

Court No. - 2

Case :- WRIT - A No. - 2000811 of 2009

Petitioner :- Ghanshyam Misra S/O Radha Krishna Misra And Anr.

Respondent :- Union Of India Thru Secy. Railway Board And Others

Counsel for Petitioner :- Praveen Kumar, Subodh Kumar Verma

Counsel for Respondent :- Manik Sinha, Anand Dwivedi, Arvind Kumar, Asit Kumar Chaturvedi, Pratul Kumar Srivastava

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

[C.M. Application No. IA/6/2017 (54297/2017) : Recall Application]

1. Heard learned counsel for the petitioners and Sri Anand Dwivedi, learned counsel for the respondents.

2. Cause shown for recall of the order dated 02.05.2017 is sufficient.

3. Accordingly, the recall application is allowed. The order dated 02.05.2017 is hereby recalled.

[order on writ petition]

4. Parties' counsel have agreed to argue the matter today itself.

5. By means of this petition, the petitioners No.1 and 2, namely, Ghanshyam Misra and Rakesh Kumar Verma, have challenged

the impugned judgment and order dated 02.09.2008 passed by Central Administrative Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as "**Tribunal**") in O.A. No.391/99.

6. The claim of the petitioners-applicants before the Tribunal was for being continued as Voluntary Ticket Collector in view of the decision of Railway Board dated 06.02.1990 by which such Voluntary Ticket Collectors who had worked prior to 17.11.1986 when the said scheme was discontinued, were to be allowed to continue. The Original Application has been dismissed. However, the last paragraph of the Original Application reads as under :

"In the above view of the matter, when in the event either the applicants submit to the respondents the valid proof of their working, which could have been verified by this remotest point of time or give any other collateral evidence, same shall be considered. However, the claim of the applicants at present cannot be established in law. Accordingly, O.A. is found bereft of merit and is dismissed. No costs."

7. Apparently, the last paragraph starts with the observations that in the event, the applicants-petitioners submit valid proof of their working to the respondents which could be verified or gives any other collateral evidence in this regard, the same would be considered but then in the succeeding line it goes on to state that "*.... However, the claim of the applicants at present cannot be established in law. Accordingly, O.A. is found bereft of merit and is dismissed...*". One does not require a roving

enquiry to arrive at a conclusion that the observations are apparently incongruous, in conflict and contradictory.

8. In view of the earlier observations of the Tribunal that the case of the petitioners-applicants would be considered for re-engagement if valid proof of their working is submitted which can be verified, we set aside the subsequent observation regarding dismissal of the Original Application and dispose of the Original Application in terms of the aforesaid observations meaning thereby on an application being submitted by the petitioners-applicants herein along with proof of their working as Voluntary Ticket Collectors prior to 17.11.1986, the same would be considered in light of the decision of the Railway Board dated 06.02.1990 within a period of three months of such submissions.

9. As regards the averments in para 15 and other paragraphs of the counter affidavit regarding some of the petitioners having been found involved in illegal realization of money from passengers on 18.11.2003 by a vigilance team, it is contended by petitioners counsel that the petitioners were never re-engaged after 17.11.1986, therefore, these averments do not relate to them nor did they file any O.A. No.161 of 2004 challenging their disengagement. He has invited our attention to para 5 of the rejoinder affidavit wherein the contents of the counter affidavit have been denied though the paragraph of the

counter affidavit has been incorrectly mentioned as '14' whereas it is '15'. The Original Application in which the impugned judgment has been passed was itself filed in 1999 and if the petitioners had been re-engaged thereafter, they would not have pursued the Original Application nor filed this petition. This aspect would be verified while reconsidering the claim of the petitioners by the respondents.

10. We also take note of the fact that though before the Tribunal there were several applicants in Original Application No.391 of 1999 but before us there are only two petitioners, namely, Ghanshyam Misra and Rakesh Kumar Verma, therefore, this order will be confined only to these two petitioners. The impugned judgment is set aside only to the extent it dismisses the Original Application as being bereft of merit. It is modified as aforesaid. The Original Application is disposed of in the aforesaid terms.

11. The writ petition is **allowed** accordingly.

[Om Prakash Shukla, J.] [Rajan Roy, J.]

Order Date :- 19.9.2024
Shubhankar