NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/INHERENT JURISDICTION

CIVIL APPEAL NO(S). 5027-5029 OF 2012

ABDUL HAMID & ORS. ...APPELLANT(S)

Versus

UNION OF INDIA & ORS. ...RESPONDENT(S)

WITH

CONTEMPT PETITION (C) NO(S). 291-293 OF 2016
IN
CIVIL APPEAL NO(S). 5027-5029 OF 2012

GIRDHAR GOPAL SHARMA ....CONTEMPT PETITIONER(S)

Versus

A.K. MITTAL & ORS. ....CONTEMNOR(S)/RESPONDENT(S)

J U D G M E N T

Deepak Gupta, J.

1. Three original applications being O.A. No. 238 of 2004, O.A. No. 264 of 2004 and O.A. No. 365 of 2004

were filed before the Jodhpur Bench of the Central Administrative Tribunal (for short 'the Tribunal'). There were in all 14 original applicants. The dispute raised in these original applications was that in the Bikaner Division of the Railways, the Divisional Manager, while issuing advertisement for filling up the posts of 'fresh face substitutes' in Group-D in Bikaner Division, had directed that only those candidates who had done their apprenticeship training with the Railways would be eligible for appointment. The contention of the original applicants was that this was violative of the directions given by the Railways and while making similar recruitments in all other parts of the country, though preference was given to those who had done there apprenticeship with the Railways, the selection was not exclusively limited to such candidates and all persons who were otherwise qualified, were entitled to apply for being selected. These original applications were filed before selection was made and after the selection process had been initiated.

2. The stand of the Railways before the Tribunal was that fresh face substitutes are engaged only as a time gap arrangement purely as a temporary measure till regular selection takes place and, therefore, the Railways was well within its jurisdiction to limit the source of recruitment to candidates who had undergone apprenticeship with the Railways. The main issue raised was that since only casual labourers were being engaged, keeping in view the local needs, preference was given to local candidates.

3. Admittedly, the 14 original applicants were course completed act apprentices, i.e. they fulfilled the eligibility criteria. However, their applications were not considered since they had not undergone apprenticeship training under the Railways. The Tribunal found that the Railways had issued instructions from time to time and the term "fresh face substitutes" referred to "engagement of persons in railway establishment against posts falling vacant because of regular employee being absent or otherwise and the post could not be kept vacant".

However, instructions had been issued that these engagements should be made by way of exception purely on temporary basis limited to the posts which cannot be kept vacant until regular posts are filled. The fact, however, remains that thousands of persons were given appointment as fresh face substitutes.

4. The Circular dated 21st June, 2004 provides that fresh face substitutes can be engaged from course completed act apprentices. These instructions do not envisage that the course completed act apprentices should have done their apprenticeship only under the Railways establishments. No rule or instructions of the Railways have been brought on record to show that the Railways had taken a decision to limit the field of choice to those course completed act apprentices who had done their apprenticeship training with the Railway establishments only. It was only in the Bikaner Division that the General Manager issued a memo on 30th August, 2004 that only those candidates would be considered who

had completed the apprenticeship training with the Railways. The Tribunal vide common order dated 24th February, 2005 held that this memo violates Article 14 and 16 of the Constitution of India in so far as it discriminates against those qualified persons who had not done their apprenticeship training with the Railways and denies them the right of equal opportunity of employment. The Tribunal quashed the memo dated 30th August, 2004 and all subsequent actions thereto.

5. The Railways filed writ petitions being Civil Writ Petition Nos.4272-4274 of 2005. These matters were listed on 3rd August, 2005 before the High Court on which date notice was issued and, in the meantime, the order of the Tribunal, dated 24th February, 2005 was stayed.

6. It appears that as a result of the stay, the appellants before us were selected. Some were selected in the year 2005 and some in the year 2006. On 22nd August, 2005

after hearing the parties, the High Court passed the following order:

> "Heard learned counsel for the parties.
>
> The order dated 3.08.2005 passed by this Court is modified to the extent that the selection made by the respondents pursuant to the order of the Tribunal Annexure 1 dated 24.02.2005, but the same shall be subjected to the final decision of the instant petition.
>
> Let the writ petition itself be posted for hearing on 2nd September, 2005."

7. It will be pertinent to mention that thereafter a clarification was sought for and the High Court on 05.01.2006 passed the following order :-

> "It is pointed out by the learned counsel for the petitioners that there is some confusion with respect to order dated 22.8.2005. We make it clear that if any selections are made pursuant to the policy decision, then the same shall be subject to final decision of the instant writ petition.
>
> Let the writ petition be posted for hearing in the 2nd week of February, 2006."

Perusal of the aforesaid order leaves no manner of doubt that the appointment of the appellants herein was subject to the final decision of the writ petitions.

8. It is thus apparent that the appointment of the appellants was subject to the final result of the writ petitions. The writ petitions were finally dismissed on 5th

December, 2007 but the persons appointed were allowed to continue for four months. The Railway administration filed a review petition but the same appears to have been rejected. The Railways accepted the order and judgment of the High Court and did not pursue the matter further. Thereafter, the Railways vide order dated 25.08.2008 discontinued/terminated the services of the fresh face substitutes/appellants. It is only then that the appellants filed the special leave petitions, which they were permitted to do. Leave was granted to file these appeals. Applications for intervention have also been filed by more than 300 other course completed qualified persons who have undergone apprenticeship training under the Railways.

9. The first ground raised on behalf of the appellants is that since the fresh face substitutes/apprentices are appointed temporarily against short term vacancies, the Railways was well within its jurisdiction to limit the field of choice to those candidates who had undergone

apprenticeship training with the Railways. In the alternative, it is submitted by Mr. R. Venkatramni, learned senior counsel appearing for the appellants that the appellants who have been working for more than 10 years, they should now be permitted to continue and, in this regard, he has relied upon a large number of circulars issued from time to time by the railway administration whereby fresh face substitutes have been regularized.

10. It is apparent that there is a policy of the Railways to grant regularization to these fresh face substitutes. We need not refer to all the circulars issued in this behalf, but a perusal of the documents especially those filed as additional documents clearly show that the Railways has a policy of regularizing these fresh face substitutes. This, in our opinion, is a clear indicator that while making appointment of fresh face substitutes, the field of choice should be wide and all citizens who are qualified and eligible should be given a chance to take part in the

selection process. Though these appointments may be termed as short term appointments, the facts placed on record reveal that thousands of fresh face substitutes have been regularized and have become employees of the Railways because of the policy of the Railways. It is, therefore, imperative that while appointing fresh face substitutes, a transparent system of appointment is followed. It would be much better if the Railways follows the regular system of appointment rather than making appointments on *ad hoc* basis of fresh face substitutes. However, as and when exigencies of service require that fresh face substitutes have to be appointed, then also the field of choice cannot be limited only to those who have undergone their apprenticeship training with the Railways since that would patently violate Article 14 and 16 of the Constitution of India depriving those who have not undergone apprenticeship training with the Railways of an equal opportunity for applying for these posts.

11. Reliance has been placed by learned counsel appearing for the Railways trained apprentices on the judgment of this Court passed in the case of ***U.P. State Road Transport Corporation and Another*** v. ***U.P. Parivahan Nigam Shishukhs Berozgar Sangh and Others***,[1]. In Para 12 of the judgement it has been held that all other things being equal, the trained apprentices should be given preference upon direct apprentices. This judgment does not help the appellants at all. What has been held is that if the non-Railway trained apprentice is equal to the Railways trained apprentice on merit, then preference can be given to the Railways trained apprentice. The word "preference" does not mean that the Railways trained apprentice will have an exclusive right to the exclusion of all others to be considered for appointment. Both the Tribunal and the High Court were justified in deciding this issue against the Railways and in favour of the original applicants.

[1] (1995) 2 SCC Page 1

12. As far as the second issue raised by Mr. R. Venkatramni, learned senior counsel is concerned, we may have sympathy with the appellants but we cannot direct that they be continued in service. The courts below held that they have been employed in violation of the general directions issued by the Railways from time to time wherein there is no restriction of limiting the field of choice to Railways trained apprenticeship. It is only in Bikaner Division of the Railways that this limitation was placed.

13. The appellants were well aware that their appointments made when the original applications were pending before the Tribunal or when the writ petitions were pending before the High Court were subject to the result of the litigation. They did not choose to file any application for intervention before the High Court. After the Railways lost in the High Court and did not carry the matter further, they approached this Court. They were granted stay and have been continuing on the basis of the

stay order. They knew that their fate depended upon the result of the litigation. Once their appeal is dismissed they cannot be permitted to be continued in employment only because they have been permitted to continue due to the interim orders.

14. At this stage, we may note that the learned Solicitor General had informed us that fresh regular recruitment for Group-D posts and other posts in Bikaner Division of the Railways is under process. On 24th August, 2017, 14 original applicants were granted age relaxation for a period of 13 years and they were permitted to appear in the selection process wherein their cases would be considered on merit. Mr. R. Venkatramni, learned senior counsel had sought time to take instructions from his clients in this regard. He now submits that his clients, having served for more than 10 years, are not in a position to appear in the test. We are concerned with a large number of appellants and in case the process for selection is still on, we direct the Railways to give

relaxation of age to the appellants by deducting the period of service for which they have worked and they may also be considered at par with the original applicants by allowing them to take part in the selection process. In case the appellants or any of them do not take part in the selection process, they will not be given relaxation of age in any further selection process. As far as the intervenors are concerned, no relief can be granted to them.

15. In view of the above, we do not find any merit in these appeals which are dismissed accordingly.

16. Applications for substitution to bring on record the legal representatives of the deceased Appellant Nos. 46, 50, 74, 94, 156, 167, 254, 289 and 304 and condonation of delay in filing the substitution applications and setting aside abatement are allowed. Applications for impleadment are allowed to the extent that the applicants are permitted to intervene in the matter. All other pending applications stand disposed of.

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17. In view of the fact that the process of selection is stated to have started, the contempt petitions are dismissed.

.....J.
(MADAN B. LOKUR)

.....J.
(DEEPAK GUPTA)

New Delhi
September 20, 2017