

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION(C) No.640 OF 2007

HOWRAH PARCEL (EAS.RLY.)L.C.M.PANCH. & ORS. ... Petitioner(s)

Versus

UNION OF INDIA & ORS. ... Respondent(s)

WITH
W.P(C) NO. 239 of 2008
W.P(C) NO. 405 of 2008
W.P(C) NO. 507 of 2008
W.P(C) NO. 114 of 2009

ORDER

1. Of the five writ petitions, which are listed for hearing and final disposal, Mr. Garg, learned advocate appearing for the petitioners in these five matters, submits that he does not wish to press Writ Petition(C)Nos. 507 of 2008 and 114 of 2009. The same are, therefore, dismissed as withdrawn.

2. As far as the remaining three writ petitions are concerned, the only relief which has been sought for in these Writ Petitions is that the directions given by a three-Judge Bench of this Court in

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A.I. Railway Parcel & Goods Porters' Union Vs. Union of India and Others, 2003(11)SCC 590, in paragraph 34 of the judgment have not been implemented as far as the writ petitioners are concerned. Appearing in support of the writ petitions, Mr. Altaf Ahmad, learned senior counsel, submitted that the writ petitioners were licensed Parcel Porters working under the Railways. He drew our attention to paragraph 34 of the judgment, in which the following directions were given:

" 1. The Assistant Labour Commissioner, Lucknow is directed to again scrutinize all the records already placed by the petitioners and also the records to be placed by the respective contractors and Railway Administration and discuss and deliberate with all parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for

regularization. This exercise shall be done within six months from the date of receipt of this judgment.

2. Subject to the outcome of the fresh enquiry and the report to be submitted by the Assistant Labour Commissioner, Railway Administration should absorb them permanently and regularize their services, the persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the dates of their absorption, the minimum scale of pay or wages and other service benefits which the

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regularly appointed railway parcel porters are already getting.

3. The Units of Railway Administration may absorb on permanent basis only such of those Railway Parcel Porters (petitioners in this batch) working in the respective railway stations concerned on contract labour who have not completed the age of superannuation.

4. The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway Parcel Porters who are found medically unfit/unsuitable for such employment.

5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by Railway Administration as Railway Parcel Porters does not disable Railway Administration from utilizing their services for any other manual work for the Railways depending upon its needs.

6. In the matter of absorption of Railway Parcel Porters on contract labour as permanent and regular Railway Parcel Porters, the persons who have worked for longer periods as contract labour shall be preferred to those who have put in shorter periods of work.

7. The report to be submitted by the Assistant Labour Commissioner should be made the basis in deciding the period of contract labour work done by them in the railway stations. The report shall be finalized and submitted after discussions and

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deliberations with Railway Administration and the contractors and all the representatives of the writ petitioners or writ petitioners themselves.

8. While absorbing them as regular employees their inter se seniority shall be determined department/job-wise on the basis of their continuous employment.

9. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by Railway Administration for its own employees irrespective of any existing contract or agreement between the respondent and the contractors. No claim shall be made by the contractors against Railway Administration for premature termination of their contracts in respect of the contract labourers.

10. Railway Administration shall be at liberty to retrench the workmen so absorbed in accordance with law. This order shall not be pleaded as a bar to such retrenchment.

11. This judgment does not relate to the persons who have already been absorbed."

3. He specifically drew our attention to the directions contained in Clauses 3 and 4 which provide that the Units of the Railway Administration may absorb on permanent basis only such Railway Parcel Porters working in the respective railway stations concerned on contract labour who have not completed the age of superannuation. The second stipulation is that the Railway Administration were not required to absorb on permanent basis such of the contract labour, Railway Parcel Porters, who were found to be medically unfit/unsuitable for such employment.

4. According to Mr. Ahmad, despite the said directions, the writ petitioners in these three writ petitions have not been absorbed in terms of the said directions. Mr. Ahmad submitted that the objection taken regarding their absorption appears to be that they had not passed the Class-8 examination and, accordingly, they were not eligible for absorption. Mr. Ahmad submitted that in none of the directions was such condition or stipulation made by this Court and the only two restrictions were the ones indicated hereinabove. He, therefore, submitted that appropriate directions be given to the respondents to abide by the terms of the directions contained in the aforesaid judgment and to absorb the petitioners in these three writ petitions forthwith, irrespective of whether they have passed class-8 or not.

5. Opposing the writ petitions, learned ASG, Mr. Malhotra submits that as a matter of policy, it had been decided by the

respondents that since Parcel Porters were required to read instructions and directions given on the parcels themselves, the Government had thought it fit to make the passing of class-8 examination as an eligibility criteria for absorption. Reference was also made by him to a two-Judge Bench decision of this Court in National Federation of Railway Parcel Porters' Union Vs. Union of India, 2003(11)SCC 604. In the said decision, a direction had been given that some of the Railway Parcel Porters could be absorbed in accordance with the rules then existing. He submitted that according to the rules, a candidate in order to be absorbed while working as Railway Parcel Porter had to pass the class-8 examination. He, accordingly, submitted that the decision taken by the respondents to insist that a candidate must have passed the class-8 examination was fully justified as far as the present writ petitioners are concerned.

6. Having heard learned counsel for the respective parties, we are unable to accept the submissions made on behalf of the respondents by the learned ASG. The judgment referred to by him had been passed on 8th July, 1996, whereas the judgment referred to by the writ petitioners was delivered on 22nd August, 2003.

7. Apart from above, the earlier judgment had been brought to the notice of the Hon'ble Judges in the later case but in spite of the same, the directions, as referred to above, were given in paragraph 34 of the judgment.

8. Apart from the above, it has also been pointed out to us by Mr. Ahmad that in certain cases, that is in the case of absorption of Commission Vendors/Bearers, the Ministry of Railways had completely relaxed educational qualifications and in its place, the eligibility criteria was reduced to ability to read and write only. This had been done by virtue of Circular dated 1st April, 2008, of the Ministry of Railways, regarding appointment of licensed porters to the post of Gangmen, who could only "read and write".

9. We are unable to visualise or appreciate the basis of the decision taken to insist that in order to be absorbed, a Railway

Parcel Porter should have passed the Class-8 examination, inasmuch as, in our view, the ability to read and write is not dependent on whether a person had passed the class-8 examination or not.

10. In that view of the matter, as far as the writ petitioners are concerned, we allow the writ petitions and direct that in terms of the directions given in the case of the A.I. Railway Parcel & Goods

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Porters' Union (supra), the respondents shall take immediate steps to absorb the writ petitioners but taking into consideration only those conditions which have been indicated in paragraph 34 of the judgment. Such exercise should be completed within three months from the date of communication of this order.

11. The writ petitions are disposed of.

12. There will be no orders as to costs.

.....J.
(ALTAMAS KABIR)

.....J.
(B.S. CHAUHAN)

New Delhi,
November 17, 2009.

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ITEM NO.2 COURT NO.4 SECTION X

SUPR EME COUR T OF I ND I A
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO(s). 640 OF 2007

HOWRAH PARCEL(EAS.RLY.)L.C.M.PANCH.&ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for intervention and intervention and office report)
(for final disposal)

WITH

W.P(C) NO. 239 of 2008

(with appln.(s) for ex parte stay and office report)

(for final disposal)

W.P(C) NO. 405 of 2008(with appln.(s) for stay and office report)

W.P(C) NO. 507 of 2008(with office report)(for final disposal)

W.P(C) NO. 114 of 2009

(With appln.(s) for stay and office report)
(for final disposal)

Date: 17/11/2009 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE B.S. CHAUHAN

For Petitioner(s) Mr. Altaf Ahmad, Sr. Adv.
Mr. Dinesh Kumar Garg, Adv.
Mr. Dhanjayan Garg, Adv.
Ms. Ritu Puri, Adv.
Mr. D.K. Gupta, Adv.

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Mr. Vijay Pratap Singh, Adv.

Mr. Vivek Gupta, Adv.

Contd..2/-

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For Respondent(s)

Mr. P.P. Malhotra, ASG.
Mr. C.K. Sharma, Adv.
Mr. Aditya Sharma, Adv.
Mr. Prateek Jalan, Adv.
Mr. A.K. Sharma, Adv.

Mr. P.V. Yogeswaran, Adv.

Mr. Harish Pandey, Adv.
Mr. Mohan Pandey, Adv.

Mr. P.P. Malhotra, ASG.
Mr. Arvind Kumar Sharma, Adv.
Ms. Sushma Suri, Adv.

Mr. Arvind Kumar Sharma, Adv.

UPON hearing counsel the Court made the following

ORDER

Of the five writ petitions, Writ Petition(C)Nos.
507 of 2008 and 114 of 2009 are dismissed as withdrawn
and rest of the writ petitions are disposed of in terms of
the signed order.

There will be no orders as to costs.

(Sheetal Dhingra)
Court Master

(Juginder Kaur)
Court Master

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[Signed order is placed on the file]