



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.04.2022
Pronounced on	26.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.23389 of 2013

and

M.P.No.2 of 2013

The General Manager,
Southern Railway,
Chennai.

... Petitioner

Vs.

1.The Appellate Authority,
Ministry of Labour and Employment,
Sastri Bhavan,
Chennai - 600006.

2.The Regional Labour Commissioner (Central),
No.26, Haddows Road,
Sastri Bhavan,
Chennai - 600006.

3.The Labour Enforcement Officer (C),
Madurai.

4.The Secretary,
All India Loco Running Staff Association,
C/o. R.Soundarapandian,
No.16, Sengow Nagar,
Madurai - 18.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the first respondent in Appeal No.Z-20026/13/2012/CLS-I dated 18.02.2013 and the order passed by the second respondent in Proceedings No.M.41/1/HOER/2011-B2 dated 26.12.2011 and to quash the same.

For Petitioner : Mr.V.Radhakrishnan, Sr. Counsel
for M/s.T.P.Savitha



For Respondent : No Appearance
Nos. 1 to 3

For Respondent-4 : Mr.K.M.Ramesh

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O R D E R

The employment of the railway servants as Loco Pilots and Assistant Loco Pilots, who are the Loco Running Staff under the petitioner herein, is classified to be 'continuous' under Section 130 of the Railways Act, 1989 (hereinafter called as 'the Act'). The fourth respondent, which is an Association of the Loco Running Staff, made an appeal to the Regional Labour Commissioner for change in the classification of these running staffs from 'continuous' to 'intensive', as prescribed under Rule 4 of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005 (hereinafter called as 'the Rules').

2. The Labour Enforcement Officer (L.E.O) had conducted a job analysis on a stationed Loco of Vaigai Express Train and recommended for changing the classification. The second respondent had accepted the job analysis and by an order dated 26.12.2011, had changed the classification from 'continuous' to 'intensive'. The appeal before the first respondent was rejected on 18.02.2013. Challenging these orders, the present Writ Petition has been filed.

3. Section 130(a) of the Railways Act, 1989, provides that the employment of a railway servant is said to be 'continuous' except when it is excluded or has been declared to be 'essentially intermittent' or 'intensive'. Clause (d) of Section 130, provides that such an employment would be 'intensive' when it has been declared to be so by the prescribed Authority on the ground that it is of a strenuous nature involving 'continued concentration' or 'hard manual labour' with little or no period of relaxation.

4. The term 'continued concentration' has been explained in Rule 7 of the Rules, as intended to convey that the attention demanded of the railway servant concerned for a particular nature of job should be exclusive not to allow any other thought or idea to enter the mind and must be of such nature as to cause strain (physical or mental or both) upon the railway servant concerned as a result of continuous application to such work over certain period without reasonable periods of respite.



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5. Rule 7 of the Rules, provides for the criteria for determining classification of railway servants. As per this Rule, all employments of railway servants, except those excluded from the purview of the Hours of Employment Regulations are assumed to be 'continuous'. Thereafter, on the basis of factual job analysis, the employment may be classified either as 'intensive' or 'essentially intermittent', as the case may be.

6. Thus, the employment of the railway servants as Loco Pilots or Assistant Loco Pilots is deemed to be 'continuous', before re-classification. In order to re-classify these employments as 'intensive', a factual job analysis requires to be made and on the basis of such a report, the Head of the Railway Administration would be empowered to declare the employment of these Loco Pilots as 'intensive'. Any railway servant aggrieved by such declaration of classification, can prefer an appeal to the Regional Labour Commissioner and a further appeal would lie to the Ministry of Labour under Rule 4 of the Rules.

7. It was stated that, owing to the non-cooperation of the railway staff, the Assistant Labour Commissioner, who was deputed to conduct the factual job analysis, had carried out his work on 11.12.2009 at Madurai Railway Station on a stationed 'Loco Engine' and he was not permitted to enter Pilot's cabin in the train's engine, to conduct the factual job analysis. It is on the basis of such job analysis, the first and second respondents herein, had re-classified these employments as 'intensive'.

8. The Railway Labour Tribunal 1969, has specified four methods of job analysis namely (a) Rough assessment method; (b) representative method; (c) method of issuance of certificate by Executive Officer; and (d) factual job analysis. In all these four methods of job analysis, the fourth method of factual job analysis was preferred to be most suitable. The procedure for conducting this factual job analysis has also been prescribed in the following manner:-

"(i) The collection of data should be objective.

(ii) The factual job analysis should be conducted for 72 hours.

(iii) The days on which job analysis are to be carried out should be carefully chosen in order that normal workload and the normal time span in which duties are performed are taken into account.

(iv) Duty lists of staff carefully prepared



should be consulted by the H.E.R. staff in charge of job analysis.

(v) Past records should be consulted with a view to ensuring that the results obtained are correct.

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(vi) The correctness of results obtained in the job analysis should not be vitiated by improper standardisation or arbitrary and artificial reduction in periods of action.

(vii) The association of Executive Officer and Accounts Officer in the final decision making process is unexceptionable.

(viii) The periods of action should clearly indicate those on sustained attention when a worker may not be physically active.

Besides the points made out, certain specific decisions have given been by the Tribunal in regard to

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- a) machinery for classification;
- b) dates of effect of job analyses; and
- c) rosters."

9. However, in total disregard to such a detailed procedure, the job analysis seems to have been done in the slipshod manner by carrying out the work on a stationed Loco Engine. This Court is unable to appreciate as to how the Job Analyst could have analysed the continued concentration of these Loco Pilots from a stationed engine? The performance of their job and the physical or mental strain that could be caused to them, as a result of continuous application to such work over certain period, without reasonable periods of respite, requires to be analysed only when they are observed and analysed while they actually perform their duty in a moving train.

10. As stated earlier, Section 130(d) of the Act, defines an employment to be 'intensive' when it is of a strenuous nature involving 'continued concentration' or 'hard manual labour' with little or no relaxation. The term 'continued concentration' therein, is explained under Rule 7.

11. In this background, the report of the Job Analyst which is pursuant to an inspection conducted on a stationed Loco Engine, cannot be termed to be factual job analysis conducted on the job performed by these Loco Pilots. Consequently, the re-classification of the employments into 'intensive' by the first and second respondents herein, cannot be sustained.



12. At this juncture, the learned senior counsel appearing for the petitioner submitted that the Ministry of Labour has constituted a High Power Committee to review the duty hours of running staff and other safety related categories of staff of the railways and the Committee had also submitted its report on 27.08.2013.

13. When the Railways Act, 1989, provides for classification of an employment as 'continuous', with a further provision for declaring it to be 'intensive' as well as the railway servants' hours and works providing for the procedure and powers of the Head of the Railway Administration to declare an employment as 'intensive' under Rule 3, on the basis of the factual job analysis report, the High Power Committee may not be empowered to overlook these statutory regulations and declare an employment to be 'continuous' or 'intensive'. To this limited extent, the High Power Committee report dated 27.08.2013, may not be applicable.

14. Since this Court has found that the job analysis was not done in a proper manner, it would be appropriate to have the claim of the fourth respondent to re-classify the empowerment of Loco Pilots, redone by ordering for a fresh factual job analysis. Incidentally, Rule 4 of the Rules, empowers the Regional Labour Commissioner to conduct a fresh job analysis for the purpose of ordering for a change in the classification.

15. In the light of the above findings, the impugned orders dated 26.12.2011 and 18.02.2013, are quashed. Consequently, the Regional Labour Commissioner, which is now said to have been re-designated as Deputy Chief Labour Commissioner, is called upon to conduct a fresh job analysis into the working conditions of the Loco Pilots and Assistant Loco Pilots, in accordance with the findings rendered by this Court, as well as the provisions of the Railways Act, 1989 and the Railway Servants (Hours of Work and Period of Rest) Rules, 2005 and based on the report of such analysis, shall consider the claim of the fourth respondent for re-classification of the employment of the Loco Pilots and Assistant Loco Pilots from 'continuous' to 'intense'. Such factual job analysis shall be conducted in a running train for not less than 72 hours. He shall also endeavor to complete the job analysis and pass final orders on the fourth respondent's claim for re-classification, within a period of three months from the date of receipt of a copy of this order.

16. With the above directions, this Writ Petition stands



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ordered, accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

sni/DP

To

- 1.The Appellate Authority,
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No.16, Sengow Nagar,
Madurai - 18.
- 5.The Deputy Chief Labour Commissioner,
Chennai.

+1cc to Mr.M.Sathyan, Advocate SR.No.28869
+1cc to Mr.T.P.Savitha, Advocate SR.No.28867
+1cc to Mr.K.M.Ramesh, Advocate SR.No.28572

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GSM(CO)
GN(04/05/2022)