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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2688/2017**

KANT YADAV AND ORS

..... Petitioners

Through: Mr.G.D.Ahmed and Ms.Mohsin,
Advocates with petitioners no.1, 2, 4,
6, 20, 21, 25, 42, 45 & 46.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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18.04.2017

C.M.11654/2017 (for exemption)

Exemption is allowed subject to just exceptions.

Application stands disposed of.

W.P.(C) 2688/2017

1. The petitioners have preferred the present writ petition to assail the orders dated 26.04.2016 and 22.08.2016 passed by the Central Administrative Tribunal, Delhi in O.A.3364/2014 and R.A.158/2016 preferred in the said O.A. respectively. The tribunal had dismissed the O.A. preferred by the petitioners on 26.04.2016, and the review application was dismissed on 22.08.2016.

2. The petitioners-who are 49 in number, had preferred the Original Application to seek a direction that they be absorbed as

regular employees of North Central Railways. The case of the petitioners was that they had worked as contract workers with the said railways for long periods of time. In their Original Application, the petitioners stated that the entire record pertaining to their services was in the possession of the contractor. The petitioners filed along with the Original Application some of the documents in respect of a few of them to support their claim.

3. A perusal of the Original Application shows that it was not claimed by the petitioners that their contract employment was a sham, or that they had actually been engaged directly by the railways, however, showing them to be contract employees.

4. The Tribunal, while dismissing the Original Application, has taken note of the fact that only in respect of four of the employees, a few documents have been placed on record which showed their engagement intermittently by the Contractor. In the impugned order, the Tribunal has observed as under:

“9. It is the case of the applicants that the respondent no.5-Contractor had engaged them to work as ‘fitter, cleaner, Mechanic, porter and helper for the number of years.’ In support of their case, they have filed photocopies of the identity cards (Annexure A/1) issued by the Contractor in favour of Mr.Shrikant Yadav (applicant no.1), Mr.Sachin Kumar Sharma (applicant no.4), Mr.Subhash Chandra (applicant no.5), and Mr.Harishankar Vishwakarama (applicant no.6). It is pertinent to mention here that though the present O.A. has been filed by 49 applicants, yet copies of only four identity cards purportedly issued by the respondent no.5-Contractor in favour of four of them have been filed by the applicants in support of their case that they have all

being engaged by the Contractor to work in the Railway. The copies of the identity cards issued by the Contractor to applicant no.1-Shrikant Yadav reveal that applicant no.1 was engaged by the Contractor to work as Fitter during the periods from 11.2.2011 to 18.12.2011, from 10.1.2013 to 18.3.2013, and from 28.4.2013 to 27.7.2013. The copy of the identity card issued by the Contractor to applicant no.4-Sachin Kumar Sharma reveals that applicant no.4 was engaged by the Contractor during the periods from 14.1.2012 to 18.12.2012, and from 10.1.2013 to 18.3.2013. The copy of the identity card issued by the Contractor in favour of applicant no.5-Subhash Chandra shows that applicant no.5 was engaged by the Contractor to work as Carpenter during the period from 28.4.2013 to 24.1.2014. The copies of the identity cards issued to the applicant no.6-Harishankar show that applicant no.6 was engaged by the Contractor to work as Carpenter during the periods from 14.1.2012 to 18.12.2012, from 10.1.2013 to 18.3.2013 and from 28.7.2013 to 24.1.2014. Thus, the aforesaid copies of the identity cards issued to applicant nos. 1, 4, 5 and 6 do not even disclose them to have been engaged by the contractor to work as contract labourers/Parcel Porters in the Railways.”

(emphasis supplied)

5. The submission of learned counsel for the petitioners is that the petitioners were possessed of similar documents in respect of other petitioners as well. Learned counsel submits that he is carrying a bunch of such documents which, admittedly, were not placed before the Tribunal. Learned counsel, therefore, submits that this court may set aside the impugned order and remand the matter to the Tribunal for reconsideration, while permitting the petitioners to place on record the said documents. However, the petitioners have not offered any

justification for not filing all their supporting documents with the Original Application or at least before the same was taken up for hearing by the Tribunal. We may observe that the Tribunal has dismissed the Original Application on another independent ground. The Tribunal has observed, and rightly so, that it could not be said that there was an employer-employee relationship between the railways and the applicants. Admittedly, the petitioners were working through a contractor. There was insufficient material to substantiate the petitioners' claim that they had been engaged by the Contractor/Respondent No.5 to work for the Railways, and Railway alone during their employment with Respondent No.5. The petitioners did not aver in the Original Application that they were actually appointed by the railways; that they were being paid salary/remuneration by the railways directly; that the railways had the authority to dismiss them; that the railways had the authority to take disciplinary action against them; whether each of them had worked continuously in service with the railways and; the applicants did not bring on record the extent of control and supervision exercised by the railways over their services.

6. Learned counsel for the petitioners has submitted that while the aforesaid Original Application was pending, their services were disengaged on 25.10.2014. The said order has been placed on record, which shows that the same had been issued by the contractor/Respondent No.5, and not by the Railways. This contra indicates that the engagement of the petitioners was not by the Railways directly, even if it is assumed that they had been engaged

through the Contractor/Respondent No.5 to work for the Railways.

7. There is another reason why we are not inclined to accede to the petitioners' request for remand of the case while permitting the petitioners to place the documents on record. In our view, the same would serve no useful purpose and would lead to an unnecessary and wasteful exercise to be undertaken by the Tribunal, which would lead to further financial burden, inter alia, on the petitioners. The reason is that the petitioners, even if they are presumed to have been working with the railways directly, though camouflaged as contract workers, would not be entitled to seek absorption and regularisation except in accordance with the stipulations laid down by the Supreme Court in *the Secretary, State of Karnataka and Others vs. Uma Devi and Others* (2006) 4 SCC 1. In this decision, the Supreme Court, inter alia, directed that as a one-time measure, the services of the irregular employees may be regularised, provided they were appointed against duly sanctioned posts and their regularisation could also be made only against the vacant sanctioned post. Once again, we find that there is absolutely no averment in the original application of the petitioners in this respect.

8. For the aforesaid reasons, we are not inclined to interfere with the impugned order. The same is, accordingly, dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 18, 2017

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