



W.P.No.35774 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 20.08.2024	PRONOUNCED ON 19.11.2024
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CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.No.35774 of 2023
and Cont.P.No.157 of 2024
and W.M.P.Nos.35754 to 35758 of 2023
and W.M.P.Nos.24, 9220 & 9224 of 2024
and Sub.Appln.No.62 & 153 of 2024

1.Dakshin Railway Employees' Union, (Regn.No.3068),
Represented by its General Secretary, V.Harilal,
No.27, Mosque Street, Chepauk,
Chennai

2.B.Balamuruganm
House Keeping Assistant – Medical,
Chennai Headquarters, Southern Railway,
Chennai.

... Petitioners

vs.

1.Union of India,
Represented by its Secretary to Chairman,
Railway Board,
Rail Bhavan, New Delhi.

2.The Southern Railway,
Represented by the General Manager,
Park Town, Chennai – 600 003.



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3.Principal Chief Personnel Officer,
Headquarters Office, Personnel Branch,
Chennai – 600 003.

4.Senior Divisional Personnel Officer,
Divisional Railway Manager Office,
Southern Railway,
Madurai – 625 016.

5.Senior Divisional Personnel Officer,
Divisional Railway Manager Office,
Southern Railway,
Palghat – 678 002.

6.Senior Divisional Personnel Officer,
Divisional Railway Manager Office,
Southern Railway, Thycaud,
Trivandrum – 695 014.

7.Senior Divisional Personnel Officer,
Divisional Railway Manager Office,
Southern Railway,
Park Town, Chennai – 600 003.

8.Senior Divisional Personnel Officer,
Divisional Railway Manager Office,
Southern Railway,
Tiruchirappalli Junction – 620 001.

9.Central Administrative Tribunal,
Represented by the Registrar,
Chennai Bench, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,



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to issue a Writ of Certiorarified Mandamus to call for the records pertaining to order dated 19.12.2023 passed by the 9th respondent in O.A.No.806 of 2022 read with the letter bearing No.2020/EnHM/10/01, dated 22.01.2020 issued by the 1st respondent read with the letter bearing No.E(MPP)2022/1/22, dated 03.07.2023 issued by the 1st respondent quash the same and consequently direct the respondents 1 to 8 to regularize the services of the members of the 1st petitioner i.e., 202 House Keeping Assistants (Safaiwalas), who were regularly selected and appointed pursuant to the Notification dated 27.07.2018 issued by the Chairman, Railway Recruitment Cell w.e.f., their dates of joining in 2019 with regular pay-scale, arrears, seniority and all other consequential benefits.

(Prayer amended as per order dated 02.04.2024 in WMP.No.9219/2024 in W.P.No.35774 of 2023)

For Petitioners : Ms.R.Vaigai Sr., Counsel for
Ms.Anna Mathew

For Respondents : Mr.AR.L.Sundaresan ASG for
Mr.K.Srinivasamurthy SPC for RR1 to 8

R9 – Tribunal

ORDER

D.KRISHNAKUMAR., J
and
K. KUMARESH BABU., J

This instant writ petition has been filed to set aside the order dated 19.12.2023 passed by the Tribunal whereby to regularise the 1st petitioner union members from their date of joining with all consequential benefits and



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thereafter amended by also challenging the communication dated 03.07.2023

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2. Heard Ms.R.Vaigai, learned Senior Counsel appearing for Ms.Anna Mathew, learned counsel appearing for the petitioners and Mr.A.R.L.Sundaresan, learned Additional Solicitor General of India appearing for Mr.K.Srinivasa Murthy, learned Senior Panel Counsel appearing on behalf of the respondents 1 to 8.

3. Ms.R.Vaigai, learned Senior Counsel appearing for the petitioners would submit that the first petitioner is a registered Trade Union in the Southern Railways and the second respondent is its member. She would further submit that the present Writ Petition had been filed to espouse the cause of 202 members belonging to the petitioner Union who were originally engaged as House Keeping Assistant – Medical (hereinafter referred to as 'HKA') on full time contract basis to work in various divisions. The 202 HKAs were engaged directly by the Southern Railways pursuant to the notification issued by the Railway Recruitment Cell (hereinafter referred to



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as 'RRC'). The policy of Reservation was also followed in the engagement of the 202 HKAs on contract basis. The said

notification also further prescribed relaxation with regard to various communal categories in respect of educational qualification also. Thereafter, an examination was also conducted and the applicants were short listed for interview. The successful candidates had also undergone Physical Efficiency Test and after conducting the interview, the 202 HKAs were appointed. The HKAs were posted mainly in the Railway Hospital and the staff quarters premises attached to the Railway Hospital and they were also assigned duties on daily basis with one weekly off. However, they were not entitled for any other leave as available to regular workers and in the case of absence from duty, proportionate amount of pay per day would be deducted. They were also entitled for Hospital Patient Care Allowance, when they are posted in the Railway Hospital. The HKAs have also been assigned with specified duties as listed in the Indian Railway Medical Manual. She would further submit that initially the contract was for a period of six months and since, some of the workers did not opt to continue in the job, 72 other candidates who were provisionally selected were appointed on full time basis and their



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contract was also renewed periodically. The service of the HKAs were also given an artificial break after each term of engagement and they were re-engaged after the said artificial break. The contract also specifies that their engagement would be continued till the regular candidate is selected through RRC or candidates on compassionate grounds or transfers and posted against the said sanctioned post of HKA whichever is earlier. Thereafter, when the re-engagement was issued to the contract workers working in the Palghat Division, they were informed that their engagement would be till 30.09.2022 or until the date of finalisation of contract through Government e-Marketing (hereinafter referred to as 'GeM'), whichever is earlier. The engagement orders or re-engagement orders also specify that the contract workers cannot have any claim or right for their continuity or regularization or absorption in the Railway service.

4. She would submit that advertisements were issued for the post of sanitary workers, sweepers pertaining to Sattur and Rajapalayam Region of Maduari Division, inviting tenders through GeM and apprehending that the Railway Board's communication to mandatorily engage or hire staff on



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contract basis only through GeM, if given effect to the services of 202

HKAs would be terminated. Hence, an Original Application in O.A.No.806

of 2022 was filed before the 9th respondent herein seeking for a direction to

regularise the services of the 202 HKAs who were appointed pursuant to the

notification dated 27.07.2018. The reason for seeking for such a prayer was

that the 202 HKAs were all appointed pursuant to the notification invited by

the RRC and they have also undergone the rigor of recruitment process

including the policy of reservation as envisaged for a regular appointment to

the Railway services. Originally, an interim direction was issued on

19.09.2022 directing the Railway Administration not to disengage the HKAs

till the date of next hearing. The said order had been extended time and

again till the final orders are passed in the said O.A. She would contend that

filling up of the sanctioned post on contract basis mandatorily through GeM

set at naught the constitutional Scheme of filling up of the sanctioned post as

provided under the Rules framed under Article 309 of the Constitution of

India. She would submit that the GeM is a National Public Procurement

Portal hosted by the Department of Commerce through which the common

user goods and services can be procured by the Government. The



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respondents are attempting to treat the employees as commodities for engaging them by tender. Therefore, the Policy of the Railway Board to engage the services of HKAs through GeM is wholly arbitrary and

irrational. An attempt was made by the Railway Department to engage the Hospital Assistants who were newly recruited to the post of HKAs and therefore, an interim application was moved by the petitioners in which by order dated 31.03.2023, the Tribunal had directed the Railways Department not to go ahead with recruitment in so far as the 202 HKAs were concerned. She would further submit that the Ministry of Health and Family Welfare had also taken initiative to recognise the services rendered by the health workers engaged during Covid-19 period. The 202 HKAs were also engaged during Covid-19 period and as per the said Scheme they were all entitled to be considered for regularization. By order dated 20.09.2023, the 9th respondent had vacated the interim order which was in operation since 19.09.2022 against which the petitioners had preferred a Writ Petition in W.P.No.27994 of 2023 in which this Court was pleased to pass an order against terminating the services of the petitioners and transfer the matter to the Second Bench of the 9th respondent. An application had also been filed



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by the petitioners in MA.No.194 of 2023 challenging the instructions dated

30.06.2022 to engage employees on contract basis through GeM Portal.

Recording the submission made by the learned counsel appearing for the Railways Department that the Railways Department is not going to appoint anybody through GeM but for regular appointment had closed the said application. In the interregnum, the Railway Board by its letter dated 03.07.2023 had directed that the post of HKAs should be surrendered in a phased manner. Such communication had been emanated only to defeat the valuable rights of the 202 HKAs seeking for regularisation. She would submit that the work of a HKAs is perennial in nature and the same is also evidenced by the continuous defined work that the 202 HKAs would have to perform on a day today basis. If such work has not been carried out by the HKAs, the functioning of the hospitals would be in jeopardy. Therefore, the petitioners even though had been appointed on contractual basis and continued to have worked till date are entitle for regularisation.

5. She would further submit that the post of HKAs all have been sanctioned post and in the rules framed under Article 309 of the Constitution



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and the Railway Department cannot continue to engage contract workers to a sanctioned post that too without conducting a regular recruitment process.

She would further submit that the contract HKAs engaged for the Department are all over aged and even if recruitment

process is initiated, they would not be eligible to participate in such recruitment process. Since their services have been engaged regularly in the perennial nature of work, the HKAs appointed on contract basis are entitled to be regularised in service. However, without considering these aspects, the Tribunal had rejected the claim of the petitioners by holding that the HKAs appointed on contract basis have knowingly entered the services and had given a undertaking that they would not claim any absorption or regularisation in service and rejected the claim for regularization of services. Further pending this Writ Petition, the petitioners have also sought to amend the pleading in the Writ Petition so as to challenge the communication dated 03.07.2023 issued by the first respondent for surrendering the post of HKAs.

6.She would submit that the Tribunal had erroneously relied upon the judgment in the case of *Uma Devi's* case reported in *(2006) 4 SCC 11*,



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which had been distinguished by the Hon'ble Apex Court in the subsequent judgments. To that aspect, she had relied upon the judgment of the Hon'ble Apex Court in the cases of *Arjun Singh & Ors. vs. State of Himachal Pradesh & Ors* reported in (2015) 15 SCC 713; *Nihal Singh & Ors., vs. State of Punjab & Ors.*, reported in (2013) 14 SCC 65; *Mohd., Abdul Kadir & Anr., vs. Director General of Police, Assam & Ors.*, reported in (2009) 6 SCC 611 and the judgment of the Maharashtra High Court in the case of *Sachin Ambadas Dawale & Ors Vs State of Maharashtra & Anr.* reported in 2014 (2) Mh.L.J 36. In view of the aforesaid judgment, she would submit that the reliance placed upon by the Tribunal on *Uma Devi's* case according to her is bad. She would further submit that the doctrine of estoppel /approve and reprobate put against the petitioners by the Tribunal is also wholly absurd. She would submit that the principle of estoppel/approve and reprobate cannot be applied to the facts of the present case. The fundamental rights vested with the petitioners under Article 14 and 16 for equal and fair treatment cannot succumb to the principles of estoppel /approve and reprobate. To that effect, she had also placed reliance on the judgment of the Hon'ble Apex Court in the case of *Government Branch*



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Press vs. D.B.Belliappa reported in ***1979 (1) SCC 477***; ***Air India vs.***

Nargesh Mirza reported in ***1981 (4) SCC 335***; ***Central Inland Water***

Transport Corporation Ltd., & Anr., vs. Brojo Nath

Ganguly & Anr., reported in ***(1986) 3 SCC 156*** and ***Somesh Thapliyal &***

Anr., vs. Vice-Chancellor, HNB Garhwal University & Anr., reported in

(2021) 10 SCC 116.

7. She would further submit that the post are sanctioned post are continuing and not abolished. Hence, decision to surrender the post is illegal as being violative of the constitutional mandate and the Industrial Disputes Act, 1947. In that context, she had also relied upon the judgment of the Hon'ble Apex Court in the cases of ***Ajit Singh & Ors., vs. State of Punjab*** reported in ***(1983) 2 SCC 217***; and ***A.Madheswaran & Ors., vs. State of T.N., & Ors.,*** reported in ***2006 (3) CTC 753*** and the decision of the Division Bench of this Court made in W.P.No.14661 etc., of 2004, dated 08.09.2004. Since the post are sanctioned post, governed under the Rules framed under Article 309 of the Constitution of India which had been issued by the President of India, the Railway Board's decision to surrender such post and



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also engage the contract workers through tenders called through GeM portal are also violative of the execution instructions and the Rules that had been framed under Article 309. She would submit that the Railway Board with the approval of the President of India had published rules governing the Recruitment and Service Conditions of the Railway Servants under which the post of HKRs is also one of the sanctioned post. It is the contention that even though the Rule 157 enables the Railway Board to tinker with the Rules such tinkering can only be made with the approval of the President of India under Article 309 and not otherwise. She also pleaded that the respondents had not showed that the powers exercised by the Railway Board would constitute the Rules under Article 309 or has been issued as approved by the President of India. She would contend that the GeM policy envisaged under the General Finance Rules 2017 cannot violate the Recruitment Rules framed under Article 309 of Constitution of India. The policy does not have a force of the statute nor the effect of rules framed under Article 309. She would further submit that when recruitment made to the sanctioned post by calling tenders, the same would also violate the reservation policy which have to be followed in the matters of recruitment of Railway servant.



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Hence, GeM policy under the General Finance Rules adopted by the Railway Department is *ultra vires*, Article 16, 309, 320(3A & 3B) and Article 335 r/w Rule 216 of the IREC. She would submit that

these aspects have all been overlooked by the 9th respondent Tribunal in rejecting the Original Application filed by the petitioners. Hence, she would seek interference of the order impugned passed by the Tribunal and also the communication dated 03.07.2023, wherein the post of HKAs was issued to be surrendered in a phased manner and out sourcing such engagement.

8. Countering her arguments, Mr.A.R.L.Sundaresan, learned Additional Solicitor General of India appearing on behalf of the respondents at the out set would submit that the relief sought for by the petitioners is not tenable as being opposed to the ratio laid down by the Hon'ble Apex Court in ***Uma Devi's*** case. He would further submit that the engagement of manpower on contract basis through GeM was based upon a policy decision



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which cannot also be interfered with by this Court as the Hon'ble Apex

Court in a judgment in case of *Union of India vs. Pushpa Rani & Ors.*,

reported in *(2008) 9 SCC 242*, had held that matters relating to creation and abolition of posts, formation, structuring/restructuring of cadres prescribing the sources/mode of recruitment of qualification criteria, the evaluation of

service records of employees, falls within the exclusive domain of employer and the power of judicial review in such matters can be exercised only if it is shown that such action is contrary to any constitutional or statutory provisions or if it is patently arbitrary, vitiated due to malafides. In the present case, he would submit that the Government had taken a policy decision of employing employees on contract basis through GeM portal and such policy decision cannot be challenged subject to limited scope available as per the aforesaid judgment.

9. He would further submit that even though the selection was based pursuant to the notification, the procedures that were contemplated under the



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Rules for appointment of regular employees was totally different from the process of selection by which the 202 HKAs were engaged. The process of selection of 202 HKAs cannot be equated with the regular process of selection as envisaged under the Rules for them to claim that they had undergone the process of selection as per the Rules and that they are entitled for regular employment. He would submit that the said submission is made without any prejudice to other contentions raised by the respondents. He would further submit that just because the contract staffs had performed the duties of a regular HKA, would not entitle them to consider for absorption. Having accepted to perform for the contract period and having given an undertaking that they would not claim absorption/regularisation or priority in the matter of appointment, when a regular process of appointment is sought to be carried, the 202 HKAs represented by the first petitioner are estopped now from claiming the relief. The terms of engagement itself indicated that they have no right to continue even during the contract and their service period would be subject to appointment on regular basis. But since a decision was taken to engage HKAs on contract basis by calling for tenders through GeM, their re-engagement at the last leg was on basis on the



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condition that their engagement would come to an end either on the end of the period or appointment based on tender through GeM whichever is earlier, would itself show that the 202 HKAs have agreed to such term. He would rely upon Rule 123 (earlier Rule 157) to contend that the Railway Board has a right to make amendment to the Rules including the method of appointment for Group D employees. He would also rely upon the judgment of the Hon'ble Apex Court in the case of **BALCO Employees Union vs. Union of India** reported in (2002) 2 SCC 333, and contend that the elected Government has a prerogative to follow its own policy unless or until, the same is *per se* with vested with interest, illegalities committed in execution of such policy or such policy is contrary to law or malafides.

10. He would also rely upon the judgment of the Hon'ble Apex Court in the case of **Tata Motors Limited vs. Brihan Mumbai Electric Supply and Transport Undertaking** reported in 2023 SCC Online SC 671 in support of the said contention. Drawing strength from the aforesaid judgment, he would submit that the Railway Board is entitled to take policy decision from



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time to time, as and when it becomes necessary in the light of the change in circumstances in general. He would further submit that the engagement of 202 HKAs beyond 19.09.2022, was pursuant to the interim orders passed by the Tribunal and therefore, the continuance of the contract staff beyond the said period cannot be imposed upon the respondents to regularise their services. That apart, he would submit that the eligibility criteria including the educational qualifications are not the same and

therefore, the contract HKAs cannot claim that they possess the same qualification for a regular employment. He had also taken us through the tabulated column given in the counter affidavit at paragraph 36 to drive home his contention with regard to the difference in qualifications for regular employment and the qualifications based upon which the contract staffs were engaged. Even to extend the scheme given by the Government for COVID warriors, the contract staffs cannot be benefited with the same as they do not possess the qualifications prescribed for regular appointment during the regular recruitment process. He would reiterate that having



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agreed under the contract to extend the services for a particular period or in the alternative till the regular appointment made, the persons engaged on contract cannot claim to be continued in service. They cannot also rely upon the litigious employment continued beyond 19.09.2022. He would further contend that if the claim of the petitioners for regularisation is entertained, it would offend the Articles 14 & 16 of Constitution of India. The persons who are equally qualified or more qualified and have better merits might not have applied pursuant to the notification for engagement on contract basis, since the notification itself clearly indicated that the engagement was purely temporary. If a notification is issued for regular employment more number of candidates would have participated and on merits, the petitioners could not have qualified as they did not possess the regular qualification envisaged under the Rules also. He would also submit that the provisions of Industrial Disputes Act particularly Section 25(N), which had been relied upon by the learned Senior counsel would also not apply because the dis-engagement of the contract staff was only due to the reasons of expiry of contract and not otherwise.



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11. He would also rely upon the judgment of the Hon'ble Apex Court in the case of *The Railway Board & Ors., vs. P.R.Subramaniam & Ors.*, reported in (1978) 1 SCC 158, and contend that the Railway Board's decision has the force of Rule in terms of Section 123 of the Rules framed under Article 309 and since such a decision is made, the same shall have an overriding effect of other Rules in respect of a non-gazetted railway Servants or to a class of them. He would further rely upon the judgment of the Hon'ble Apex Court in the case of *State of Uttar Pradesh vs. Abhay Nandan Inter College* reported in (2021) 15 SCC 600 and had contended that the post could be abolished indirectly by providing for outsourcing of a particular post and if the same is made pursuant to the policy decision taken by the Railway Administration, such a policy decision is to be presumed in public interest and to challenge such policy decision, there should be a claim of excessive and extreme arbitrariness and the same should be proved. He would further rely upon the judgment of the Hon'ble Apex Court in the case of *The Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.*, reported in (2006) 4 SCC 1 and contend that when an appointment was purely on a *adhoc* and contractual basis for a limited period, on the expiry of the said



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period right to remain in the post comes to an end and based upon such contractual employment covered by time, no claim for regularisation can be made by such contracted employees. He would further submit that the terms of employment are equally binding on the employee as well as the Government. If on understanding of the condition that the employment is only for a particular period that too, till an eventuality is to occur i.e., appointment on regular basis/appointment through GeM, then the contract workers cannot turn back and claim to regularise their services that too, particularly when they do not have the qualifications to be appointed on

regular basis. He would further submit that the creation, abolition, prescription of qualification and other conditions of service are within the domain of the employer and is liable to be changed by altering, amending or varying or by addition or subtraction and the employee cannot as a matter of right claim that such terms should be forever the same at all times. In support of the said contentions, the learned Additional Solicitor General of India also relied upon the judgment of the Hon'ble Apex Court in the case of ***P.U.Joshi & Ors., vs. UOI & Ors.***, reported in ***(2003) 2 SCC 632***.



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Reiterating his submissions in a nutshell, the learned Additional Solicitor General would pray this Court to dismiss the Writ Petition as the same is devoid of merits.

12. We have carefully analysed the various submissions made by the respective counsels appearing on either side and also analysed the issues involving in this Writ Petition.

13. The issues that has to be decided mainly are:-

(a) Whether 202 HKAs employed on contract basis are entitled for regularization of their services?

(b) Whether the policy decision taken by the respondent to engage the contract staffs through GeM portal by calling for tender would be a valid in the light of the Rules framed by appointment of the Railway servants under Article 309 of the Constitution of India?



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14. Before advertizing to any further, it would be useful to refer to the

Rules that are framed in that regard.

15. Indian Railway Establishment Code had been made under Article 309 of the Constitution of India by the President in exercising of his power vested therein. The said code had undergone various amendments and it had contained Group A, B, C, & D officers and with regard to Group C & D posts on Indian Railways and other Railway Administration, they were directed to be filled up by direct recruitment, by promotion or by transfer of suitable staffs, if necessary from other Government offices. The Rules for Recruitment of Group C & D were made in the Indian Railway Establishment Manual. For better appreciation, the relevant Rules are extracted hereunder:-

Classification of Services

106. *For the purpose of these rules, the railway services shall be classified as follows with effect from 01.04.1976;*

a) Gazetted

(1) Railway Services Group A

(2) Railway Services, Group B

b) Non-Gazetted

(1) Railway Services, Group C

(2) Railway Services, Group D

(3) Workshop Staff (Group C & D)

107. *(1) With effect from 08.01.2010 subject to exceptions*



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made in the footnotes below and also subject to such exceptions as Ministry of Railways may, by any general or special orders make from time to time, Railway Services posts shall be classified as follows:

S.No	Description of Posts	Classification of posts
1(a)	A Railway Service post in Apex Scale (Rs.80000-fixed) and Higher Administrative Grade plus scale (Rs.75500-80000) and HAG Scale (Rs.67000-79000); and	Group A (Gaz.)
(b)	A Railway Service post carrying Grade Pay Rs.10000, Rs.8900 and Rs.8700 in Pay Band PB-4 (Rs.37400-67000) and Grade Pay Rs.7600, Rs.6600 and Rs.5400 in Pay Band PB-3 (Rs.15600-39100) but excluding the posts falling in S.No.(2) & (3) below	

S. No	Description of Posts	Classification of posts
	A Railway Service post carrying Grade Pay Rs.5400 and RS.4800 in Pay Band PB-2 (Rs.9300-34800) but excluding the posts falling in S.No.(3) below: The posts of Assistant Nursing Officer carrying Grade Pay Rs.5400, Principal/Head Master/Head Mistress (Secondary/High school & equivalent) (Basic Grade & Sr. Grade) carrying Grade Pay Rs.5400/6600 in Pay Band PB-3 (Rs.15600-39100) and Non-functional Grade of Group 'B' Gaz., posts of various organized Railway services & RBSS/RBSSS carrying Grade Pay Rs.5400 in Pay Band PB-3 (Rs.15600-39100) will continue to be classified as Group 'B' (Gaz.)	Group B (Gaz)



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3	A Railway Service post carrying Grade Pay Rs.4600 and Rs.4200 in Pay Band PB-2 (Rs.9300-34800), Grade Pay Rs.2800, Rs.2400, Rs.2000, Rs.1900 and Rs.1800 in Pay Band PB-1 (Rs.5200-20200). The posts of S.O., (Acs)/Sr.SO (Acs), TIA/Sr.TIA and ISA/Sr. ISA (Merged grades) carrying Grade Pay Rs.4800 in Pay Band PB-2 (Rs.9300-34800), Nursing Sister carrying Grade Pay Rs.4800 in Pay Band PB-2 (Rs.9300-34800). Matron/Chief Matron (Merged Grade) carrying Grade Pay Rs.5400 in Pay Band PB-3 (15600-39100), Primary School Teacher/Trained Graduate Teacher/Post Graduate Teacher and equivalent (Basic/Senior/Selection Grade) carrying Grade Pay Rs.4800/5400/6600 in Pay Band PB-2/PB-3 (Rs.9300-34800/15600-39100) will continue to be classified as Group 'C'.	Group C
4	A Railway Service post carrying Grade Pay Rs.1650 Rs.1600, Rs.1400, Rs.1300 in Pay Band IS (Rs.4440-7440).	Group D (till the posts are upgraded)

Notes:

(a) A person placed in higher Grade Pay/Pay Band I-situ promotion scheme/ACP or MACP Schemes will continue to retain the classification of his Basic Post.

(b) The classification of Non-functional posts, Sr., & Selection Grade posts of Teaching/school staff will continue to remain the same as applicable to Basic Grade Post.

(c) The Assistants of Railway Board Sectt., Service & Personal Assistants of Railway Board Sectt., Stenographers Services will continue to be classified as Group 'B' (Non-gazetted) as



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laid down in respective service rules.

(d) If higher classification than that indicated above is presently prescribed for any specific post in the respective service rules, the same shall continue till further orders.

(2) Posts created subsequent to date of effect of these orders as specific additions to existing cadres shall have the same classification as posts in the cadre to which they are added.

(3) For above purpose Pay Band, in relation to a post, means the running Pay Bands specified in Part A, Section I, Column 5 of the First Schedule to the Railway Services (Revised Pay) Rules, 2008 & Board's letter No.PC VI/2008/I/RSRP/1, dated 11.09.2008.

108. *Establishments and categories (including probationers) falling under the services mentioned in rule 106 are shown below.*

Group A

(1) Posts in the Railway Board;

(2) Advisors in Railway Board;

(3) Directors, Additional director, Joint Directors, Deputy Directors, Railway Board and Research Design and Standards Organisation; Secretary, Joint Secretaries; Deputy



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Deputy Secretaries, Under-Secretaries, Railway Board;

(4) Indian Railway Service of Engineers;

(5) Indian Railway Accounts Services;

(6) Indian Railway Traffic Services;

(7) Indian Railway Service of Mechanical Engineers;

(8) Indian Railway service of Electrical Engineers;

(9) Indian Railway Service of Signal Engineers;

(10) Indian Railway Medical Services;

(11) Indian Railway Stores Services;

(12) Indian Railway Personnel Services;

(13) Such posts in general Administration and Miscellaneous Departments (e.g., Chemical & Metallurgical Department, Cash & Pay Department)

Group 'B'

Gazetted posts not included in Group A

Note:- Temporary Assistant Officers will not be classified either as Group A or Group B

Group 'C'

All posts classified as Group 'C' under Rule 107.

Group 'D'

All posts classified as Group 'D' under Rule 107.

Workshop Staff

All categories of Group C & D staff employed in workshops



other than those employed in clerical, skilled or supervisory categories and not included in Group C or Group D above.

16.It is to be noted that the classification of service had been amended under the direction of the President of India which is as follows:-

CLASSIFICATION OF SERVICES

106. *For the purpose of these rules, the Railway services shall be classified as follows with effect from 01.01.2016:*

(a) Gazetted

- (1) *Railway Services Group A*
- (2) *Railway Services, Group B*

(b) Non-Gazetted

- (1) *Railway Services, Group C*
- (2) *Workshop Staff (Group C)*

107. *(1) with effect from 17.01.2023, subject to exceptions made in the footnotes below and also subject to such exceptions as Ministry of Railways may, by any general or special orders make from time to time, Railway Service posts shall be classified as follows:*

Sl. No.	Description of posts	Classification of Posts
1	A Railway service post carrying the pay in the Pay Matrix at	Group 'A'/Gaz.



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	<i>the Level from 10 to 17 excluding the posts falling in Sl. Nos. (2) and (3) below.</i>	
2.	<i>A Railway service post carrying the pay in the Pay Matrix at Level-8 & 9 excluding the posts falling in Sl. No. 3 below:</i> <i>The posts of Assistant Nursing Officer in Level-10 of the Pay Matrix, Principal/Head Master/Head Mistress (Secondary/High School & equivalent) (Basic Grade and Sr. Grade) in Level-10 and Level-11 of the Pay Matrix and Non-functional Grade of Group 'B' Gaz. posts of various Organized Railway Services & RBSS/RBSSS in Level-10 of the Pay Matrix will continue to be classified as Group 'B' Gaz.</i>	Group 'B'/Gaz.
3.	<i>A Railway service post carrying the pay in the Pay Matrix at the Level from 1 to 7 and the posts of Sr. SO(Accounts), Sr. Travelling Inspector(Accounts), Sr. Inspector (Store Accounts) in Level-8 and Level-9(Non-Functional) of the Pay Matrix; Sr. Nursing Superintendent in Level-8 of the Pay Matrix, Chief Nursing Superintendent in Level-10 of the Pay Matrix; Primary School Teacher/Trained Graduate Teacher/Post Graduate Teacher and equivalent (Basic/Senior/Selection Grade) working in Level-8/9/10/11 of the Pay Matrix; Senior Dietician in Level-8 of the Pay Matrix, will continue to be classified as Group 'C'.</i> <i>The Group 'C' Cadres upgraded to Level-8 and Level-9(Non-Functional) in terms of Board's letter RBE No. 155/2022 dated 17.11.2022 (F. No. PC-VII/2019/RSRP/3) will continue to be classified as Group 'C'.</i>	Group 'C'

Notes:

(a) A person placed in higher Level of the Pay Matrix under in situ promotion Scheme/MACP Schemes will continue to retain the classification of his Basic Post.

(b) The classification of Non-functional posts, Sr. and Selection Grade posts of Teaching/School staff will continue to remain the same as applicable to Basic Grade post.



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(c) *The Assistant Section Officers of Railway Board Secretariat Services (RBSS) and Personal Assistants of Railway Board Secretariat Stenographers Service (RBSSS) will continue to be classified as Group 'B' (Non Gazetted) as laid down in respective service rules.*

(d) *If higher classification than that indicated above is presently prescribed for any specific post in the respective service rules, the same shall continue till further orders.*

2. *Posts created subsequent to date of effect of these orders as specific additions to existing cadres shall have the same classification as posts in the cadre to which they are added.*

3. *For the purpose of this order, "Pay Matrix" means the Matrix specified in Part A of the Schedule to Railway Services (Revised Pay) Rules, 2016. Further, "Level" in Pay Matrix means the Level corresponding to the existing Pay Band and Grade Pay or Scale specified in Part A of Schedule to Railway Services (Revised Pay) Rules, 2016.*

(Authority: Ministry of Railways' letter No. PC-VII/2017/RSRP/2 dated 17.01.2023)

17. Under the amendment Group D services had been done away with and they have been merged with Group C services. Rule 112 of the Rules as extracted supra would indicate that the permanent strength of the Medical



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Department to which the HKAs belongs will be determined with reference to the permanent post acquired for an ordinary duty. Under the Rules, cadre post had not been indicated and it was left to the wisdom of the Railway Ministry with regard to Group A& B and Railway Board and with regard to Group C & D, the first respondent by the impugned communication dated 03.07.2023, had indicated the decision for rationalisation of the post. The said communication indicates that such rationalisation was done on periodical basis based upon the manpower requirement, in view of the change in work conditions, introduction of new technological system, creation of new access, etc.,. It also further indicates that such exercise had been carried out by considering the use of human resources in a most efficient and protective manner. Hence, with the consultation of the Health Department, it was decided to outsource the duties of the HKAs in a

planned manner and to surrender the post of HKAs especially those who are involved in cleaning functions by March 31st, 2024. This could be traced to power vested with the first respondent under Rule 123 of the Rules framed under Article 309. Such powers has been recognised by the Hon'ble Apex



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Court in the judgment in the case of ***The Railway Board and Ors., vs.***

P.R.Subramaniam & Ors., reported in ***(1978) 1 SCC 158.*** For better

appreciation, the same is extracted hereunder:-

3. In the Indian Railway Establishment Code, Volume I are the Rules framed by the President of India under Article 309 of the Constitution. Contained in the said Code is the well known Rule 157 which authorises the Railway Board, as permissible under Article 309, to have "full powers to make rules of general application to non gazetted railway servants under their control". The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated as rules having the force of rules framed under Article 309 pursuant to the delegated power to the Railway Board if they are of general application to non-gazetted railways servants or to a class of them.

The Prefactory Note of the Indian Railway Establishment Manual which contains the above rule says :

"It must be noted that the provisions of this Manual do not supersede the rules contained in any of the Indian Railway Codes and

in case of conflict the latter should prevail. This Manual may not be referred to as the final authority and a reference should always be made to the original orders on the subject."

...In our judgment, the decision contained in Ext. Rule 9 which



had the force of a rule made under Rule 157 did override Rule 20(b) contained in the Manual

18.It is to be noted the Rule 157 noted in the said judgment is now Rule 123.

19.It may further be noted that to make Rules with regard to Group C & D have been vested with Railway Board/1st respondent (Rule 123) & the General Manager Railways (Rule 123). However the power vested with General Manager is circumscribed to be consistent with the Rules made by the President but no such limitation has been placed with the powers vested with the Railway Board.

20.In that context, it would be useful to refer to the judgment of the Hon'ble Apex Court relied upon by the learned Additional Solicitor General in the case of *Union of India Vs Pushparani & Others* referred supra.

21.The Hon'ble Supreme Court in the aforesaid judgment had



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reiterated a settled legal position with regard to creation and abolition of post. For better appreciation, the relevant paragraph is extracted hereunder:-

37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.



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22.A similar view had also been expressed by the Hon'ble Apex Court in its judgment in the case of P.U.Joshi & Ors. Vs Union of India & Ors. reported in (2003) 2 SCC 632 and in the case of ***Official Liquidator Vs Dayanand and Ors.***, reported in (2008) 10 SCC 1.

23.A conjoined reading of the aforesaid three judgments would clearly indicate that;

(a) An employee has no right to claim that Rules governing conditions of service should be for ever the same as the one when he had entered services for all purposes except for ensuring of safeguarding the rights and benefits already earned, acquired or accrued at a particular point of time.

(b) The power of judicial review can be exercised only if it is shown that action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is



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vitiated due to malafides.

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(c) The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of post be created or filled by a particular mode of recruitment.

24.In the present case, the Rules framed under Article 309 of the Constitution of India had left it to the wisdom of the first respondent with regard to the Group C & D employees. In such an event, it is the employer namely the first respondent to tinker with its cadre/ post. When such a power is available, the Court can only analyse whether such tinkering had been made would be contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to malafides. Since, we have already held that the Rules framed under Article 309 of the Constitution of India permitted the first respondent to tinker with the cadre, it cannot be said that the surrendering of HKAs would be violation of any constitutional or statutory provisions. As held by the Hon'ble Apex Court, it is for the employer to follow a process of employment. Further, the order dated



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03.07.2023 clearly indicates the reason for which they have decided to outsource the engagement of HKAs. Therefore, the said decision cannot be termed to be either arbitrary or with malafied intention, as the Circular does not seek to deny the 202 HKAs on whose behalf the Writ Petition had been filed for a continuous employment, but a decision taken to be applied for engagement of HKAs throughout the territory of India.

25.Since, we have answered the right of the employer to tinker with its cadre in favour of the respondents, we do not propose to address the other issues raised on behalf of the learned counsel appearing for the petitioners as the same would be an unnecessary exercise.

26.Admittedly, the 202 HKAs have been engaged only on contract basis on certain terms and conditions. It had been fervently argued that the undertaking given by them was only because to secure a job atleast on temporary basis. In that context, it would be useful to refer to the judgments of the Hon'ble Apex Court is as follows:-



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a) ***UoI vs. N.Murugesan & Ors., reported in (2022) 2 SCC 25:-***

37. We have already dealt with the principles of law that may have a bearing on this case. There is no element of an unequal bargaining power involved. Nobody has forced the respondent to enter into a contract. He indeed was an employee of the Society for 23 years. We do not wish to go into the question as to whether it is a case of re-employment or not, as the fact remains that the respondent wanted the job, which is why there was an unexplained and studied reluctance to raise the issue of him being a permanent/regular employee, but only at the fag end of his tenure.

b) ***The Secretary, State of Karnataka & Ors., vs. Umadevi & Ors., reported in (2006) 4 SCC 1:-***

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might



have been searching for some employment so as to eke out his livelihood and accepts

whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was



accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

27.Further, when the Railway Ministry had taken a decision in consultation with the Health Department to outsource the engagement of HKAs for the reasons indicated in the order and applying the principles laid



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down by the Hon'ble Apex Court as indicated supra, the relief sought for to regularise the services of 202 HKAs in our considered view cannot also be granted and if any such relief is granted, it will go against the policy decision which we have upheld on the findings indicated above.

28. Even though, we have arrived at aforesaid conclusion on a different findings and reasonings, other than on which the Tribunal had dismissed the Original Application, we do deem it fit not to interfere with the order impugned in this Writ Petition and accordingly, this Writ Petition fails on both claims and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions and application are closed.

29. In view of the findings and reasonings that we have arrived at in the Writ Petition, no adjudication is required to be made in the Contempt Petition and accordingly, the same stands closed.

(D.K.K.,J)

(K.B.,J)

19.11.2024

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Pbn/Gba

Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

To

1.Union of India,
Represented by its Secretary to Chairman,
Railway Board,
Rail Bhavan, New Delhi.

2.The Southern Railway,
Represented by the General Manager,
Park Town, Chennai – 600 003.

3.Principal Chief Personnel Officer,
Headquarters Office, Personnel Branch,
Chennai – 600 003.

4.Senior Divisional Personnel Officer,
Divisional Railway Manager Office,
Southern Railway,
Madurai – 625 016.

5.Senior Divisional Personnel Officer,
Divisional Railway Manager Office,
Southern Railway,
Palghat – 678 002.

6.Senior Divisional Personnel Officer,
Divisional Railway Manager Office,
Southern Railway, Thycaud,
Trivandrum – 695 014.



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7.Senior Divisional Personnel Officer,
Divisional Railway Manager Office,
Southern Railway,
Park Town, Chennai – 600 003.

8.Senior Divisional Personnel Officer,
Divisional Railway Manager Office,
Southern Railway,
Tiruchirappalli Junction – 620 001.

9.Central Administrative Tribunal,
Represented by the Registrar,
Chennai Bench, Chennai.



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D.KRISHNAKUMAR, J.
and
K . KUMARESH BABU, J.

Pbn/Gba

A Pre-Delivery Order in
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