

Court No. - 6

Case :- WRIT - C No. - 6604 of 2018

Petitioner :- U.O.I Thru General Manager Northern Railway
New Delhi And Anr

Respondent :- Parvez Alam Auth. Representative Of Workmen
Lucknow And 49 Ors

Counsel for Petitioner :- Neerav Chitravanshi, Chandra
Shekhar Sinha, Kumar Ayush

Counsel for Respondent :- Birendra Narain Shukla, Avanish
Shukla, Mohammad Azhar Siddiqui, Prashant Shukla, Ram
Lagan Mishra, Ram Lagan Misra

Hon'ble Alok Mathur, J.

1. Heard Sri Mohd. Irfan holding brief of Sri Kumar Ayush for the petitioners and Sri Prashant Shukla on behalf of respondent No.s 6, 7, 8, 14, 15, 16, 19, 20, 24, 25, 26, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49 and 50 and Sri Birendra Narain Shukla for respondent No.s 2/1, 3, 4, 6, 8, 9, 10, 11, 13, 14, 17, 18, 21, 22, 23, 26 and 51.

2. Indian Railways has approached this Court being aggrieved by the order dated 14.11.2017 passed by Deputy Chief Labour Commissioner (Central), Kanpur thereby issuing directions for regularization of the private respondents on Group D posts of Parcel Porters.

3. It has been submitted by learned counsel for the petitioner that the work of handling of parcels at respective railway stations all over the country was undertaken by the Parcel Porters who were engaged on contract basis through contractors. The persons claiming themselves to be Parcel Porters had approached Supreme Court seeking a direction that the services be regularized as Parcel Porters considering the fact that they have worked for extremely long length of time and in the aforesaid circumstances Supreme Court decided bunch of writ petition the leading being Writ Petition (Civil) No.433 of 1998 by means of the judgment and order dated 22nd August, 2003. Before Supreme Court the correctness of the judgment and order dated 7.7.2000 passed by High Court of Delhi in Writ petition No.5595 of 1998 was also questioned. Similar issues were raised before Allahabad High Court which were decided in Special Leave Petition No.6560 of 2001 in the case of Radhey Shyam and others Vs. Union of India and others vide judgment and order dated 10.11.2000 where the writ petitions

were dismissed and the order of Central Administrative Tribunal allowing the claim of the private respondents was upheld.

4. Apprehension was expressed on behalf of the Railways that number of Porters is more than 1500 and in case the judgment is passed in favour of the workers then there will be flood of litigation which will also have financial implications for the Indian Railways. The Supreme Court also considered the fact that considering the previous orders passed by Assistant Labour Commissioner Central, Lucknow on 18.1.2000 containing 85 pages where he framed two issues for consideration; one whether the petitioners are working continuously; two whether the job which they perform is of a perennial nature and had recorded that the Railways had not produced any records pertaining to the period of working of Parcel Porters as no records of the petitioners are maintained at the stations or any other railway office. On the other hand, the railways have also contended that they have no knowledge as to which of the petitioners were engaged by the contractors and from what date. It was further noticed that number of contractors did not even respond to the notice. The contractors who appeared before the Labour Commissioner did not also produce any records.

5. Considering the rival submissions the Supreme Court was of the view that fresh directions deserve to be given to the Labour Commissioner to again verify the authenticity and genuineness of the staff engaged by the railways at the stations and the contractors of the workers and verify the authenticity and genuineness of the claim made by the workers with reference to the record that may be produced by the Railways Administration and the contractors and submit a report to the Railways within six months. While deciding the said case following directions were issued:-

"1. The Assistant Labour Commissioner, Lucknow is directed to again scrutinize all the records already placed by the petitioners and also the records to be placed by the respective contractors and the railway administration and discuss and deliberate with all parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for regularization. This exercise shall be done within six month from the date of receipt of this judgment.

2. Subjectd to the outcome of the fresh enquiry and the reprot to be submitted by the Asssistant Labour Commissioner, the Railway ADministration should absor them permanently and regularize their services. The persons to be so appointed being

limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the dates of their absorption, the minimum scale of pay or wages and other service benefits which the regularly appointed railway parcel porters are already getting.

3. The Units of Railway Administration may absorb on permanent basis only such of those Railway Parcel Porters (petitioners in this batch) working in the respective railway stations concerned on contract labour who have not completed the age of superannuation.

4. The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway Parcel Porters who are not found medically fit/unsuitable for such employment.

5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by the Railway Administration of Railway parcel Porters does not disable the Railway Administration from utilizing their services for any other manual work of the Railways depending upon its needs.

6. In the matter of absorption of Railway parcel Porters on contract labour as permanent, and regular Railway parcel Porters, the persons who have worked for longer periods as contract labour shall be preferred to those who have put in shorter period of work.

7. The report to be submitted by the Assistant Labour Commissioner should be made the basis in deciding the period of contract labour work done by them in the railway stations. The report shall be finalized and submitted after discussions and deliberations with the railway administration and the contractors and all the representatives of the writ petitioners or writ petitioners themselves.

9. While absorbing them as regular employees their inter se seniority shall be determined department/ job wise on the basis of their continuous employment.

9. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by the railway administration for its own employees irrespective of any existing contract or agreement between the respondent and the contractors. No claim shall be made by the contractors against the railway administration for premature termination of their contracts in respect of the contract labours.

10. The railway administration shall be at liberty to retrench the workmen so absorbed in accordance with law. This order shall not be pleaded as a bar to such retrenchment.

11. This judgment does not relate to the persons who have already been absorbed."

6. It is in pursuance of the directions of Supreme Court that fresh exercise has been conducted by Deputy Labour Commissioner (Central), Kanpur.

7. From perusal of the aforesaid report/order it is noticed that he had issued notices to the parties on 14.6.2017. He also took note of the fact that according to the version of the Railways the work from Parcel Porters was taken on contract basis till March, 2001 and also that there is a report submitted by parliamentary Committee of the Railways which is known as 9th report where recommendations were made for regularization of the services of Parcel Porters. He has relied upon the report submitted by Assistant Labour Commissioner (Central), Lucknow which was prepared previously and according to him was never cancelled and has been accepted in toto. He has, therefore, proceeded to consider the directions given by Supreme Court and passed an order for their regularization.

8. Learned counsel for the petitioner submits at the outset that it is evident from a bare perusal of the impugned order that Deputy Labour Commissioner (Central), Lucknow has not followed the directions issued by Supreme Court, specially direction No.1 issued by Supreme Court where it was stated that Assistant Labour Commissioner is directed to again verify all the records placed by the petitioners and also the records to be placed by the respective Director, Railway Administration and discuss and deliberate with all parties and accordingly arrive at a conclusion with regard to the genuineness and authenticity of each and every claim for regularization. He submits that from a perusal of the order it is evident that Deputy Labour Commissioner has not conducted the exercise and perused the record nor has he arrived at any conclusion with regard to genuineness and authenticity of the each and every claim. It is stated that unless and until fresh exercise as directed by the Supreme Court was conducted no such direction could have been issued by Deputy Labour Commissioner as has been done by the impugned order.

9. Learned counsel for the respondent also could not produce any list prepared by Deputy Labour Commissioner subsequent to the directions of the Supreme Court dated 22nd August, 2003

or show that any fresh exercise was conducted in pursuance of the judgment of the High Court. After perusing the entire record I am of the considered opinion that Deputy Labour Commissioner, while passing the impugned order has not complied with the direction No.1 issued by Supreme Court in its judgment and order dated 22nd August, 2000 and accordingly the impugned order deserves to be set aside and the matter deserves to be remanded back to Deputy Labour Commissioner to pass fresh order strictly with the directions issued by the Supreme Court in its judgment and order.

10. In light of the above, the writ petition is **allowed** and the impugned orders dated 10/14.11.2017 passed by Deputy Labour Commissioner (Central), Kanpur, as contained in Annexure No.1 to the writ petition, are quashed.

11. Considering that much time has lapsed due to pendency of the present case he is directed to proceed afresh with the case with expedition.

12. The petitioner as well as respondents undertake to cooperate in the proceedings before Deputy Labour Commissioner and in case the parties cooperate he will conclude the proceedings expeditiously, say within a period of three months in case there is no other legal impediment.

13. The writ petition thus stands allowed.

(Alok Mathur, J.)

Order Date :- 28.3.2024
RKM.