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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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T.A. No. 1403 OF 1986
(R.C.A.No. 96 OF 1985)
M.A.No.46 OF 1986 = O.A.No. 197 OF 1986.
in T.A.No. 542 OF 1986.
(R.C.S.No. 4 OF 1980)

DATE OF DECISION 11.8.1987.

THE UNION OF INDIA & ORS. (W.RLY) Petitioner
(Orig. Defendants)

B.R. KYADA Advocate for the Petitioner(s)

Versus

SHRI GORDHAN GOVIND Respondent
(Orig. Plaintiff)

M.K. PAUL. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Union of India, owing &
Representating,
Western Railway,
Through : The General Manager,
Western Railway,
Bombay.
(Advocate : B.R. Kyada)

..... Appellant.
(Orig. Defendant.)

Versus.

Shri Gordhan Govind,
Shunter 'B'
Occu: Railway Service,
C/o. Loco Foreman,
Railway Loco Shed,
HAPA.
(Advocate : M.K. Paul.)

..... Respondent.
(Orig. Plaintiff)

J U D G M E N T

T.A.No. 1403 OF 1986
(R.C.A.No. 96 OF 1985)

M.A.No. 46 OF 1986 = O.A. No. 197 OF 1986.
in T.A.No. 542 OF 1986.

(R.C.S.No. 4 OF 1980)

Date : 11.8.1987.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The Union of India through the General Manager, being aggrieved by the judgment and decree dated 6th April, 1985, passed by the learned Second Jt. Civil Judge (S.D) Jamnagar in Regular Civil Suit No. 4/80, filed Regular Civil Appeal No. 103/85 in the Court of District Judge, Jamnagar to set aside the same. After coming into operation of the Administrative Tribunals Act, 1985, this R.C.A.No. 96/85 stands transferred to this Tribunal for adjudication under section 29 of the said Act.

2. The plaintiff-Respondent Shri Gordhan Govind holding the post of Driver 'B' grade, claims that he is entitled to be promoted as Driver Grade 'C' as many other Gujarati literate junior employee

have been promoted to the said post vide memorandum No. EM/839/S/L/10 dated 17.5.1978. The Defendants-Railway Administration resisted the plaintiff's suit vide their written statement Exh.11 contending inter-alia that as per the rules illiterate candidates are not given promotion to the post of Driver Grade 'C', unless acquired requisite standard by their own efforts. The learned Civil Judge rejected the Defendant's plea that the Defendants have failed to quote any rule or regulation in support of their contentions that the plaintiff is required to pass literacy test. The learned Civil Judge therefore held that the plaintiff is entitled to get promotion on the post of Driver Grade 'C' as prayed for and passed the order in the following terms:-

1. The suit of the plaintiff is hereby decreed with costs.
2. It is hereby declared that the refusal of the promotion to the plaintiff for the post of driver grade-'C' is illegal, unconstitutional, void and against the rules and regulation of the Railway Administration and that the plaintiff is entitled to get promotion on the post of driver grade - 'C'.
3. It is further declared that plaintiff is entitled for promotion to the post of driver grade 'C' in the pay scale of Rs. 330-560 and is also entitled to draw emoluments available to him for this post and to fix his pay in the grade of Rs. 330-560.
4. Decree be drawn accordingly.

3. Mr. B.R. Kyada, the learned counsel for the applicant-appellant, admitted that the plaintiff had passed Driver's promotion training in Gujarati illiterate course at Udaipur, but he had not passed the literacy test as required. According to him, the learned Civil Judge had committed an error in passing the decree in favour of the plaintiff-appellant. The Respondents-original plaintiff Shri Gordhan Govind was heard in person.

4. It is pertinent to note that even though the applicant-appellant had contested the plaintiff's suit on the sole ground that the plaintiff had not come up to requisite standard of promotion as per the rule, however no such rule was even referred or relied upon till the final hearing of the suit before the Trial Court. Even at

this stage no such rule has been produced or relied upon. In this regard the learned Civil Judge while rendering the judgment in R.C.S.No. 4/80, was constrained to observe as under :-

"It is also pertinent to note that so many dates have been granted to the defendants for submitting rules and regulation still however, the defendant has not produced alleged rules and regulation and hence I draw adverse inference against the defendant and hold that there is no such rules and regulation for passing literacy test."

5. It was the case of the plaintiff-Respondents that the Defendants have promoted persons who were junior to him and who were also Gujarati illiterate employee and thereby the Respondents have violated the provisions of Article 16 of the Constitution in refusing promotion to him. The applicant-Defendants failed to produce any evidence to controvert the allegations made in this regard. The plaintiff, Shri Gordhan Govind, stepped in the witness box and in his testimony Exh.31, stated the circumstances leading to discrimination and also relied on the documents produced by him. On the basis thereof the learned Civil Judge was completely justified in holding that the plaintiff had established the case to claim promotion for the post in question. There are no valid grounds whatsoever to interfere with the findings arrived at by the learned Civil Judge in passing decree in favour of the plaintiff.

6. Before parting with it may be stated here that M.A.No.46/86 (Misc. Application No. 21/86) = O.A. No. 197/86) was initially filed on 15.4.1986 before the Tribunal by Shri M.N. Udani, Railway Advocate on behalf of the Union of India, requesting the Tribunal to call for record and proceedings of Civil Appeal No. 96/86. Thereafter R & P of R.C.A. No. 96/86, R & P of R.C.S.No. 4/80 were received by the Tribunal separately from the District Court and the Court of Civil Judge (S.D), Jamnagar and were numbered separately through error, but they are amalgamated later on and they stand disposed of by this order.

7. For the reasons aforementioned, there is no merit in this application and therefore fails. The judgment and decree passed by the learned Second Lt. Civil Judge (S.D) Jamnagar in R.C.S.No. 4/80, are hereby confirmed. The application (R.C.A. No. 96/86) therefore stands dismissed with no order as to costs.

-Sd-

(P.M. JOSHI)
JUDICIAL MEMBER.

-Sd-

(P.H. TRIVEDI)
VICE CHAIRMAN.