

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7974 OF 2004

Swami Durai Sundareshan	...Petitioner
Versus	
Union of India and ors.	...Respondents

None present for the Petitioner.
Mr. T.J. Pandian for the Respondents.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 26th APRIL 2018.

ORAL JUDGMENT:

1] On 12th April 2018, we made the following order:

“1. Learned Advocate Mr. T.J. Pandian is appearing for the respondents, however, none present on behalf of the petitioner. In order to give one last chance to the petitioner, the matter is adjourned to 19th April 2018. It is made clear that if none appears for the petitioner on the next date, we may proceed with the matter and dispose of it on merits”

2] Today, when the matter is called out, neither the petitioner nor his advocate are present. Mr. Pandian, learned counsel appears for the respondents. In view of the order made by us on 12th April 2018, we propose to dispose of this petition on merits.

3] The challenge in this petition is to the judgments and orders dated 29th May 2002 and 6th July 2004 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. No. 771 of 2001 and Review Petition No. 13 of 2004 instituted by the petitioner seeking *inter alia* regularisation in the post of Mate instead of post of Khalasi.

4] Mr. Pandian, learned counsel for the respondents, points out that the issue involved in the present petition is covered by the decision of the Hon'ble Supreme Court in case of ***Union of India and anr. vs. Moti Lal and ors. - 1996 (7) SCC 481*** and since, the CAT has followed this decision of the Hon'ble Supreme Court, there is no case of any jurisdictional error or perversity made out by the petitioner. On this basis, Mr. Pandian submits that this petition is liable to be dismissed.

5] Since, neither the petitioner nor advocate for the petitioner are present, we ourselves perused the various grounds in support of the writ petition. The petitioner has made reference to the decisions in ***Ram Kumar and ors. v/s. Union of India - AIR 1988 SC 390*** and ***K.C.***

Sharma v/s. Union of India - 1998 (1) AISLJ 54, to submit that the petitioner ought to have been regularised in Group- C post as Mate and the action of the respondents in denying such regularisation is contrary to law. The petitioner has also relied upon a decision of Jaipur Bench of the CAT and contends that on the basis of said judgment, the Bombay Bench of CAT was duty bound to review the impugned judgment and order.

6] According to us, the issues raised in the present petition stands covered by the decision of the Hon'ble Supreme Court in *Moti Lal (supra)*. Incidentally, in this case, the Hon'ble Supreme Court has considered its earlier decision in case of *Ram Kumar (supra)*. Therefore, it is only appropriate that we follow the decision of the Hon'ble Supreme Court in case of *Moti Lal (supra)*.

7] In case of *Moti Lal (supra)*, the following issues arose for consideration:

"8. In view of the rival stand and the parties two questions really arise for our consideration;

1. Is it permissible under Rules to appoint a person directly as mate in Class III and if not, then whether the factually continuance of the person as a Mate for a considerable period entitles him to be

regularised as a Mate?

2. Conferment of a temporary status as a Mate whether ipso facto entitles a person to be regularised as a Mate and not as a Gangman?"

8] The Hon'ble Supreme Court, at paragraphs 9 to 11, has answered the aforesaid issues in the following manner:

"9. So far as the first question is concerned, on examining the relevant provisions of the Rules as well as Administrative instructions issued by the Railway authorities we are of the considered opinion that it is not permissible to appoint a person directly as a Mate and it is only a promotional post from class IV post of Gangman and Keyman. These Gangman and keyman can be promoted to the post of Mate in Class III subject to their suitability and efficiency being tested through trade test. It is no doubt true that these respondents under certain circumstances had been appointed directly as casual Mates and they continued as such and further by virtue of their continuance they acquired temporary status but that by itself does not entitle them to be regularized as Mate since that would be contrary to the rules in force. In our considered opinion the respondents did not acquire a right for regularisation as Mates from mere fact of their continuance as casual Mate for a considerable period.

10. So far as the second question is concerned, we are also of the considered opinion that conferment of the temporary status as Mate ipso facto does not entitle the person concerned for regular absorption as Mate. It the case of Ram Kumar v. Union of India, (Writ Petition Nos.15863-15906 of 1984 disposed of on 2nd December 1987) this Court has held that an employee on daily wage basis under the Railway acquires number of days in service and with the acquisition of said status such employees are entitled to :

- (1) *Termination of service and period of notice (subject to the provisions of the Industrial Disputes Act, 1947).*
- (2) *Scales of pay.*
- (3) *Compensatory and local allowances.*
- (4) *Medical attendance.*
- (5) *Leave rules.*
- (6) *Provident Fund and terminal gratuity*
- (7) *Allotment of railway accommodation and recovery of rent*
- (8) *Railway passes.*
- (9) *Advances.*
- (10) *Any other benefit specifically authorised by the Ministry of Railways."*

11. Thus it is apparent that a daily wage or casual worker against a particular post when acquires a temporary status having worked against the said post for specified number of days does not acquire a right to be regularised against the said post. He can be considered for regularisation in accordance with the Rules and therefore, so far as as the post of Mate under Railways is concerned, the same has to be filled up by a promotion from the post of Gangman and Keyman in Class IV subject to employees passing the trade test."

9] The CAT has also relied upon the decision of the Hon'ble Supreme Court in *Moti Lal (supra)*. Accordingly, we are unable to detect any jurisdictional error or perversity in the impugned judgments and orders.

10] For all the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall be no order as to cost.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)