

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL/APPELLATE JURISDICTION**

WRIT PETITION (CIVIL) NO. 52 OF 2016

RAM BHAJAN DAS & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

WITH

W.P.(C) No. 155/2017

W.P.(C) No. 167/2016

W.P.(C) No. 282/2012

W.P.(C) No. 910/2016

W.P.(C) No. 497/2012

W.P.(C) No. 53/2017

W.P.(C) No. 113/2018

W.P.(C) No. 745/2017

W.P.(C) No. 794/2017

W.P.(C) No. 781/2017

W.P.(C) No. 773/2017

W.P.(C) No. 754/2017

SLP(C) No. 3293/2018

W.P.(C) No. 986/2017

W.P.(C) No. 969/2017

W.P.(C) No. 1017/2017

W.P.(C) No. 1073/2017

W.P.(C) No. 38/2018

W.P.(C) No. 82/2018
W.P.(C) No. 85/2018
W.P.(C) No. 121/2018
W.P.(C) No. 269/2018
W.P.(C) No. 230/2018
W.P.(C) No. 240/2018
W.P.(C) No. 386/2018
W.P.(C) No. 605/2018
W.P.(C) No. 618/2018
W.P.(C) No. 627/2018
W.P.(C) No. 786/2018
W.P.(C) No. 1190/2018
W.P.(C) No. 1168/2018
W.P.(C) No. 1132/2018
W.P.(C) No. 1294/2018
W.P.(C) No. 1329/2018

J U D G M E N T

KURIAN, J.

Writ Petition (C) No. 794 of 2017

and Writ Petition No. 240 of 2018

1. The petitioners are before this Court seeking appointment in Grade D post in Railways. Their claim is rested on the decision of this Court in All India Railway Parcel & Goods Porters' Union Vs. Union of India and Others, reported in (2003) 11 SCC 590. It

appears that the objection is that the petitioners have not acquired the required educational qualifications in terms of the rules.

2. But taking note of the long service rendered by the petitioners and taking note of the fact that there is a power for relaxation and taking note of the further fact that it is a one-time measure, we are of the view that it is a fit case for invocation of our jurisdiction under Article 142 of the Constitution of India and give a quietus to the entire litigations. Therefore, the writ petitions are disposed of with a direction to the Railways to consider the names of the petitioners in case they are otherwise eligible, ignoring the objection on qualification and pass the required orders within a period of one month from today.

W.P. (C) No. 52/2016, W.P.(C) No. 155/2017, W.P.(C) No. 167/2016, W.P.(C) No. 282/2012, W.P.(C) No. 910/2016, W.P.(C) No. 497/2012, W.P.(C) No. 53/2017, W.P.(C) No. 113/2018, W.P.(C) No. 745/2017, W.P.(C) No. 781/2017, W.P.(C) No. 773/2017, W.P.(C) No. 754/2017, SLP(C) No. 3293/2018, W.P.(C) No. 986/2017, W.P.(C) No. 969/2017, W.P.(C) No. 1017/2017, W.P.(C) No. 1073/2017, W.P.(C) No. 38/2018, W.P.(C) No. 82/2018, W.P.(C) No. 85/2018, W.P.(C) No. 121/2018, W.P.(C) No. 269/2018, W.P.(C) No. 230/2018, W.P.(C)

No. 386/2018, W.P.(C) No. 605/2018, W.P.(C) No. 618/2018, W.P.(C) No. 627/2018, W.P.(C) No. 786/2018, W.P.(C) No. 1190/2018, W.P.(C) No. 1168/2018, W.P.(C) No. 1132/2018, W.P.(C) No. 1294/2018, W.P.(C) No. 1329/2018

1. All impleadment/intervention applications are allowed.

2. In all these petitions, the petitioners/applicants/ interveners have sought for absorption as Grade D employees in the Railways on the ground that they have been working as Parcel and Goods Porters in the Railway Stations.

3. We find that the issue was considered by a Bench of three Judges of this Court, leading to the Judgment dated 22.08.2003 in All India Railway Parcel & Goods Porters' Union Vs. Union of India and Others, reported in (2003) 11 SCC 590. The operative portion of the Judgment reads as follows :-

"34. We have carefully examined the report of the Assistant Labour Commissioner, the findings recorded therein and the counter affidavits, reply affidavits and rejoinder filed by the respective parties. The facts disclosed in the report and the findings recorded in regard to the perennial nature of work cannot be overruled. Though we have heard

at length both the parties, the learned Additional Solicitor General appearing for Railway Administration was not able to point out to us any valid reason as to why the present writ petitions should not be allowed in terms of the order dated 15.04.1991 made by this Court in similar Writ Petition No. 277 of 1988, particularly when in the matter of absorption of contract labour by a public undertaking on a permanent regular basis. We feel, therefore, it is just and appropriate to issue the following directions to the respondent Union of India and Railway Administration Units:

- 1. The Assistant Labour Commissioner, Lucknow is directed to again scrutinize all the records already placed by the petitioners and also the record to be placed by the respective contractors and 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 months from the date of receipt of this judgment.*
- 2. Subject to the outcome of the fresh enquiry and the report to be submitted by the Assistant Labour Commissioner, the Railway Administration should absorb 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 found medically unfit/unsuitable for such employment.

5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by Railway Administration as Railway Parcel Porters does not disable Railway Administration from utilizing their services for any other manual work for 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 railway administration and the contractors and all the representatives of the writ petitioners or writ petitioners themselves.

8. 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 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 labourers.

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."

4. In all these cases, the grievance was that despite the Judgment, the Labour Commissioner concerned has not been verifying the factual position of the petitioners. Pursuant to several orders passed by this Court, we find that the Labour Commissioners have completed their inquiry and submitted the reports before this Court. The Railways have collected copies of the reports filed by the Labour Commissioners.

5. Therefore, we do not find any necessity to retain these petitions before this Court. It is for the Railways to act in terms of the Judgment we have extracted above. If they have any objection other than those covered in the decision extracted above, it will be open to them to communicate such objections to the Labour Commissioners concerned with a copy to the individual porter.

6. In the case of such Railway Parcel and Goods Porters where the Labour Commissioners concerned have given a report for which the Railways have no objection, for all purposes they shall stand appointed with effect from 15.12.2018. We make it clear that if the objection is only on those grounds covered by the decision referred to above, the same shall be ignored.

7. Any other objections, which are not otherwise covered by the decision referred to above, shall be reported to the Labour Commissioners concerned with a copy to the incumbent concerned within 15 days and the Labour Commissioners concerned shall complete the inquiry thereon within six weeks from the date of receipt of the objections. We make it clear that if the objection is only on those grounds which are otherwise covered in the decision referred to above, the Labour Commissioners shall simply ignore those objections.

8. Within the said six weeks of such inquiry, the Labour Commissioners shall forward the report to the competent authority of the Railways and the competent authority shall act on such report within another two weeks.

9. With the above observations and directions, the petitions are disposed of. We also make it clear that since the inquiry was conducted with notice to the Railways, the objections which have already been considered by the Labour Commissioners, no further objection shall be raised on those objections.

10. In the case of those Porters where the inquiry

has not yet been conducted/completed, the same shall be conducted/completed positively within six weeks from the date of production of a copy of this Judgment by the incumbent concerned before the Labour Commissioner concerned and the Railways will act upon those reports subject to the objections which we have referred to in this Judgment, within another two weeks.

.....J.
[KURIAN JOSEPH]

.....J.
[HEMANT GUPTA]

New Delhi;
November 28, 2018.