

Inder Pal Yadav & Others

v.

Union of India & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE RUMA PAL HON'BLE MR. JUSTICE B.N.  
SRIKRISHNA

Writ Petition (Civil) No. 548 Of 2000 With No. 658, 659, S.L.P.(C) No. 4159,  
4160, 14048 Of 2001 | 13-01-2003

1. The writ petitioners before us have been appointment as casual employees in different projects of the Northern Railway in the years 1979 to 1981. Because of uncertainty of their tenure, they filed writ petitions before this Court, during the pendency of which, a scheme was framed by the Railway authorities for granting the petitioners temporary status with a view to permanent absorption. This scheme was approved with certain modifications, which are no relevant for the purpose of this petition, by the decision of this Court reported in 1985 (2) SCC 863. The scheme was implemented and the petitioners were categorised as skilled, semi-skilled and un-skilled. The implementation of the scheme was upheld again by this Court when the petitioners filed a complaint in this regard before this court on 11th August, 1986. The third petition filed by the petitioners or some of them was disposed of by this Court on 30th October, 1986 in which this Court said that the petitioners before being "absorbed askhalasis on temporary status have to submit themselves to medical examination which is usually taken before a person is conferred temporary status". It was also made clear that the Railway administration would given full benefit of actual service of the petitioner for the purpose of counting their seniority and it would be open to the Railway administration to absorb the petitioners on temporary status either as work khalasis or as gang khalasis in the appropriate scale.

2. The fourth order in the field in an order dated 2nd December, 1987 on a separate writ petition, in which the petitioners alleged that although the petitioners had served continuously for a long period of time the Railway administration had neither permitted them seniority nor granted them the same rate of wages as regular employees. This Court by its decision Ram Kumar & Others (reported in 1988 (1) SCC 306) noted that the petitioners had admittedly

been in service for more than 360 days and according to the Railway authorities, they were entitled to temporary status. In the judgment this Court said:

"In the Signal and Telecom Construction Organisation under which the petitioners are working, according to the Railway Administration further privileges of being regularised in permanent service is afforded by giving them access to their regularisations against permanent vacancies which mostly occur in open line. For such purpose, casual labour in open line as well as willing project casual labour are combined for the purpose of screening and forming of panel on the basis of seniority depending upon the days of work put in. In view of the submissions, learned counsel for the respondents has pleaded that the allegation of discrimination does not exist".

3. This Court also noted the provisions of the Railway Establishment Manual, which, inter alia deals with the grant of regular status to a temporary appointee after selection through regular Selection Board for class IV staff. The court accordingly directed that since many of petitioners had been empanelled, the Railway authority was expected to take prompt steps to screen such of the petitioners who were still waiting for the purpose of regularisation of their service.

4. It is not in dispute that subsequent to the orders of this court, the petitioner were regularised as khalasis in ground D in the open line. However, they have been permitted to continue to serve in various projects of the Railway administration. While they were serving in such projects, they have been granted provisional promotion in a particular corresponding scale of pay on the basis of supplementary trade test held in the project itself. However, the order by which such petitioners were granted local provisional or ad hoc promotion made it clear that they would not claim over their seniors in other units. The reason for the filing of these petitions before us by the petitioner is the preparation of lists of surplus staff in the projects. It is the petitioners' case that these surplus lists have been prepared with a view to bring the petitioners back to the open the cadre at the scale of pay applicable to group D employees overlooking that the petitioners had in the meanwhile been promoted to group C and were enjoying much higher scale of pay.

5. From the documents on record, it is clear that the petitioners have been regularised and continue to hold the substantive posts of Khalasi in ground D category in the open line division of the respondents. Their provisional local promotion in the projects cannot be taken as having vested in them a right either to continue in the project or to resist reversion back to the cadre, or to enjoy a higher promotion merely on the basis of locally provisional promotion granted to them in the project in which they had been employed at a particular point of time. No rules have been pointed out to us to justify this claim on the part of the petitioners. Besides it this stand of the petitioner were to be accepted it would operate inequitably as far as the regular employees in the open line department are concerned. Furthermore the order of provisional promotion expressly made it clear that the petitioners were in fact provisionally appointed. Therefore, the writ petitioners cannot seek to make such provisional appointment permanent by filing a writ petition to restrain the respondents from reverting them back to their appointed cadre.

6. However, while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other project, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such re-posting of the petitioners is based on selection.

7. Additionally, while it is open to the Railway administration to utilise the services of the petitioners in the open line, they must for the purpose of determining efficiency and fitness take into account the trade tests which may have been passed by the petitioners as well as the length of service rendered by the petitioners in the several projects subsequent to their regular appointment.

8. Where a trade test is provided under the relevant rules for the purpose of promotion to group C, we make it clear that it will not be necessary for the

petitioners to take the trade tests over-again, if they had already taken any comparable test while they were on duty in the projects. It is stated by the learned counsel appearing on behalf of the Railway authorities that during the pendency of the writ petitions that several of the petitioners had applied for promotion in the open line from Group B to Group C but only some were successful. It is not necessary to go into this question since we proceed on the basis that there was a requirement of passing a qualifying trade test held for the purpose of promotion from Group D to Group C post held in the projects.

9. However, we make it clear that so far as further promotions are concerned that is from Group C to Group B, the observation of this Court will not serve to grant any benefit to the petitioners. It is open to the respondent authorities to proceed in the matter of further promotion in accordance with the rules. We accordingly dispose of these writ petitions and special leave petitions with the aforesaid observations.

10. Interim orders are vacated. There will be no order as to costs.