

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.410 of 2018
In
Civil Writ Jurisdiction Case No.4248 of 2009

1. The Union of India through the General Manager, East Central Railway, Hajipur
2. The Chief Personnel Officer, Eastern (now East Central) Railway, Hajipur.
3. The Divisional Railway Manager, East Central Railway, Danapur.
4. The Senior Divisional Personnel Officer, East Central Railway, Danapur.
5. The Hony. General Secretary, V.N. Sharma Institute, E.C. Rlys (Prev.-E. Rly), Railway Cinema, Khagaul.

... .. Appellant/s

Versus

Gyanendra Kumar Sharma alias G. K. Sharma, son of Late Deb Narayan Lall, resident of Mohalla-Sultanpur, P.O. and P.S.-Danapur Cantt. Distrcit-Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rishi Raj Sinha, Advocate
For the Respondent/s : None

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-12-2018

Heard Shri Rishi Raj Sinha, learned counsel for the appellant-Railways and its authorities.

2. The appeal questions the correctness of the judgement dated 26th February, 2018 passed in CWJC No.4248 of 2009 by the learned Single Judge, whereby the writ petition filed by the respondent-petitioner has been allowed and the order passed by the Divisional Railway Manager dated 3rd of



November, 2008 has been quashed with a direction to decide the matter afresh in the light of the observations made therein.

3. The dispute arises out of a claim of regular appointment of the respondent-petitioner that was set up by him keeping in view the Railway Board's Circular dated 30th May, 2000 read with the Circular dated 12th June, 2001. The said Circulars were in relation to Group 'D' Railway Staff Working in quasi-Administrative Organizations connected with the Railways. It is undisputed that the respondent-petitioner was working in what is known as "V.N. Sharma Institute" in the premises of the Railways which is running as a Club to cater to the employees of the Railways. In effect, it is a recreation club and the respondent-petitioner had been appointed therein as a temporary Operator, which is evident from Annexure-3 to the writ petition. The terms and conditions of the employment indicate that it was on an *ad hoc* basis as a stopgap measure with stipulation that it could be terminated on a notice of seven days without any claim. The petitioner continued for decades together in that capacity.

4. The respondent-petitioner in the wake of the aforesaid circulars stakes his claim for regular appointment and ultimately, on 4th of June, 2002, he was informed that he was



under-age at the time of his initial employment and engagement and secondly, he was under-qualified inasmuch as he had only the educational qualification of having passed Class-IV. The respondent-petitioner objected to this by clearly stating that on the date of his engagement, he had attained majority and that even otherwise, he had passed Class-IX and had sought entry in Class-X. For this, the appellant relied on a scholar certificate, copy whereof was filed in the previous round of litigation as well as before the learned Single Judge in the present proceeding as well.

5. Since the appellant's contention was negatived, he approached the Central Administrative Tribunal by filing an original application, but the same was rejected on the ground that since the respondent-petitioner had not entered service, therefore, the application would not be maintainable keeping in view the earlier opinion of the Apex Court, reported in **A.I.R. 1990 SC 952 (All India Railway Institute Employees Association through its General Secretary Vs. Union of India through the Chairman)**. It is thereafter that the respondent-petitioner filed CWJC No.13920 of 2005 and other similarly situate persons also approached this Court. The said writ petitions were disposed of by a common judgement dated



23rd of July, 2008 by the learned Single Judge of this Court,
which is extracted herein under:-

“Heard learned counsel for the petitioners and learned counsel for the respondents. It is categorically recorded that despite indulgence no counter affidavit on the merit of the case has been filed so far. Therefore the matters are being disposed of on the pleadings available on records.

All the petitioners are aggrieved because despite they having rendered services under the respondents for a long period of time may be three decades in some cases. As would be evident from the records brought by the petitioners when it came down to the irregular appointment they have been pushed out from the zone of consideration on two grounds, one, under-age and second under-qualification.

The irony of the situation is not lost on this Court because the respondents have taken 30 years to realize that they have engaged minor persons at the initial time of their engagement or they do not have adequate qualification. But the question does arise now whether these two reasons can be held out against the petitioners when they have been working under the respondents for a long period of time may be 25-30 years without any objection by them on the above counts?

Petitioners are only seeking regularization now. It is not a case of fresh appointment where the question of age or qualification will play any vital role. They have acquired right by virtue of the length of service under the respondents and not anything else.

The Court need not record various decisions on this issue but states that least these two grounds i.e. under age and under qualification cannot be held out against the petitioners after so many years of their engagement by the respondents. The reasons for refusal is not based on any logic because both the grounds of disqualification could have been passed at the time of initial engagement but the same cannot be a disqualification after so many years. In the



opinion of this Court the cases of the petitioners require reconsideration by excluding these two grounds which are under-age and under-qualification for regularization of their services.

These writ applications are allowed with a direction upon the respondents to consider their cases afresh in the light of the length of services they have rendered and if they are otherwise eligible and senior in the matter. An early adjudication to the issue is expected by the Court preferably within three months from the date of communication or production of a copy of this order.”

6. It may be noticed that the appellant-Railways did not file any counter affidavit in the said proceedings as well nor did they file any counter affidavit before the learned Single Judge even in the writ petition, that has given rise to the present appeal. The learned Single Judge noted the arguments, particularly with regard to the fact of the petitioner being under-age and his under-qualification, and allowed the writ petitions with a specific direction that the case of the respondent-petitioner shall be re-considered by excluding these two grounds of under-age and under-qualification.

7. In pursuance of the said directions, the respondent- petitioner received a communication of the order of the D.R.M. dated 3rd of November, 2008, vide letter dated 6th of November, 2008, rejecting his request on the ground that the respondent-petitioner was not on the rolls nor was he under the administrative control of the Railways or any of its authorities



and to the contrary, there was no master and servant relationship between the Railways and the respondent- petitioner as he was engaged in a recreation club managed by a private body, the funds whereof arrived from the membership fee received from the members of the said recreation club.

8. In such a situation and keeping in view the reference made to the Apex Court's judgment therein, the claim of the respondent petitioner was rejected.

9. Aggrieved, the respondent-petitioner filed CWJC No. 4248 of 2009, that has given rise to the present appeal. The learned Single Judge having noticed the impact of the earlier judgement dated 23rd of July, 2008, which is extracted herein above, allowed the writ petition on 26.02.2018 by the following judgment extracted herein under:-

“Heard learned counsel for the parties.

Prima facie the Court is satisfied that the decision or speaking order, contained in Annexure-1, dated 03.11.2008, passed by the D.R.M., Danapur, is a case of over-reach, because he does not have the privilege of inventing the new grounds for rejections of the claim of the petitioners, especially when the earlier stand taken before the Court was considered and validity of which had already been adjudicated upon and found to be unviable.

The impugned order, dated 03.11.2008, passed by the Divisional Railway Manager, East Central Railway, Danapur stands quashed. A direction is issued upon him that he will now decide the matter strictly on two



grounds, which were taken in the previous round of litigation for non-consideration of their claim, which were (i) under-age and (ii) under-qualification. A fresh decision in this regard must be taken within a period of eight weeks from the date of production/communication of a copy of this order.

Both the writ applications stands allowed in terms of above.”

10. Learned counsel for the appellant-Railways contends that the learned Single Judge has completely overlooked the fact that the Railway Establishment Code acknowledges a Railway servant to be a person who is the member of the service or holds posts under the administrative control of the Railways. In the instant case, since the post held by the respondent-petitioner was not under the administrative control of the Railways, therefore, there was no occasion for the Railways to have extended any benefit to the respondent-petitioner as was being claimed in terms of the Circulars dated 30th of May, 2000 read with the Circular dated 12th June, 2001, which was only in respect of such workers of quasi-administrative offices under the category of Group ‘D’, subject to the conditions in this regard. Apart from this, the respondent-petitioner had not attained the age of majority when he was engaged in 1977 and did not possess the minimum education qualification as that which is required of a Group ‘D’ employee



for absorption in terms of the aforesaid Circulars. In short, the contention is that the said Circulars were nowhere attracted on the facts of the present case and consequently, respondent-petitioner was rightly not considered for any such absorption.

11. We have considered the submissions and what we find is that the issue of the applicability of the Circulars was very much alive when the respondent-petitioner had approached this Court and filed the writ petition which was allowed on 23rd of July, 2008. The respondent-petitioner had categorically raised this issue and the writ petition was pressed with the aid of such Circulars. No resistance was put forth by the appellant either by filing a counter affidavit or even raising any such issue in this regard.

12. Apart from this, the judgment dated 23rd of July, 2008 was allowed to become final between the parties and the appellant-Railways did not choose to question the correctness of the said judgment.

13. In the wake of the aforesaid circumstances, this Court is unable to accept the argument on behalf of the appellant that they had the authority to look into the matter independent of the judgement dated 23rd of July, 2008 on any other ground so as to non-suit the respondent-petitioner. We



further find that so far as the issue of under-age is concerned, it may be possible that there was some dispute with regard to the age of the respondent-petitioner when he was inducted in the year 1977, but the Circular dated 30th of May, 2000 categorically indicates that consideration has to be made in respect of such candidates who were on the rolls continuously for a period of at least 3 years as on 10th of June, 1997. Thus, on the date preceding three years of 10th June, 1997, the respondent-petitioner had already attained the age of majority, even according to the appellant and, therefore, on the date when the consideration had to be made, the respondent-petitioner did not suffer from any such infirmity of being under-age.

14. Apart from this, the issue of qualification had been disputed by the respondent-petitioner by categorically relying on a certificate that he had passed Class-IX and had entered Class-X. The aforesaid aspect is also on record. In this view of the matter, unless the appellants are able to establish that the said contention of the respondent-petitioner is not based on any correct fact, it will be difficult to accept that the respondent-petitioner had passed only Class-IV and had not acquired any other qualification as required under the Circulars.

15. In short, the issue with regard to any other



infirmity in the claim of the appellant stood foreclosed with the judgment dated 23rd of July, 2008. In such circumstances, in our considered opinion, the learned Single Judge was justified in allowing the writ petition in accordance with the observations made therein.

16. We, therefore, do not find any force in the submissions on behalf of the appellant. The appeal lacks merit and it is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.N.M./Saif/-

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