

Union of India and Others

Vs

K. V. Baby and Another

Civil Appeals Nos. 3140-3145 of 1995

(Sujata V. Manohar, D. P. Wadhwa JJ)

21.08.1997

ORDER

1. These appeals are filed by the Union of India and Southern Railway against the decision of the Central Administrative Tribunal, Ernakulam Bench, dated 28-10-1993 under which the Tribunal has held that the respondents are entitled to regularisation in accordance with law and has held that they should be treated on a par with regular salaried bearers/waiters of the appellant, applying the principle of "equal pay for equal work".

2. The respondents are Commission Bearers/Vendors appointed on a contract basis by the Southern Railways. They are not paid any salary by the Southern Railways but are given a commission on the business transacted by them. In respect of similar Commission Bearers and Vendors working on the platforms of Central Railway and South Central Railway, this Court, in the case of T. I. Madhavan v. Union of India (1988 Supp SCC 437 : 1988 SCC (L&S) 872) directed that such persons employed on contract basis should be absorbed progressively in the Railway Catering Service on a regular basis, as per paragraph 3 of the memorandum dated 13-12-1976 issued by the Joint Director, Traffic Commercial (C)II, Railway Board, as and when vacancies occur. The Court further directed that until all such persons are absorbed, the Railway Administration shall not recruit or appoint any persons to these posts on a permanent basis from any other source. The Court also directed that vendors and bearers so absorbed in the Railway Catering Service shall be entitled to salary as from the date of their absorption. The position of the respondents in the present case is similar to the vendors and bearers in the above case. It is conceded by learned counsel appearing for the appellants that these respondents are also entitled to absorption as directed by the Supreme Court in the abovementioned case and that, as and when they are absorbed, they will be paid salary from the date of their absorption as regular employees.

3. The respondents, however, contend that pending their absorption they must be paid the same salary as regular employees, as they are doing similar work. They have also contended that the Railways have the same disciplinary control and power over them as over their regular employees. The Tribunal has accepted this contention and granted them the same emoluments as the regular employees. However, persons who are engaged on the basis of individual contracts to work on a commission basis cannot, by the very nature of their engagement, be equated with regular employees doing similar work. Their appointment and mode of selection, their qualifications cannot be compared with regular employees. The Recruitment Rules and service conditions of Southern Railways do not apply to these employees. Since they are not regular employees on the cadre of Railway Catering Service, we fail to see how they can contend that they are subject to the disciplinary jurisdiction of the Railway authorities under the relevant Rules. Their responsibilities cannot be equated with the responsibilities of regular employees. Our attention has been drawn in

this connection to a decision in the case of State of Haryana v. Jasmer Singh ((1996) 11 SCC 77 : 1997 SCC (L&S) 210) (to which one of us was a party), where this Court has, for reasons set out therein, declined to equate daily-rated workers with regular employees for similar reasons. In a subsequent case of State of Haryana v. Surinder Kumar ((1992) 3 SCC 633 : 1997 SCC (L&S) 844) employees who were engaged on a contract basis were not considered as on a par with regular employees for the purposes of their salary and other benefits. In the case of T. I. Madhavan v. Union of India (1988 Supp SCC 437 : 1988 SCC (L&S) 872) also, this Court, although it did not go into this question, directed that the salary of a regular employee can be paid to such employees only from the date of their absorption. In the premises, the appeals are allowed and the impugned judgment of the Tribunal is set aside. However, the respondents are entitled to absorption in the same manner as directed in T. I. Madhavan v. Union of India (1988 Supp SCC 437 : 1988 SCC (L&S) 872) and will be entitled to salary as regular employees from the date of their absorption.