

Indian Airlines Ltd.

Vs

Samaresh Bhowmick and Others

Civil Appeals No. 3165 of 1999 No. 3166 of 1999

(G. T. Nanavati, S. N. Phukan JJ)

14.05.1999

ORDER

1. Leave granted.
2. The appellant, a statutory corporation, after advertisement and selection, prepared a list of selected persons for appointment to the post of Helpers. The select list was valid upto 15th July, 1994. The names of 74 writ petitioners, respondents herein, were included in the select list but they could not be appointed during the period of validity of the select list.
3. Respondents approached the High Court of Calcutta by filing a writ petition and the learned Single Judge inter alia held that the respondents herein had no indefeasible right of being appointed and they had only the right of being considered for appointment in the vacancies for which selection was made contingent upon the appellant filling up those vacancies. However, the learned Single Judge directed that the cases of the respondents should be considered for appointment if any vacancies arose till 30.7.1991.
4. An appeal was laid before the Division Bench and by the impugned judgment and order dated 12.8.1998, the Division Bench inter alia directed that in the present vacancies as well as future vacancies, the candidates who were selected and empanelled shall be regularized first.
5. It may be stated that the appellant proposed a Scheme for regularisation of casual employees working in Calcutta and the present respondents were also given casual employment by the appellant.
6. The said Scheme for regularisation of all casual employees is extracted below :
 - "1. All the casuals irrespective of the fact that names were borne on any panel or not will be treated at par provided they have worked for 90 days as casual during the last three years.
 2. Notification will be issued inviting application from casual employees for the post of Helpers in Commercial, Engineering, Stores, Ground Support, Catering Canteens and Peons.
 3. Age relaxation to the extent of casual employment will be given subject to a maximum age requirement of 40 years for general category, 43 years for OBC and 45 years for SC & ST as on date of the order of the Court.

4. The candidates must fulfill the educational qualification of having passed 8th class from a recognized institution for the post of Helpers in Commercial, Engineering, Stores, Ground Support and Peons.
5. Selections will be made by duly constituted Selection Board as per the Recruitment and Promotion Rules of the Company.
6. Merit lists, category/cadre-wise will be prepared and the selected candidates would be offered employment against the vacancies In order of merit.
7. While making appointments, the directives of the Government with regard to reservations will be adhered to.
8. Those who cannot be appointed due to non-availability of regular vacancies would be given ex-gratia payment calculated on the basis of compensation payable under Section 25-F of the Industrial Disputes Act, 1947. However, they will have no claim for re-employment as casual or otherwise in future.
9. The appointment of the above-mentioned empanelled casual employees, will be subject to their completing all the pre-employment formalities and on being declared medically fit by Medical Officer of the Company.
10. This will be a one time exercise only."

7. The contention on behalf of the appellant is that as the life of the select list has expired long back, the direction of the Division Bench is not relevant now. It has also been urged that merely because the candidates were empanelled, it would not give any right for appointment and at best they may have the right for consideration for appointment. It has been further contended on behalf of the appellant that as the Scheme has been prepared for absorption of casual employees which would also include the present respondents, the judgment of the Division Bench of the High Court is not at all sustainable in view of the above scheme.

8. While trying to support the judgment of the Division Bench, the learned counsel for the respondents urged that the cases of the respondents need sympathetic consideration in as much as they were properly selected.

9. We are of the considered opinion that the impugned judgment of the Division Bench of the High Court is not sustainable inasmuch as High Court could not have overlooked the scheme. However, we are of the opinion that respondents having been selected in the test earlier should be given preference in the matter of their consideration under the Scheme. In the result the appeals are allowed to the extent that the respondents shall be given preference for regularisation of their service consistently with the scheme extracted above.

10. Parties shall bear their own costs.