Now he is about to retire. At the fag end of the service contending that he has put up 33 years of qualifying service without basis and material is not tenable, this contention is against his service record, without mention of date of birth in his service register, now he cannot set-up a different date of birth, having conceded for more than three decades. It is to further state that the learned Principal Bench of Central Administrative Tribunal had dismissed the O.As., declaring the LARGESS scheme as unconstitutional and *ultra vires* of Articles 14 and 16 of the Constitution of India, relying on the decisions of the Hon'ble Supreme Court in **Secretary, State of Karnataka v. Umadevi**¹, **Shrilekha Vidyarthi v. State of Uttar Pradesh**², **Indian Express Newspapers v. Union of India**³ and **Akil Bharatiya Soshit Karamchari Sangh v. Union of India**⁴, stating that under no circumstances, the petitioner-applicant's son cannot take a back door entry to a Government Department. In these circumstances, the contention of the petitioner-applicant that there is a violation of rights guaranteed under Articles 14, 16 and 21 of the Constitution of India are not tenable. The learned Tribunal, while dealing with the matter, had examined elaborately all the issues raised before it with regard to the qualifying 33 years of service of the petitioner-applicant

¹ (2006)4 SCC 1

² 1991(1) SCC 12

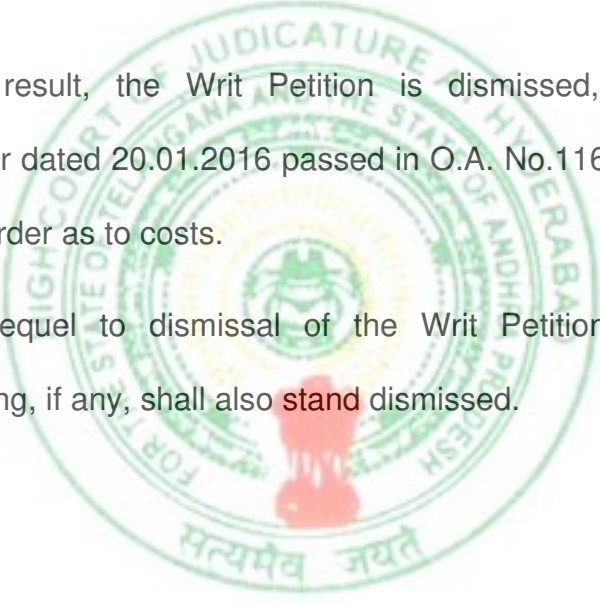
³ 1985(1) SCC 641

⁴ 1981(1) SCC 246

and also his joining into service as a casual labour, etc., and ultimately, held that no benefit can be extended to the petitioner-applicant under the LARGESS scheme. The findings of the learned Tribunal are based on record. There is no perversity in the impugned order passed by the Tribunal. Ordinarily, this Court, under Article 226 of the Constitution of India, would not interfere with impugned orders, unless there is infirmity or perversity. The writ petition is devoid of merits. All contentions raised by the writ petitioner do fail. Therefore, the impugned order passed by the Tribunal is liable to be confirmed. Both the points are answered against the writ petitioner.

9. In the result, the Writ Petition is dismissed, confirming the impugned order dated 20.01.2016 passed in O.A. No.1166 of 2015 by the Tribunal. No order as to costs.

10. As a sequel to dismissal of the Writ Petition, miscellaneous petitions pending, if any, shall also stand dismissed.



SURESH KUMAR KAIT, J

Dr. SHAMEEM AKTHER, J

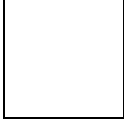
Date: 30-06-2017.

DSH/SIVA

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

And

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WRIT PETITION No.29428 OF 2016

(Order of the Division Bench prepared by
Hon'ble Dr. Justice Shameem Akther)

Date. 30-06-2017

DSH