

23
10.06.2024
Ct. No. 11
rrc

WPCT 211 of 2013

(Indian Railways, Coal Ash & Transshipment
Handling Mazdoor Union & Ors. Vs. Union
of India & Ors.)

Mr. Gopal Ch. Ghosh
Mr. Rajkrishman Mondal

.... For the petitioners

Mr. Sauvik Nandy

..... For the respondents

The present application has been preferred challenging an order dated 22nd February, 2013 passed by the learned Tribunal in a contempt application being CPC 172 of 2009 and in a miscellaneous application being MA 149 of 2012 filed in connection with an original application being OA 400 of 1990.

Records reveal that the petitioner no. 1, namely, Indian Railways, Coal Ash & Transshipment Handling Mazdoor Union, is a registered union and the petitioner nos. 2 to 18 are its members. Three original applications being OA 400 of 1990, OA 401 of 1990 and OA 402 of 1990 were preferred by the Indian Railways, Coal, Ash, & Transshipment Handling Mazdoor Union and its members, who were working at New Alipurduar Railway Station, Hasimara Railway Station and New Cooch Behar Railway Station as casual labours for the purpose of handling of coal, ash, parcels and other transshipments

under the respective Station Superintendents. They were initially recruited through contractors and after their contracts ceased, they were working under the direct control of the railway authorities and were being paid by the railways. As such, they claimed to be absorbed as railway employees. However, such prayer was not considered and accordingly they filed the original applications. The learned Tribunal directed for having a scheme for absorption of the said applicants. Aggrieved thereby, the Union and its functionaries preferred Civil Appeal Nos. 7448 – 7450 of 1994 before the Hon'ble Supreme Court and by an order dated 29th November, 2000, the said appeals were allowed and the original applications were remitted back to the learned Tribunal for re-disposal since no finding was arrived at by the learned Tribunal as regards the status of the applicants/ petitioners herein and as to whether there was any master servant relationship between the petitioners and the railway administration. Pursuant to the said order, the learned Tribunal considered and disposed of the original applications with directions, as quoted in paragraph 2 of the impugned order. Challenging the said order dated 22nd April, 2003, the Union of India and its functionaries again preferred a writ petition which was ultimately dismissed for default and the prayer for recalling of the orders of such dismissal was also refused by an order dated 6th March, 2009. Thereafter, the

respondent no. 3 herein passed an order on 10th September, 2009 pursuant to the order passed by the learned Tribunal on 22nd April, 2003. Alleging violation the order dated 22nd April, 2003, the petitioners filed an application for contempt before the learned Tribunal in which an order was passed on 1st April, 2001 observing, *inter alia*, as follows:-

‘We accordingly hold that respondent No. 2 of OA/alleged contemnor No. 3 is prima facie guilty of the contempt of Court. We direct him to implement the order within six weeks of the receipt of the order failing which he will appear in person on 14.6.2011 for further proceedings in this Contempt Application. Respondent No. 1 of the OA i.e. the General Manager should ensure implementation of the orders of the Tribunal. Send copy of the orders to all concerned.’

Pursuant to such direction, a compliance report in the form of an affidavit was filed on 18th August, 2011 referring to the proceeding of screening and considering the same, the contempt application was dismissed of by the order impugned in the present writ petition.

Mr. Ghosh, learned advocate appearing for the petitioners submits that by an order dated 22nd April, 2003, the original applications were disposed of with a categoric direction upon the respondents to consider the petitioners’ claim for absorption within a period of six months from the date of communication of the order. However, in blatant violation of such directive, the respondents kept the petitioners’ claim in abeyance for an indefinite period with the sole intent to frustrate the same. As a model employer, the railways ought to have

conducted itself with high probity and candour and ensured that its employees do not succumb to the procedural rigmarole particularly when the claim pertains to the life and livelihood of the petitioners.

He argues that award of compensation in a proceeding under Article 226 is a remedy available in public law. Enforcement of petitioners' right pertaining to life and livelihood and grant of redress embraces award of compensation as part of the legal consequences of its contravention. In view of deliberate violation of such right of the petitioners, the learned Tribunal ought to have directed the respondents to compensate the loss suffered by the petitioners. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

He further argues that the petitioners have continued to serve the railways for a substantial period of time and they did fulfill the eligibility criteria to be considered for absorption, as would be explicit from the contents of the learned Tribunal's order dated 22nd April, 2003. Disregarding such observations, the petitioners' claim was rejected by a cryptic order dated 10th September, 2009. The said order being derogatory to the earlier direction of the learned Tribunal was a nullity and the learned Tribunal ought to have been interfered with the same in the contempt application.

Mr. Nandy, learned advocate appearing for the respondents, however, denies and disputes the contention of the petitioners and submits that the order dated 22nd April, 2003 would reveal that the direction of the learned Tribunal was subject to fulfilment of the eligibility criteria. The petitioners pursuant to such direction, were called for screening test in which most of them did not appear. The documents produced were scrutinized and it was found that they did not have the educational qualification and were age barred on the date of screening. None of the petitioners were ever engaged by the railways as casual labour. In support of such contention, he has drawn our attention to the compliance report as well as the proceeding of screening.

He further argues that a fresh cause of action arose with the issuance of the order dated 10th September, 2009, the report dated 18th August, 2011 passed by the respondents in compliance with the order of the learned Tribunal and the proceeding of screening. The said orders gave rise to a fresh cause of action. Such fact was rightly noted by the learned Tribunal and the contempt application was dismissed and accordingly, no interference is called for in the present writ petition.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The argument of the petitioners that there was a willful and deliberate violation of the earlier direction passed by the learned Tribunal, in our opinion, was rightly discounted by the learned Tribunal in view of the observations made in the compliance report dated 18th August, 2011 and the proceeding of screening. Once an order has been passed by a party to a proceeding on the basis of the direction issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum and such action does not constitute contempt.

The argument of Mr. Ghosh that the delay towards consideration of the petitioners' claim is totally attributable to the respondents and that for such delay, they are under an obligation to pay compensation, is also not been acceptable to us. The direction towards compensation would depend upon the facts and circumstances of the case and no straight jacket formula can be applied. No *mala fide* can be attributed to the action of the respondents and from the sequence of facts, it does not appear that the respondents were solely responsible for the delay due to pendency of the proceedings.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

Accordingly, the writ petition being **WPCT 211 of 2013** is dismissed.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Supratim Bhattacharya, J.) (Tapabrata Chakraborty, J.)