

3rd December, 2024
(D/L No.02)
Ct. No.4
(SKB)

W.P.C.T.243 of 2024

Indian Railways Coal &
Handling Mazdoor Union
Versus
Union of India and others

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Dibyendu Chatterjee,
Mr. Pritam Majumdar,
Mr. Rahul Deb Goenka,
Ms. Satabdi Das,
Mr. Mainak Singha Barua
....for the petitioner.

Mr. Bhudeb Chatterjee,
Mr. Anindya Sundar Das
... for the U.O.I.

1. Heard learned senior counsel for the petitioners as well as the learned counsel for the respondents/railways.
2. The petitioners Union has filed the present writ petition challenging the judgment dated 21.06.2024 passed by the learned Central Administrative Tribunal, Kolkata Bench (Tribunal for short). The Tribunal dismissed the original application filed by the Union assailing the office order dated 07.05.2021 rejecting the claim of regularization of its members as they could not produce conclusive documents to show that they have worked as labourers in Railways for ten or more years.

3. The petitioner Union herein is also claiming the relief of regularization of its members who had been engaged as Coal and Ash Handling Majdoors long back and are working in the Loco Sheds under the Kharagpur Division. They claim to have been engaged by the contractor for discharge of such duties since 1984, and onwards. It is not in dispute that they were disengaged in 1993.
4. The learned senior Counsel appearing for the petitioner submits that the authorities had themselves agreed to consider the petitioner's claim for regularization which is evident from the order passed in O.A. No. 350/01350 of 2016 earlier filed by the petitioner Union. The Tribunal by its order dated 05.12.2019 has recorded the advice of the Railway Board given to the General Managers to scrutinize the following documents for the purpose of absorption as per letter dated 25.07.2007:

a) Identity Cards/Pass issued by the contractor and countersigned by the Railway Supervisor for the period claimed to have worked as Contract Labour.

b) Copy of Certificate/Affidavit attested by the Notary Public in regard to age proof.

c) SC/ST certificate if the applicant wants the benefit.

d) Any proof of working period."

5. Members of the petitioner Union are still willing to subject themselves to the scrutiny based on the abovenoted four documents for the purposes of availing the benefits of regularization.
6. Since the respondents could not comply with the time limit for making the scrutiny in terms of the order passed in O.A. No.350/01350 of 2016, they approached the Tribunal for extension of time for conducting such exercise of scrutiny by filing M.A. 189 of 2021. The M.A. 189 of 2021 was disposed of by the Tribunal on 29.03.2023. The order of the Tribunal, therefore, passed in O.A. No.350/01350 of 2016 has attained finality between the parties and is binding *inter partes*.
7. The authorities, however, have failed to comply with the scope of scrutiny specified in O.A. No.350/01350 of 2016. When they undertook the exercise of scrutiny of the claim of the various majdoors of the petitioner's Union, they expanded the scope of scrutiny to include various other documents which is evident from the process for compliance initiated by them under the communication dated 09.07.2020. From bare perusal of the same, it appears that they have demanded more than 4 documents.
8. Relevant extract of this letter is being reproduced:

“Now in obedience to Hon’ble CAT/KOL’s order dated 05.12.2019 on the side of respondents and according to the procedure adopted by the Eastern Railway in similar matter as stated by the Hon’ble Court, you are here by advice to submit the followings are collected for. To process further in the matter as 1st stage of compliance:

1) The terms and agreement of contract of each of the contractors which were executed between the railway Administration and the contractors.

2) Nature and Purpose of the contract and the period for which the contract was in operation.

3) The terms and condition for engagement of labourer by the contractors.

4) Copies of the wage list month by month of each individual worker.

5) Attendance Register of contract labourer.

6) Nature of job performed by each of the individual contract labour.

7) How they were recruited by the contractors.

8) Facilities enjoyed by them.

9) The Identity Cards were issued obviously after maintaining office record, proof of such record/register.

10) The Identity cards were countersigned by some Railway Officials. However, signature and designation of such officials are totally illegible. The name of the sold official with his official address in full.

11) A personal Bio-data of each of the individual worker in the prescribed format along with the following documents:

a) Xerox copy of Ration Card or voter Identity Card in proof of residential address.

b) Age proof certificate.

c) Proof in support of educational qualification.

- d) *Proof in support of technical qualification, if any.*
- e) *A statement showing detailed period of working including break period.*
- f) *Xerox copy of Employment Exchange Card.*
- g) *Xerox Copy of caste certificate.*
- h) *Authority of engagement, if any issued by the contractor.*

The Railway Administration reserves right to collect additional documents for verification of claim.

You are therefore requested to collect the above listed documents and deposit collectively.”

9. Only 6 members of the petitioner's Union, therefore, participated in the process of scrutiny initiated in this manner as the same was in violation of the direction of the learned Tribunal passed in O.A. No.350/01350 of 2016. The others, however, have reserved their right to consideration strictly in terms of the order passed in O.A. No.350/01350 of 2016.

10. Thus, the petitioner Union again approached the authorities seeking enforcement of their claim which has been considered by an order dated 07.05.2021 rejecting the petitioner's claim to be scrutinized on the basis of 4 documents only in terms of the order passed in O.A. No.350/01350 of 2016. This reasoned order was again put to challenge before the Tribunal in O.A. No.954 of 2021. The reasoned order has not been interfered with by the Tribunal which has

held that the same does not suffer from any infirmity.

11. Assailing the findings of the Tribunal in this regard, the present writ petition has been filed.
12. The submissions of the learned senior counsel is that requiring the petitioners to subject themselves to a scrutiny beyond the scope of the order passed in O.A. No.350/01350 of 2016 is unsustainable and the petitioners are entitled to consideration of their claim in terms of the order passed by the Tribunal. This court should direct the authorities to reconsider their claim confining it's scrutiny to four documents in terms of the order passed in O.A. No.350/01350 of 2016.
13. The respondent railways, on the other hand, has taken a stand that the Tribunal in its order dated 13.10.2016 has used the expression documents with reference to the four parameters enumerated in the said order, which has been extracted above in this judgment. The last item 'd'“any proof of working period” cannot be limited to just one document. The expression is illustrative and not exhaustive and does not limit the discretion of the authorities to verify the genuineness of the working period by asking the applicants to submit proof in this regard.

14. Referring to the reasoned order dated 07.05.2021, it is submitted that since the original claim was submitted by the Union, the authorities undertook an exercise to verify the documents of the individual members so as to ascertain the proof of working period and genuineness of their claim based on certain documents. Few of the members who had participated could not even produce any identity card issued by the Contractor/employer. From the reasoned order itself, it is apparent that it is imperative that the claim of the applicants/members of the Union is required to be examined to ascertain the authenticity and genuineness of their claim.
15. The order of the Tribunal in O.A. No.350/01350 of 2016 does not in any way limit such scrutiny. The four items enumerated therein are with regard to the parameter of scrutiny, and the Tribunal's order does not specify an exhaustive list of documents.
16. It is, therefore, submitted that the reasoned order passed by the authority does not require any interference. The Tribunal has rightly rejected the petitioner's challenge to the said reasoned order.

17. The learned counsel for the Railways has thereafter submitted that the respondents authorities are not averse to comply with the order passed by the Tribunal in O.A. No.350/01350 of 2016, should the petitioner's be willing to subject themselves to a scrutiny wherein the genuineness of their claim can be examined by the authorities, without insisting that they will not produce more than four documents an exercise can thus be undertaken again.

18. On consideration of the rival submissions and the order of the Tribunal passed in O.A. No. 1350 of 2016 we are of the considered opinion that the Tribunal has in its order dated 21.06.2024 passed in O.A. No. 1350 of 2016 enumerated the parameters for scrutiny of the petitioner's claim for regularization. The four parameters have to be established with reference to documents. It is in this circumstance that the Tribunal has stated "following documents for the purpose of absorption as per letter dated 25.07.2007". The Tribunal has not limited the scrutiny to only four documents, but has specified the four parameters necessarily to be verified while considering the claim of regularization.

19. The fourth parameter (d) states “any proof of working period”. A plain reading of this parameter discloses the intention of the Tribunal. It has left it to the authorities to examine “any proof”. While examining the claim for regularization, therefore, it is open to the authorities to seek the proof of working period by more documents than one. The discretion of the authorities to ask the petitioners to produce documents relevant to their claim of regularization has not been limited. The proof of working period is a very relevant consideration as it is based on the same that the authority can consider the entitlement of the petitioners for regularization.

20. It is by now a settled law as per decision of the Apex Court in the case of ***Secretary, State of Karnataka and Ors. vs. Umadevi (2) and ors.*** reported in ***(2006) 4 SCC 44*** that the period of work discharged by the employee claiming regularization is one amongst the other relevant factors to be considered for the purposes of regularization. It is only based on cogent material produced in support of the working period, taken along with the other relevant considerations that the petitioners’ claim can be considered for regularization. We are, therefore, unable to accept

the contention of the petitioners that they cannot be asked to produce more than four documents or that there was such a mandate in the order of the Tribunal passed in O.A. No. 1350 of 2016.

21. Since the learned Counsel for the respondent railway submits that Railway is still agreeable to reconsider the claim for regularization of the petitioners, if they agree to submit the proof/(s) in respect of their earlier duty performed, We reserve the option of the petitioners to subject themselves expeditiously to a scrutiny wherein they may be required to produce more than four documents, to satisfy the four parameters for considering their claim for regularization in terms of order passed in O.A. No. 1350 of 2016.

22. The writ petition is disposed of with such liberty.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)