

07-12-2023

ct no. 13

Sl. 119

sp

WPA 22060 of 2023

Md. Noor Ajam & Ors.

-Versus-

The Union of India & Ors.

Mr. Anilendra Pandey, Adv.

Mr. Debasish Sur, Adv.

...for the petitioners

Mr. Asok Kumar Chakraborty, Ld. Adv.

Mr. Sukanta Chakraborty, Adv.

Mr. Rivu Dutta, Adv.

Mr. Rhitam Chatterjee, Adv.

..for the respondent nos. 1, 2 and 3

1. The petitioners seek implementation of a report of the Assistant Labour Commissioner (ALC) dated September 13, 2022, prepared on the basis of directions of this Court dated March 9, 2022 passed in WPA 3013 of 2022 (Md. Noor Ajam & Ors. Vs. Union of India & Ors.).
2. By the said report, certain recommendations were made for continuous engagement for each calendar year to the contract labour engaged by the South Eastern Railways, BNR.
3. Counsel for the petitioners would rely upon several decisions of the Supreme Court, particularly, order dated November 17, 2009 passed in Writ Petition (C) No. 640 of 2007 (Howrah Parcel (EAS. RLY.) L.C.M. Panch. &

Ors. Vs. Union of India & Ors.), order dated November 28, 2018 passed Writ Petition (Civil) No. 52 of 2016 (Ram Bhajan Das & Ors. Vs. Union of India & Ors.).

4. Reliance is also place on the order dated March 9, 2022 passed in WPA 3013 of 2022 (Md. Noor Ajam & Ors.) (supra) pursuant to which subject report dated September 13, 2022 has been passed.
5. Based on the above, counsel for the petitioners would argue that the petitioners are entitled to be regularized and absorbed as permanent Group-D employees of the South Eastern Railways.
6. It is now well-settled, inter alia, in the decision of the Supreme Court in the case of **Secretary, State of Karnataka Vs. Umadevi (III)** reported in **(2006) 4 SCC 1**, a Full Bench decision of this Court in the case of **Awadhesh Singh Vs. Union of India** reported in **2013 SCC Online Cal 9458** that matters of regularization of labour and particularly contract labour are required to be assessed and dealt with after proper trial on evidence by an appropriate forum. The appropriate forum would essentially mean the authorities and fora under the Industrial Disputes Act, 1947.

7. In the above backdrop, the report of the Assistant Labour Commissioner dated September 13, 2022 (*supra*), does not have any authority and status in the eye of law.
8. Counsel for the Railways has clearly submitted that his clients are not accepting the report in question and their stand was not properly recorded in the report of the ALC dated 13th September 2022.
9. In that view of the matter, this Court directs that the report dated September 13, 2022 (*supra*) of the ALC must be treated as a failure of conciliation proceedings and placed before the appropriate Government for a reference to be made to the concerned Industrial Tribunal for an adjudication in accordance with law.
10. This Court finds that the aforesaid procedure is *inter alia* prescribed by the Hon'ble Supreme Court in the case of ***Steel Authority of India Limited & Ors. Vs. National Union Waterfront Workers & Ors.*** reported in ***(2001) 7 SCC 1*** as followed in the decision of ***Awadhesh Singh (supra)***.
11. This Court is conscious of the fact and notes the submissions made by Mr. Chakraborty, learned Additional Solicitor General that the writ petition ought not be entertained at all

by the High Court in view of the dicta of the Supreme Court in the case of ***L. Chandra Kumar Vs. Union of India & Ors.*** reported in ***(1997) 3 SCC 261***, particularly paragraph 99 thereof.

12. However, the writ petition is entertained as an exception since the report of the ALC dated September 13, 2022 has been prepared at the instance of a Co-ordinate bench of this Court.
13. Unfortunately, the issue of maintainability of a writ petition, by employees seeking any service benefits against the Railways before the High Court, in view of the jurisdiction and authority of the Central Administrative Tribunal, has not been raised before the Co-ordinate bench in WPA 3013 of 2022 (Md. Noor Ajam & Ors.) (supra).
14. The parties may serve a copy of this order on the appropriate Government for taking steps as directed hereinabove.
15. With the aforesaid observations, the instant writ petition shall stand disposed of.
16. There shall be no order as to costs.
17. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

