

12.07.2023

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WPCT 256 of 2016
Md. Parveez Alam & Others
– *Versus* –
Union of India & Others

Mr. Achin Kumar Majumder,
Ms. Ananya Adhikari
...for the Petitioners
Mr. Asok Bhounik,
Ms. Pooja Tripathi
... for the Respondents.

The present writ petition has been preferred challenging an order dated 16th August, 2016 passed by the learned Tribunal in Original Application, being OA 350/01562/2015.

Shorn of unnecessary details, the facts are that the applicants/petitioners were working for a substantial period as Commission Vendor Helpers at Burdwan Railway Station. Prior to such engagement they had to undergo medical examination conducted by the railway authorities. They were also given special duty passes and identity cards by the competent authority. However, on 22nd February, 2010 the petitioners were asked by the IRCTC authority to stop their work without any reason whatsoever. Aggrieved thereby, the petitioners approached the learned Tribunal by an original application, being OA 1665 of 2010 claiming *inter alia* for appointment in any Group-‘D’ post in the railways. The said application was disposed of by an order dated 19th

December, 2012 directing the respondents to consider the petitioners' claim. Pursuant to such direction the Divisional Railway Manager, Eastern Railway, Howrah (in short, DRM) passed an order dated 15th March, 2013 refusing the petitioners' prayer towards absorption and regularisation. Aggrieved by the said order, the petitioners again approached the learned Tribunal by an original application, being OA 696 of 2013. The same was again disposed of by an order dated 1st March, 2015 relegating the matter for fresh consideration by the competent authority. Pursuant to such direction the Chief Commercial Manager, Eastern Railway (in short, CCM) passed an order dated 26th June, 2015 refusing the petitioners' prayer. Challenging the same, the petitioners preferred another original application, being OA 350/01562/2015. The order dated 16th August, 2016 passed in the said original application is under challenge in the present writ petition.

Mr. Majumder, learned advocate appearing for petitioners submits that there is no dispute as regards the fact that the petitioners were engaged in the post of Commission Vendor Helpers by the Commission Vendors, who were conferred the authority for such engagement by a special circular dated 20th December, 1969. Subsequent thereto the competent authority adopted a policy decision towards absorption of the Commission Vendors / Bearers, as would be explicit from the circular

dated 1st December, 2005. Considering the said issues and particularly the fact that the petitioners' services had been extracted for a substantial period and that as there was a requirement towards such service, the learned Tribunal in the first original application, being OA 1665 of 2010 categorically arrived at a finding that the engagement of Commission Vendor Helpers was neither illegal nor irregular and that their services and contribution had been recognised and their work had been facilitated by providing them identity cards and special passes by the railway authorities. Upon arriving at such finding, the learned Tribunal directed the respondents to consider the cases of the petitioners in order to redress their grievances since *'the Indian Railways is a Government Organisation and as such, it is expected to function as a model and fair employer'*.

Mr. Majumder argues that it was incumbent upon the authorities to act in a fair manner and to redress the grievance of the petitioners, however, ignoring the findings arrived at by the learned Tribunal, the DRM by an order dated 15th March, 2013 rejected the petitioners' claim. The petitioners' claim was further directed to be considered afresh by the learned Tribunal by an order dated 1st April, 2015 and in response thereto, an order dated 26th June, 2015 was passed by the CCM reiterating the grounds taken in the earlier order passed by the DRM on 15th March, 2013. The petitioners' claim has thus

been rejected in an arbitrary and mechanical manner. The authorities could not have acted contrary to the findings arrived at by the learned Tribunal in the first original application, being OA 1665 of 2010.

Per contra, Mr. Bhoumik, learned advocate appearing for the respondents submits that there was no employer-employee relationship between the railways and the petitioners. Indisputably, they were engaged by the Commission Vendors as per their own terms and conditions. For undergoing the medical tests in railway hospital, the petitioners had to pay fees and as such they were not treated as railway employees. The special passes and the identity cards were issued for establishing the identity of the petitioners as Helpers of the Commission Vendors and such issuance of passes did not confer any right upon the petitioners to claim regularization and as such the learned Tribunal did not find any infirmity in the order passed by the CMM and the original application was rightly rejected.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, there was no employer-employee relationship between the railways and the petitioners. It is not a case that the petitioners were appointed by the railways in accordance with the prevalent recruitment rules against any sanctioned post. Mere continuance of service does not entitle the petitioners to seek

regularisation. They were engaged by the Commission Vendors and not by the railways. It is also not a case that the petitioners have been subjected to any discriminatory practice or that the railway authorities have acted in an unfair and arbitrary manner. No *malafide* is attributable to the acts of the respondents.

We do not find any error, least to say any patent error of law in the order impugned. The same also does not suffer from any jurisdictional error or any substantial failure of justice warranting interference of this Court.

Accordingly, the writ petition, being WPCT 256 of 2016 is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)