

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SMT. JUSTICE SUNITA YADAV

FIRST APPEAL No. 22 of 2007

BETWEEN:-

THE UNION OF INDIA SECRETARY THROUGH
1. SECRETARY, GOVERNMENT OF INDIA, RAIL
BHAWAN, NEW DELHI (DELHI)

2. ADVISER (I.R.), RAILWAY BOARD, RAIL BHAWAN,
NEW DELHI (DELHI)

THE GENERAL MANAGER, NORTH CENTRAL
3. RAILWAY, NABAB YUSUF ROAD, ALLAHABAD
RAILWAY CAMPUS, ALLAHABAD (UTTAR PRADESH)

THE CHIEF PERSONNEL OFFICER (CPO), NORTH
4. CENTRAL RAILWAY, SANGAM PALACE,
ALLAHABAD (UTTAR PRADESH)

.....APPELLANTS

(BY MR. SHAILENDRA SINGH KUSHWAH - ADVOCATE)

AND

NORTH CENTRAL RAILWAY KARAMCHARI SANGH
1. ALLAHABAD, NABAB YUSUF ROAD, ALLAHABAD
(UTTAR PRADESH)

NORTH-CENTRAL RAILWAY KARAMCHARI SANGH
TH. THE GENERAL SECRETARY OM PRAKASH
2. PATHAK, S/O PRABHUDAYAL PATHAK,
OCCUPATION: RAILWAY SERVICE, R/O JAWALA
PATHAK KA PURA, LAXMIBAI COLONY, PADAV,
LASHKAR GWALIOR (MADHYA PRADESH)

.....RESPONDENTS

(BY MR. M.P.S. RAGHUVANSHI – SENIOR ADVOCATE
ASSISTED BY MR. R.P. SINGH - ADVOCATE)

FIRST APPEAL No. 157 of 2011

BETWEEN:-

1. NORTH CENTRAL RAILWAY KARAMCHARI SANGH
ALLAHABAD, NAWAB YUSUF ROAD, ALLAHABAD
(UTTAR PRADESH)

NORTH CENTRAL RAILWAY KARMCHARI SANGH,
ALLAHABAD TH: OM PRAKASH PATHAK S/O
PRABHU DAYAL PATHAK AGE- 47, OCCUPATION:

2. RAILWAY EMPLOYEE, R/O JWALA PATHAK KA
PURA, LAXMI BAI COLONY, PADAV, LASHKAR, GW
(MADHYA PRADESH)

.....APPELLANTS

(BY MR. R.P. SINGH - ADVOCATE)

AND

1. THE UNION OF INDIA TH. SECRETARY RAILWAY
RAIL BHAWAN NEW DELHI (MADHYA PRADESH)

2. ADVISER (I.R.), RAILWAY BOARD, RAIL BHAWAN,
NEW DELHI (DELHI)

UNION OF INDIA TH: GENERAL MANAGER, NORTH
CENTRAL RAILWAY, NAWAB YUSUF ROAD,

3. ALLAHABAD (RAILWAY PARISAR) ALLAHABAD,
PRESENT ADDRESS: SUBEDAR GANJ, ALLAHABAD
(MADHYA PRADESH)

CHIEF PERSONNEL OFFICER (C.P.O.) NORTH
CENTRAL RAILWAY, SANGAM PALACE,

4. ALLAHABAD (U.P.) SUBEDAR GANJ, ALLAHABAD
(U.P.) (MADHYA PRADESH)

.....RESPONDENTS

(BY MR. S.S. BANSAL - ADVOCATE)

Reserved on : 11.07.2023

Whether approved for reporting :

JUDGMENT

(Passed on 26.07.2023)

This judgment shall govern the disposal of both the appeals (F.A.

Nos. 22 of 2007 and 157 of 2011) arising out of same judgment and decree.

2. Present first appeals have been filed assailing the judgment and decree dated 06.11.2006 passed by Twelfth Additional District Judge (Fast Track Court), Gwalior in Civil Suit No.8A/2006.

3. The facts in brief to decide these appeals are that plaintiff / respondent North Central Railway Karamchari Sangh filed a suit for declaration and permanent injunction against the defendants (appellants in First Appeal No. 22/2007 & respondents in First Appeal No. 157/2011) on the ground that plaintiff No. 1 – Union is registered under the Trade Union Act, 1986 bearing registration No. 9275 dated 07.3.2005 and plaintiff No. 2 is the General Secretary of the aforesaid Union. It was further pleaded in the plaint that a new zone of North Central was created and he being the Railway Employee is working for the interest of the Railway Employees even prior to that. Union of India through the Secretary, Railway Board under Section 3 of the Railway Act, 1989 issued the gazette notification on 04.7.2002 in respect of the New Railway Zone which was effective from 01.4.2003 and in compliance of that North Central Zone was constituted having its head office at Allahabad. It was further pleaded in the plaint that Railway Unions

known as NFIR and AIRF informed the plaintiff – Union that it should constitute a Trade Union in the newly constituted zones by re-organization. On the basis of gazette notification and in compliance thereof, the plaintiff – Union filed application for registration before Registrar, Trade Union in the name of North Central Railway Karamchari Sangh, Allahabad which was registered and submitted a list of office bearers along with their Constitution of the General Manager for recognition / affiliation and it was prayed that they are recognized / affiliated for taking care of the employees by having formal discussion in the meeting but the Union of India did not give any heed.

4. In the plaint it was also pleaded that no other Union can work except the plaintiff – Union but before the plaintiff – Union got registered, other Union – North Central Railway Employees Sangh got wrongly registered on registration No. 9168 dated 10.3.2003 before the constitution of North Central Railway Zone, which got cancelled by Registrar, Trade Union on 05.4.2003 after which plaintiff – Union is the only registered Union and is eligible to get recognition as per law. Plaintiff – Union also filed memorandum dated 31.5.2005 before the defendants but despite the order of the High Court dated 08.7.2005 passed in W.P. No. 1933/2005, defendants did not give any heed to it. They are

neither complying with the orders of superior officers nor following the legal facts and defendants are also not doing formal meetings and discussions with the plaintiff – Union. Therefore, suit be allowed and a declaratory decree be granted to the effect as under :

i) That plaintiff is the only registered Trade Union eligible to get recognition and it has a right for getting the list of elected office bearers circulated from defendants.

ii) That plaintiff has a right to hold meetings and to have formal communication, discussions, PNM (Permanent Negotiation Meeting) with defendants.

iii) That this suit is not premature and is maintainable.

5. Defendants (appellants No. 1 to 4 in First Appeal No. 22/2007) filed its written statement and submitted that the High Court in Writ Petition No. 1933/2005 had directed the defendants to decide the representation given by the plaintiffs within two months. As two months' time was not sufficient, MCC No. 528/2005 was filed by the defendants seeking six months time for deciding the representation which was allowed and defendants were directed to decide the representation of the plaintiffs by March, 2006. The plaintiffs in order to confuse the Court suppressed the aforesaid facts and filed the present civil suit, which is

premature and deserves to be dismissed. The plaintiffs also did not make the Railway Board party, who is a necessary party to the suit. Railway Board has the authority to give recognition to the plaintiff – Union and it has no right to get the recognition from the defendants. Vide letter of North Central Railway Head Quarter Office Allahabad dated 31.3.2006, it has been informed that the recognition will be given to the plaintiff – Union or other Central Railway Karamchari Sangh after conducting due election as per law. Hence, prayed to dismiss the civil suit.

6. On the basis of pleadings of the parties, learned trial Court framed as many as four issues and partly decreed the suit and granted declaratory decree in favour of the plaintiff in respect to holding meetings, talks etc. with the defendants, however, the suit was dismissed for rest of the reliefs.

7. The grounds taken in appeal no. 22 of 2007 are that the judgment of learned trial court is contrary to evidence and law, perverse and deserves to be set-aside. Learned trial court has erred granting a declaratory decree that plaintiff has a right to hold meetings and to have formal communication, discussions, PNM (Permanent Negotiation Meeting) with defendants in the light of the fact that the plaintiff's suit for the declaration of its right/entitlement for recognition and declaration that it has a right

for getting the list of elected office bearers circulated from defendants is dismissed. Therefore, the impugned judgment be set-aside.

8. In appeal no. 157/2011 the grounds in brief are that learned trial court has erred in partly allowing the suit. The plaintiff has proved its case by oral and documentary evidence that it is the only registered Trade Union eligible to get recognition and it has a right for getting the list of elected office bearers circulated from defendants. However, learned trial court denied the above relief. Therefore, to the extent of denial of the whole relief, the impugned judgment and decree is liable to be set-aside.

9. During the pendency of this appeal, the defendants (respondents in appeal no. 157/2011 and appellant in appeal no. 22/2007) filed **I.A. No. 3434 of 2023**, under Order 41 Rule 27 read with Section 151 CPC, seeking to file copies of judgments passed in Writ Petition No. 2118 of 2006 dated 03.09.2007 and in Writ Appeal No. 663 of 2007 dated 17.10.2007, documents showing Secret Ballot-2007 held on 26,27 and 28 Nov., 2007, Secret Ballot 2013 held on 25,26 and 27 April 2013 and the results and order of Government of India, Ministry of Railway (Railway Board), No. ERB-1/2012/23/49, New Delhi, dated 09.11.2012.

10. The provisions of Order 41 Rule 27 (b) of CPC are required to be seen at this juncture to decide the application. This provision reads as

13. The material available on record reveals that prior to filing of this suit, plaintiff North Central Railway Karamchari Sangh preferred a writ petition before this Court which was registered as Writ Petition No. 1933 of 2005. While deciding the writ petition, this Court issued an order by which it was directed to decide the representation of the plaintiff within two months. It is also not in dispute that thereafter MCC No. 528 of 2005 was preferred by defendant Union of India through Ministry of Railway and got extension of six months. It is also not disputed that the representation of the plaintiff was decided and their claim was turned down with a direction that as per the new policy and as per the law laid down by Division Bench of Madras High Court to contest the election by process of Secret Ballot. The record also reveals that Railway Board has issued a letter dated 26.6.2002 on the basis of decision rendered by Division Bench of Madras High Court in Writ Appeal No. 31618 of 2002.

14. As per Annexure D-4 issued by Railway Board, whichever Union is entitled for recognition shall be determined only by Secret Ballot as per the law laid down by the Division Bench of Madras High Court in Writ Appeal No. 3168 of 2002. It is not disputed that the above law laid down by the Division Bench of Madras High Court has been affirmed by the Apex Court in SLP No. 3716 of 2004.

15. The record also reveals that Government of India, Ministry of Railway (Railway Board) vide its order No. ERB-1/2012/23/49 New Delhi dated 09.11.2012 had decided to constitute a Committee to decide modalities for conducting Secret Ballot election for the purpose of recognition of Unions / Federations.

16. The documents on record further reveal that prior to filing of these appeals, the plaintiff – Union preferred a writ petition bearing W.P. No. 2118 of 2006 challenging the circular dated 04.7.2002 issued by Ministry of Railway stating that only such Trade Union of railway registered after 01.4.2003 can participate in the election process and not all the Trade Unions registered before 01.4.2003. This High Court vide its order dated 03.9.2007 dismissed the writ petition filed by the plaintiff - Union holding that those Trade Unions existing before 01.4.2003 and those registered after 01.4.2003 are entitled / permitted to participate in the election process and there is no illegality in the circular issued. The record also reveals that this view was also adopted in order passed in Writ Appeal No. 663 of 2007. Thus, it is apparent that the appellant-Union prior to filing this appeal (157 of 2011) has exercised its right to challenge the election on the ground that no Zonal Union is existing after bifurcation of the zone i.e. on 01.4.2003 and this issue has already been adjudicated by this Court

by order dated 17.10.2007 in Writ Appeal No. 663/2007.

17. The documents placed on record along with application under Order 41 Rule 27 CPC, which are not disputed between the parties, show that for recognition to Railway Trade Unions election by Secret Ballot was held between 26th-28th November, 2007 i.e. before filing of the present first appeal by the plaintiffs - Union wherein the plaintiff - Union obtained 13.426% votes. The General Manager Office, Allahabad issued result of four contesting Unions on 05.11.2007, wherein as per modalities for conducting Secret Ballot election for the purpose of granting recognition to registered Unions. Only NCRMU got 49.662% votes for the purpose of recognition. The said election was held in the year 2007 i.e. prior to filing of this first appeal by the plaintiff - Union. Further, for recognition of Railway Trade Unions, Secret Ballot Election 2013 was also held between 25th-27th April, 2013, wherein the plaintiff – Union obtained only 1.53% of valid votes. The above facts prove that in compliance of the order passed by Madras High Court which has been affirmed by the Apex Court, the election of the recognized Unions have already been conducted from 26.11.2007 to 28.11.2007 and since the plaintiff - Union got only 11.34% votes, therefore, he was not recognized. Further, another election was conducted for recognizing Railway Trade

Union from 25.4.2023 to 27.4.2023 by Secret Ballot, however, plaintiff - Union got only 1.32% of valid votes.

18. On the basis of above fact, it is apparent that as per law laid down by Madras High Court which has been affirmed by the Apex Court, plaintiff has already participated in the Secret Ballot election and this High Court vide its order dated 03.9.2007 already dismissed the writ petition filed by the plaintiff - Union holding that those Trade Unions existing before 01.4.2003 and those registered after 01.4.2003 are entitled / permitted to participate in the election process and there is no illegality in the circular issued. Therefore, now the argument of plaintiff is not having any weight that the law laid down by Madras High Court is not applicable in this case. Consequently, the plaintiff-Union is not found to be entitled to get recognition as it could not secure the desired number of votes for the purpose of recognition. Thus, plaintiff's non recognition is also not against the law in the light of law laid down by the Division Bench of Madras High Court which has been affirmed by the Apex Court in SLP No. 3716 of 2004.

19. In view of the above discussion, it is apparent that the plaintiff – Trade Union has not been recognized by the Zonal Railway and its non recognition is in accordance with the law, therefore, learned court below

erred in passing the declaratory decree in favour of the plaintiff in respect to having the right to hold meetings and to have formal communication, discussions, PNM (Permanent Negotiation Meeting) with defendants.

20. Consequently, First Appeal No. 22 of 2007 is hereby allowed, impugned judgment and decree is hereby set-aside and First Appeal No. 157 of 2011 filed by the plaintiff sans merit and is hereby dismissed.

21. Parties shall bear their own costs.

A copy of this judgment be kept in connected First Appeal No. 157 of 2011.

(SUNITA YADAV)
JUDGE

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