

Union of India and Others

Vs

Southern Railway Employees Cooperative Stores Workmen Union and Others

Civil Appeals Nos. 2492-2493 of 1998

(S. B. Majmudar, M. Jagannadha Rao JJ)

29.04.1998

ORDER

1. Leave granted.
2. By consent of learned counsel for the parties we have heard these appeals finally.
3. These appeals are preferred by the appellant-Union of India & others being aggrieved by the order of the Central Administrative Tribunal, Madras Bench, Madras dated 4-2-1997 passed in Miscellaneous Applications Nos. 65 and 66 of 1997 arising out of Contempt Application No. 8 of 1996 in OA No. 305 of 1988. The original order of the Tribunal was in favour of 172 workers working in different cooperative stores run under the auspices of the Southern Railway by different cooperative societies spread over three States, namely, States of Tamil Nadu, Kerala and Karnataka. Earlier, these employees through their Union raised a dispute against the Railway authorities in OA No. 305 of 1988 which came to be decided by the Central Administrative Tribunal, Madras Bench on 29-6-1990. The order passed by the Tribunal in connection with these 172 workers read as under :

"In the result, the respondents are directed to treat the employees of the Railway Employees Cooperative Stores of the Southern Railway as regular Railway servants and give them the pay scales that are given for regular Railway servants in corresponding posts with effect from 1-7-1990."

4. This order of the Tribunal was carried in appeal before this Court in CA No. 2932 of 1991. A Bench of this Court consisting of Kuldip Singh and B. L. Hansaria, JJ., by order dated 7-9-1994 dismissed the appeal and confirmed the aforesaid order of the Tribunal. The result is that all these 172 listed employees before the Tribunal got covered finally by the order of this Court for being treated as Railway servants. A review petition was also moved against the decision of this Court but the review proceedings have also stood terminated against the appellants. Thereafter, the Railway authorities passed an Office Order dated 26-7-1996 on the basis of the decision of the Tribunal and as confirmed by this Court. That Office Order which was issued by the Chief Personnel Officer, Southern Railway, Madras, recited as follows :

"Since these applicants (employees of the Cooperative Stores) have been working in the Stores before 1-7-1990 and thereafter and since the stores may continue to function even after giving them the status of Railway servants, it is necessary to maintain that they are all working in the Stores since 1-7-1990 on deputation, in terms of para 2337 of IREM."

5. The aforesaid Office Order was resisted in the present proceedings before the Tribunal on behalf of the workers covered by the Tribunal's earlier order who submitted through their Union that this is not valid compliance with the order of the Tribunal, and as confirmed by this Court. As per the earlier order of the Tribunal they cannot be treated to be on deputation with the Stores as they were to be treated as direct employees and not employees on deputation to be paid by the Stores. The Tribunal after hearing the parties in the present proceedings took the view that the aforesaid Office Order was not in complete compliance with the earlier order of the Tribunal and as confirmed by this Court. Consequently, the Tribunal passed the following order :

"In the result,

(i) MA No. 91 and MA No. 92 of 1996 are allowed.

(ii) The respondents shall implement the order of this Tribunal in OA No. 305 of 1988 in respect of the 172 persons shown in the annexure of this order within three months of the date of receipt of a copy of this order.

(iii) This OA will be called in the open court on 2-9-1996 to report compliance."

6. It is this order of the Tribunal which has been brought in challenge before us in the present proceedings by grant of special leave. In our view, the order of the Tribunal as confirmed by this Court is final and binding between the parties to the present litigation. It is true as submitted by learned counsel for the Union of India that in similar matter arising out of the order of the Central Administrative Tribunal, Hyderabad Bench, this Court has taken the view that such workmen cannot be treated as direct employees of the Railways. This decision cannot be of any avail in present proceedings. The appellants cannot attempt to whittle down the effect of the order of the Tribunal in the present proceedings which got confirmed by this Court. On the principle of res judicata it will be binding between the parties especially when the review proceedings have been dismissed by this Court. Consequently, in our view, interest of justice requires that the appellants be directed to absorb the 172 persons for whom the Tribunal's order operated and as listed at page 103 of the paper-book as Annexure I to the very same Office Order dated 26-7-1996 which was passed on the basis of the purported compliance of the order of the Tribunal and as confirmed by this Court. It is, of course, true that though 172 persons are listed but because of repetition of one name, the workers who would be governed by the above direction would be 171 and not 172. When we turn to Annexure I at page 103 we find the name of one M. Sivaji at Sl. No. 119. Learned counsel for the respondent-Union informed us that he is not M. Sivaji but M. Sivaswami, Clerk working under the Southern Railway Employees Cooperative Stores, Mysore. Subject to the verification by the appellant authorities, the name of this employee may be corrected as M. Sivaswami in place of M. Sivaji. We are also informed by learned counsel for the respondent-Union that the employee listed at Serial No. 171 i.e. P. N. Vijayan Pillai, Clerk is working at Railway Employees Cooperative Stores, Ernakulam and not at Dindigul as shown therein. This will also be subject to verification which may be done by the appellant authorities. Accordingly, the appellants will have to be directed to absorb all these 171 listed employees as per Annexure I at page 103, subject to what is stated hereinafter, as direct regular employees of the Railways with effect from 1-7-1990 as ordered by the Tribunal and all monetary benefits available to them flowing from the said order of the Tribunal and as confirmed by this Court, will have to be paid, if not paid earlier.

7. These benefits will be based on computation of financial benefits by treating them as regular employees to be fitted in appropriate pay scales with effect from 1-7-1990 after excluding whatever

payments they might have received from the Stores in the meantime. We make it clear that out of 171 listed employees at Annexure I the employees who have not retired/superannuated by now will be absorbed as regular employees of the Railways. Cases of those employees out of 171 listed at Annexure I at page 103, who might have got superannuated in the meantime after the order of the Tribunal or who might have unfortunately died, will have to be dealt with separately. So far as the employees who are superannuated out of 171 listed employees are concerned, their monetary benefits till superannuation flowing from the Tribunal's order in excess of what is actually paid to them by the Stores after the Tribunal's order will have to be computed and paid to them after requisite verification within twelve weeks from today. So far as the employees out of the listed 171, who have unfortunately expired after the order of the Tribunal are concerned, their legal heirs may be paid over the benefits flowing from the Tribunal's order in their favour and thus whatever excess is payable to them over and above what was actually received by those employees prior to their demise from the Stores, will be made available on due verification of the claims of the claimants concerned. It is also made clear that the surviving employees out of 171 listed at Annexure I who are to be absorbed as regular Railway employees will be absorbed on the corresponding posts on the pay scales as listed at Annexures I and II at pp. 103-111, with full continuity of service. The appellant authorities will pass appropriate posting orders preferably within the same Divisions where they are already earlier working. This exercise also may be completed within the aforesaid period. The appellants will pass appropriate orders posting all these employees and get them served. The employees concerned in the light of the appointment orders shall report for duty accordingly.

8. Before we part with these appeals, we may note one grievance canvassed by learned counsel for the respondent-Union. She submitted that it is true while raising the grievance regarding 171 employees whose list is at Annexure I before the Tribunal, the Union of workmen did not point out that there are other similarly situated workmen working in different Railway Employees Cooperative Stores under Southern Railway. If that is so, those who are left out may pursue their legal remedies in accordance with law. No orders can be passed in their favour in the present proceedings. We may also mention another grievance made by learned counsel for the respondent-Union. She invited our attention to the list at page 103 and pointed out the entry at Sl. No. 30 where one V. Arumugam is shown to be an Accountant. In the meantime, he has been appointed as Secretary drawing higher emoluments and according to her while absorbing him as a railway servant pursuant to the present order, his salary may be protected, and this grievance may be looked into while fitting him in the appropriate pay scale. It is obvious that the aforesaid grievance can legitimately be looked into by the Railway authorities if a representation is made by the employee concerned in that behalf. Such a representation will naturally be considered in accordance with law by the appellant-Railway authorities. The appeals are accordingly disposed of in the aforesaid terms. No costs.