

D/L. 9.
August 31, 2023.
MNS.

WPA No. 6271 of 2023

Lokesh Kumar and others
Vs.
Ministry of Railway and others

Mrs. Chama Mookherji,
Mr. Anujit Mookherji

... for the petitioners.

Mr. D. N. Roy,
Mr. Sourav Mondal

...for the Chittaranjan Locomotive Works.

1. The petitioners have challenged a decision of the Railway Authorities in picking and choosing among some of the candidates for an apprenticeship with the Railways, although, according to the petitioners, they were equally placed with the candidates chosen.
2. The cardinal dispute in the present case relates to the eligibility of persons holding final National Certificate of Vocational Training (NCVT) versus other candidates for the apprenticeship, who hold provisional NCVT.
3. All the present petitioners are provisional NCVT holders.
4. In the facts of the present case, an initial challenge was preferred in the context of the

provisional holders having been debarred from participating in the training for the apprenticeship. The said challenge was turned down by dismissal of the writ petition filed by some of the provisional certificate holders, which became the reported judgment of *Jagdish Dwivedi and others Vs. Union of India and others* reported at 2017 SCC Online Calcutta 9272.

5. Subsequently, another writ petition was preferred, against a second list, which had been published by the Railway Authorities, this time including provisional certificate holders as well.
6. The learned Single Judge taking up the second writ petition, bearing WPA 5143 of 2018, disposed of the same vide order dated January 17, 2019, by observing that the authorities proceeded to publish the second list doing exactly what the High Court said could not be done and, accordingly, quashed the second list issued by the authorities.
7. Some of the holders of provisional NCVTs preferred a challenge by way of an appeal against the said order. The said appeal was ultimately disposed of by the concerned

Division Bench vide order dated March 9, 2022. Interestingly, it was recorded in the said order that learned counsel for the Railway Authorities had conceded that after completion of the then ongoing training of private respondents, who were holders of NCVTs, the Railway authorities would duly consider the case of the appellants therein in accordance with law. The appellants therein were all provisional certificate holders and not holders of NCVTs.

8. It was accordingly observed by the Division Bench that the counsel for the appellants agreed to such stand and in view of such stand being taken by the Railway Authorities, the appeal was disposed of accordingly, with the expectation being recorded that the Railway Authorities would consider the case of the appellants therein after completion of the training of the private respondents within a period of four weeks to send the appellants for apprenticeship training in accordance with law.
9. It is argued that the present petitioners are provisional certificate holders, who were a part of the second list, which was quashed by the

learned Single Judge in the second writ petition and the said order was reversed in appeal. It is argued that, in any event, in view of the concession of the Railway authorities before the appellate court, as well as the findings of the appellate Bench, the right has accrued in favour of all provisional certificate holders to get a chance to participate in the apprenticeship training programme. Since some of the provisional certificate holders were given such opportunity, as per the concession of the Railway Authorities themselves, there is nothing to distinguish between the other provisional certificate holders on similar footing to deprive them from getting a similar opportunity as the appellants on the previous occasion.

10. In support of her contentions, learned counsel cites a judgement of learned single Judge of the Madras High Court in *C. L. Pasupathy Vs. Engineer in Chief (WRO) and another* reported at 2008 SCC OnLine Mad 1518. The learned single Judge expounded the distinction between the judgements “*in rem*” and “*in personam*” and observed, *inter alia*, that a final judgement on the merits of a

particular proceeding *in rem* is an absolute bar to subsequent proceedings founded on the same facts and such a judgment *in rem* may be pleaded as a bar to another action on the same subject matter, if its effect is to merge a distinct cause of action, but not otherwise.

11. Learned counsel then cites a judgment in *State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others reported at (2015) 1 Supreme Court Cases 347*. In the said judgment, the Supreme Court laid down the ratio that the normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution.

12. It was observed that this principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by the Supreme Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, it was held, the normal rule would be that merely because other similarly situated persons did not

approach the court earlier, they are not to be treated differently.

13. Learned counsel for the Railway Authorities submits that the order of the Division Bench, whereby an opportunity was given to some of the provisional certificate holders, was restricted only to the appellants in the said case.

14. It is argued that as the last decided proposition stands, the order of the learned Single Judge on the last occasion was clearly held that the second list was also quashed on the ground that the judgement of *Jagdish* (supra) was not followed. The learned single Judge specifically held, it is argued, that the provisional certificate holders were not entitled to participate in the training as apprentices. The Division Bench did not overturn the said judgement, but merely made exceptions on the basis of limited concession given by the Railway authorities regarding some of the certificate holders.

15. A consideration of the judgements cited by learned counsel for the petitioners makes fairly clear the scopes of operation of

judgement *in rem* and judgement *in personam*.

16. In ordinary legal parlance, to identify judgments *in rem*, Section 41 of the Evidence Act, 1872 is taken into consideration, which specifically stipulates four categories of judgements which are considered to be judgement *in rem*, pertaining to the probate, matrimonial, admiralty and insolvency jurisdictions. However, such proposition has been broadened now by evolution of the writ jurisdiction, beyond the specific stipulations of Section 9 of the Civil Procedure Code and Section 34 of the Specific Relief Act, which bind only the parties to the suit and persons claiming through them and in case of trustees also including the persons for whose benefit the trustees hold.

17. The Madras High Court, in the cited judgement, repeatedly reiterated and discussed the distinction of judgement *in rem* and held that a final judgement of the court in a particular proceeding *in rem* is an absolute bar to subsequent proceedings founded on the same facts.

18. The Supreme Court, applying some of the similar principles, although not exactly the same, applied such jurisprudence in service matters. The Supreme Court categorically observed that the normal rule would be that merely because other similarly situated persons did not approach the court earlier, they cannot be deprived of the benefit of a particular order passed in respect of similarly placed persons. Certain exceptions were stipulated by the Supreme Court. It was observed that those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, such employees cannot claim the benefit of the judgment, being mere fence-sitters.

19. Yet again, the Supreme Court went on to observe that the exception may not apply in those cases where the judgment pronounced by the court was judgment *in rem* with intention to give benefit to all similarly situated

persons, whether they approached the court or not.

20. Hence, three categories have been carved out by the judgment of the Supreme Court – the first being the persons who approached the court and got the benefit of an order of a court, the second category being persons, who were fence-sitters and mere watchers who seek to take advantage of an order obtained by certain persons similarly placed as them and thirdly, similarly situated persons, who were not parties to the first judgement, but by virtue of the nature of the judgement being *in rem*, get the benefit of the initial judgment, not being mere fence-sitters.

21. In the present case, we can easily rule out the third category, since I do not find from the judgement of the Division Bench that any clear ratio was laid down to hold that all holders of provisional NCVTs are entitled, as a matter of right and in law, to participate as apprentices in the Railway authorities' concerned training programme.

22. Rather, the Division Bench clearly proceeded on the premise of the limited concession given by the Railway authorities, to the effect that

the appellants therein would be accepted for training by the Railway authorities. In fact, the Division Bench observed that the appellants also agreed and hence the Division Bench took “the stand of the Railway authorities” and disposed of the appeal “accordingly”, thereby vindicating the conclusion that the observations of the Division Bench were entirely on the basis of the concession of the Railway authorities. It was also observed that the Railway authorities were expected to consider the case of the appellants after completion of the training of the private respondents.

23. As such, we do not find any clear observation to denude the conclusions of law of the learned Single Judge, which was challenged in the appeal, in so far as the ratio of law was concerned.

24. On the other hand, the learned Single Judge had conclusively observed that the ratio of *Jagdish Dwivedi* (supra) would be applicable with regard to the second list, where provisional certificate holders had been admitted but could not have been so admitted. On such premise, the learned Single Judge

categorically set aside and quashed the second list whereby provisional holders had also been admitted.

25. At the first blush, accordingly, we do not find that there is any judgment *in rem* or on merits of the law and facts concerned, by the Division Bench, which may entitle the present petitioners also to a similar relief as the appellants therein.

26. However, the conundrum in the present case is on a more basic level, touching the right to equality of the petitioners, as guaranteed by the Constitution of India, in particular in Article 14 thereof. In the present case, in fact, shades of Article 19 of the Constitution can also be borrowed, since the right of the petitioners to earn a livelihood would be directly dependent on their inclusion or exclusion in the training programme as apprentices of the railway authorities, which would earn them future livelihood.

27. Although no specific proposition of law was laid down by the Division Bench or the decision of the learned Single Judge was not categorically overruled or set aside, what transpired before the appellate Bench was

that the railway authorities themselves, for whatever reason, had conceded that some of the provisional certificate holders were to be considered eligible for participating in the apprenticeship training programme. The same has been honoured subsequently by the Railway authorities and they have chosen the said appellants as participants in the oncoming apprenticeship training programme.

28. What is clear is that the railway authorities were the authorities who had also published the second list, where they had included provisional certificate holders as well. Up to the stage of the learned Single Judge's order, the opportunity to participate in the apprenticeship training could not be opened up for provisional certificate holders. However, a paradigm shift occurred before the Division Bench, where the railway authorities themselves stood by their quashed second list and reiterated their stand that some of the provisional certificate holders would be included in the apprenticeship training.

29. The moment the railway authorities said so, a right was created implicitly in favour of the other provisional certificate holders, since they

stand on an exactly similar footing as the appellants before the Division Bench, being holders of provisional NCVTs. There is no reasonable classification or intelligible differentia between the present petitioners, that is, the other provisional certificate holders, and the similarly placed apprentices who had preferred the appeal before the Division Bench. In the absence of such intelligible differentia, there is nothing in law to prevent the present petitioners also from being absorbed or considered for apprenticeship training, being due holders of provisional NCVTs.

30. A line has to be added here as regards the role of the present petitioners in their plight. No fault for not being able to obtain provisional NCVTs can be attributed to the petitioners, since it was not their fault in any manner at all.

31. Hence, the petitioners, merely because their NCVTs were provisional and not final due to the apparent laches of the certificate-issuing authorities, cannot be deprived of an equal footing as the final certificate holders.

32. In view of the above discussions, I do not find any reason which is justifiable in law, to distinguish between the present petitioners and the appellants before the Division Bench in the appeal.

33. Hence, all the provisional NCVT holders, similarly placed as the appellants in MAT No. 722 of 2019 and the present petitioners, are also entitled to be considered for apprenticeship training with the Railway authorities, having fulfilled the criteria as set by the railway authorities themselves.

34. Accordingly, WPA No. 6271 of 2023 is allowed, thereby directing the railway authorities to permit the petitioners and others, who are equally placed, for participation in the apprenticeship training, for which the petitioners applied for.

35. The selection for such vocational training, which has been done and impugned in the present writ petition, shall accordingly be modified by including the present petitioners as well.

36. There will be no order as to costs.

37. Urgent photostat certified copies of this order,
if applied for, be made available to the parties
upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)