

RESERVED

AP-10
11

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Original Application No. 937 of 1987

Sheo Raj Singh & Others Applicant

Versus

Union of India and Others.. Respondents.

Hon'ble Mr. T.L. Verma, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

(By Hon'ble Mr. S. Dayal, Member 'A')

This is an application under section 19 of the Administrative Act, 1985, by 15 applicants, seeking as relief, directions to the Headquarters of the Northern Railways as well as the Divisional Railway Manager, Muradabad, to absorb the petitioners against regular posts, to maintain revised seniority list including the names of the petitioners, to give any incidental relief with costs. The applicant also mentions that it is against order no 727-E/EP/cleaners dated 20.05.87 of the Divisional Railway Manager, Moradabad.

2. The applicants have claimed in paragraph 3 (IV) that they have been working intermittently as casual labour from 1977 onwards but have later changed it to March 1980 onwards in paragraph 6 of the application. They also claim to have worked in Kumbh Mela and Ardh Kumbh Mela. They claim that they belong to the Communities included as Scheduled Castes. The Railway administration is said to have issued notice on 08.04.85 to employment exchanges asking for a list of suitable Scheduled Caste candidates to fill up the

A2 ⑪
21

// 2 //

short fall of quota and to have issued a corrigendum dated 23.04.85 stating that the priority of employment exchange candidates for appointment would be lower than that of employees and casual labour of the Railways. As a compliance of this directive of Railway administration, Respondent No. 2 circulated letters dated 17.03.87 and 01.04.87 to send a complete list of casual labourers as contained in the Live Casual Labour Register. As a consequence of this, the petitioners are said to have been called for selection which was subsequently cancelled on complaints. Applicant No. 1 with 19 others made a representation to Respondent No. 2 who by his reply dated 26.02.86 asked them to send their casual labour cards with information about the number of days they worked. The petitioners submitted their casual labour cards but they received a letter from respondent No.2 dated 09.04.86 that their names could not be considered for appointment because they had not worked before 04.10.78. They represented that Loco Foreman was engaging casual labourers ignoring the petitioners. The Respondent No. 2 replied that the Loco Foreman had been instructed to discharge the persons engaged wrongly. The Senior D.M.E issued a letter dated 24.03.86 according sanction to appointment of casual labourers for Kumbh Mela. It is alleged that pick and choose policy was adopted for filling the vacancies which are the subject matter of this application.

3. The Railway Board issued instruction by a letter dated 04.03.87 directing the General Manager to maintain a live casual register. The names of

Cont.....3/-

A7 (12)
B

// 3 //

the applicants who were appointed prior to 01.01.81 ought to have been included in the Live Casual Labour Register and ~~received~~^{the} seniority list but they were ignored. The representation of the applicants dated 20.05.87 was replied on the same day that they had not worked before 04.10.78 and had worked in the Kumbh Mela of 1980, hence their names could not be taken on Live Casual Labour Register. It is alleged in the application that a number of persons (names of ten such persons mentioned in para 33) engaged much after the applicants and having a lesser ^{duration} ~~direction~~ of work were absorbed against clear vacancies.

4. The claim of the applicants is that they should have been absorbed against regular vacancies especially as their juniors have been absorbed and that they should be included in the Live Casual Labour Register .

5. It appears that by letter dated 08.04.85 Respondent No. 2 asked for names of scheduled caste candidates having qualification of 8th standard or higher and age within 33 years for filling up the posts of cleaners, in the pay scale of Rs. 196 to 232. By another letter dated 23.04.85 Respondent No. 2 clarified that in filling up 60 vacancies of cleaners, priority will be given to candidates of the Department of Railways who have worked before and after 01.08.78 and the employment exchange candidates will be considered thereafter subject to vacancies remaining later. Respondent No. 2 informed by a letter dated 01.08.86 that selection

Cont.....4/-

proceedings of cleaners were cancelled by the competent authority by a letter dated 17.03.87. Respondent No. 2 called for a list of casual labourers belonging to S.Cs and S.Ts from the officers of Moradabad Division by 30.03.87. In response to the application of the applicant's, the Respondent No. 2 had clarified that since there was a ban on new recruitment after 04.10.78 and since none of the applicants had worked before 04.10.78, they could not be considered for appointment. It appears that the Sr. D.M.E. Moradabad had by his letter dated 23.04.86 approved the engagement of 270 labourers for one month and another 80 labourers for 25 days in connection with Kumbh Mela. Annexure No. 11 dated 04.03.87 gives instructions for grant of temporary status and preparation of revised seniority list in case of project labour discharged before 01.01.81 for want of work or completion of work and not reengaged thereafter and similar treatment to open line casual labour with the difference that open line casual labour cases will be considered only in the seniority unit of the establishment in which they were initially engaged.

6. The case was argued by the legal representative of the applicants Shri M.A. Siddique and the learned legal representative for the respondents Shri Amit Sthalkar. The learned legal representative for the applicant based his claim upon the fact that the applicants belonged to the Scheduled Castes and had worked as casual labourers in the Railways, that working since 1978 was not necessary for

182
5 (14)

// 5 //

regularisation and inclusion in the list of Live Casual Labour Register, that the candidates should have been regularised subject only to medical fitness. He argued that the persons had not worked for 120 days. He also said that the Union of India cannot refuse temporary status once labour card is issued. He relied on Indrapal Yadav's case.

7. The learned legal representative for the respondents mentioned that paragraphs 8 to 16 of the counter affidavit shows that the applicants had worked for less than 120 days in Kumbh Mela vacancies and he also chose to rely on Indrapal Yadav and Union of India Vs. Basant Lal's case for treatment of broken period within an year. He also drew attention to paragraph 20 and 22 of the counter affidavit to state that those whose names were submitted to respondent No. 2 in response to his letter dated 17.03.87 and selected against 38 regular vacancies had completed a minimum of 3000 days and were working on the C.P.C. scale. He denied the claim made by the applicants that their juniors were regularised and has said that only Shri Gyanendra Kumar had been given appointment on compassionate ground. The learned legal representative for the applicants has mentioned in the rejoinder that casual labourers completing 3000 days could not have existed in view of practice of regularisation after completion of 120 days.

8. The claim of the applicants for absorption against regular vacancies of cleaners is not valid. Before the applicants are considered for ^{regular} employment,

Cont.....6/-

AP 115
6

// 6 //

they will have to be considered for and granted temporary status, they should have worked for 120 days on a continuous basis if they belong to open line category. The applicants have not stated the no. of days of work performed by them. They have only made a vague claim that they were appointed as casual labour and worked in ^{consecutive} ~~consequent~~ years from 1980 to 1986. This has been denied by the respondents in their reply that petitioners at no 1,2,4,5,6 & 7 did not work in 1985, petitioners no. 8,9,10,11,12,13 & 14 only worked for 30 days during Kumbh Mela in 1986 and petitioner No.3 worked for 7 days in 1980 while petitioner no. 15 did not work in 1982 and 1985. The respondents have stated that the applicants worked only against temporary, short duration posts created for melas like Kumbh, Ardh Kumbh or Kartik. It becomes amply clear that the applicants have acquired no right to absorption against regular vacancies.

9. The applicants have claimed that by virtue of their having worked as casual labour before 01.01.81, they are entitled to be included in the revised seniority list and the Live Casual Labour Register. The applicants have claimed that each one of them worked in 1980 in the Kumbh Mela vacancies. The respondents have conceded that some of them had worked in the vacancies prior to 01.01.81 while some others had not worked before 1986 (They claim to have annexed a statement of the period worked along with their reply but no such statement is available in the case papers and on ascertaining from the legal

Cont.....7/-

APB
4

(16)

// 7 //

representatives for the respondent as well as for the applicant, no such statement was even a part of the case papers). The respondents have stated in paragraph 23 of their reply that since the applicants had worked only against Kumbh and Kartik Mela vacancies they could not be absorbed as casual labour. This statement made in paragraph 26, 27 and 28 is discriminatory. The Indian Railway Establishment Manual envisages the broad classification of all casual labour as open line or project. The manual includes the waterman engaged during summer duration as open line. Similarly, the casual labour engaged during melas will also belong to a similar category and should be treated as open line casual labour. Their names, should therefore be considered for inclusion in the Live Casual Labour Register on the same basis as it is done for other open line casual labour.

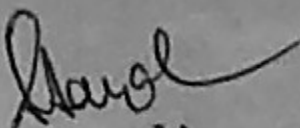
10. In effect, the relief of absorption against regular vacancies is inadmissible in case of the applicants. The denial to include their names in the Live Casual Labour Register on the ground that they have worked as casual labour on vacancies for Kumbh and Kartik melas only is discriminatory and violative of article 14 and 16 of the constitution. The respondents are directed to consider their claim for being included in the Live Casual Labour Register under ^{extant} ~~instent~~ instructions ^{of the Railway Board} for open line casual labour.

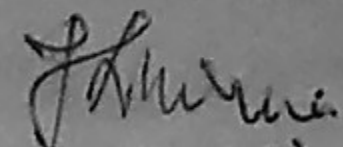
Cont.....8/-

// 3 //

AP 8 (17)

11. There shall be no order as to costs.


(S. Dayal)
Administrative Member


(T.L. Verma)
Judicial Member

Allahabad dated 29 September 1994,
/pc/