

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAW] No. 1466 of 2016
IN
Writ Petition No. 1142 of 2011
[The Senior Divisional Commercial Manager, South East Central
Railway, Nagpur Vs. Parcel Porter Sanghatana, Nagpur]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. N. W. Almelkar, Adv., for the applicant-respondent.
Dr. R. S. Sundaram, Adv., for petitioner.

- - - -
CORAM : A. S. CHANDURKAR, J.

DATE : 19th March, 2018

This Civil Application has been moved by the respondent in the Writ Petition praying that directions be issued to the petitioners to provide employment to the legal heirs of eight deceased workmen during pendency of the Writ Petition.

In the application, it has been stated that on 8th April, 2015, this Court passed an interim order directing the petitioners to provide employment to the members

of the respondent-Union in Group-D category as per Award dated 15th July, 2010 passed by the Central Government Industrial Tribunal. According to the respondent-Union, during pendency of the proceedings, about eight workmen in Group-D category have expired and in view of the earlier orders, the legal heirs of those workmen are entitled to be engaged on compassionate basis. Details of those eight deceased workmen and their legal heirs have been furnished in the application.

It is submitted by the learned counsel for the respondent-Union that after admitting the Writ Petition, directions have been issued to the petitioners to pay the last drawn wages in terms of Section 17-B of the Industrial Disputes Act, 1948. A further direction has been issued on 8th April, 2015 to absorb about 147 members in the vacant posts under Group-D category and the challenge to this order has not succeeded. Reliance has been placed on the Circular dated 9th April, 1987 which pertains to cases of casual labourers who died in harness and the provision for making compassionate appointment. It is, therefore, prayed that directions in that regard be issued to the petitioners.

Reply on affidavit has been filed by the petitioners opposing the prayers as made. According to the petitioners, the eight members of the respondent-Union who have expired during pendency of the

proceedings are not eligible for appointment on compassionate basis, inasmuch as only if the deceased workman was a serving employee of the Railways, his legal heirs would be entitled to seek compassionate appointment. The policy in that regard is, therefore, not applicable to the legal heirs of the deceased members of the Union as their entitlement as workman under the Award of the Central Government Industrial Tribunal is under challenge in the Writ Petition. Without finally deciding the status of the members of the respondent-Union, no relief as sought in the application can be granted. An additional affidavit has also been filed on record and reference is made to a Master Circular relating to appointment on compassionate ground. It is, therefore, submitted that the application calls for rejection.

I have heard the learned counsel for the parties and I have given due consideration to their respective contentions.

As per the Award dated 15th July, 2010 passed by the Central Industrial Tribunal, a direction has been issued to the petitioners to regularize the services of those members of the Union whose names appear in the Lists at Annexures-B and D attached to the Award so as to treat them at par with regularly appointed Parcel Porters by treating them as railway employees. Further ancillary directions have also been issued. It is to be

noted that on 28th June, 2011, this Court granted ad interim relief in favour of the petitioner and stayed the effect of the said Award. Pursuant thereto, the application filed by the members of the respondent-Union seeking payment of last drawn wages in terms of provisions of Section 17-B of the Industrial Disputes Act, 1948 came to be allowed on 10th April, 2012. This order was unsuccessfully challenged in a Letters Patent Appeal and thereafter before the Hon'ble Supreme Court of India.

On 9th July, 2014, the Writ Petition came to be admitted by issuing Rule. The interim relief as prayed was not granted. On the contrary, the petitioners were directed to absorb the concerned workmen as per the Award of the Tribunal as and when vacancies arose on the posts of Parcel Porters. On 8th April, 2015, another interim order came to be passed directing the petitioners to absorb 147 members of the respondent - Union whose rights were adjudicated by the Tribunal in Group-D and it was directed that unless said 147 workmen were absorbed, those vacancies should not be filled in. The challenge to this order was negated by the Hon'ble Supreme Court.

Thus, from the aforesaid, it can be seen that though challenge to the Award passed by the Tribunal is pending adjudication, the petitioners have been directed to comply with the provisions of Section 17-B of the

Industrial Disputes Act, 1948 and directions have also been issued to absorb 147 members in Group-D subject to the outcome of the Writ Petition. According to the respondent-Union, the eight workmen who have expired are amongst the 147 workmen in Group-D who would have otherwise got benefit of the interim orders passed in the Writ Petition, but for their demise. Compassionate appointments are now being sought by their legal heirs. The submission made on behalf of the petitioners that the claim for compassionate appointments would not be available to the members of the respondent-Union on the ground that their status of being serving employees of the Railways is yet to be decided cannot, in my view, at this stage, be a ground to refuse the relief sought in the Civil Application. By virtue of the interim orders passed in the light of the Award passed by the Tribunal that the services of members of the respondent-Union whose names appear in Groups "B & D" be treated as regularly appointed Parcel Porters, I find that the legal heirs of those deceased workmen from Group-D are entitled for interim directions.

Accordingly, it is directed that the petitioner shall provide employment to the concerned legal heirs of the eight deceased workmen on compassionate basis, subject to the names of those eight workmen being included in the list of 147 workmen who were directed to be absorbed as per order dated 8th April, 2015. Needless to state that this direction shall abide by the final

adjudication in the Writ Petition and it shall not create any equity in favour of any legal heir.

Civil Application is allowed in aforesaid terms.

Judge

|hedau|