

Mahender Kumar and ors. Vs. Union of India and ors.

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Court : Delhi

Decided On : Jul-22-2014

Judge : Rajiv Sahai Endlaw

Appellant : Mahender Kumar and ors.

Respondent : Union of India and ors.

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

22. d July, 2014 % + LPA No.468/2014, CM No.11099/2014 (for direction), CM No.11100/2014 (for condonation of delay), CM No.11101/2014 (for condonation of delay in re-filing) & CM No.11102/2014 (for exemption). ROSHAN LAL & ORS. Through: .. Appellant Mr. K.C. Mittal, Adv. Versus UNION OF INDIA & ORS. Through: .. Respondents Mr. Neeraj Atri with Mr. Himanshu Kaushik and Ms. Sarika Jain, Advs. AND + LPA No.469/2014, CM No.11103/2014 (for direction), CM No.11104/2014 (for exemption), CM No.11105/2014 (for condonation of delay) & CM No.11106/2014 (for condonation of delay in re-filing). MAHENDER KUMAR & ORS. .. Appellants Through: Mr. K.C. Mittal, Adv. Versus UNION OF INDIA & ORS. Through: .. Respondents Mr. Neeraj Atri with Mr. Himanshu Kaushik and Ms. Sarika Jain, Advs. CORAM :HONBLE THE CHIEF JUSTICE HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J1 Both appeals impugn, i) the common order dated 5th November, 2012 of the learned Single Judge of this Court in W.P.(C) No.4566/2001 and in W.P.(C) No.5175/1988 filed

by the appellants respectively; as well as, ii) the order dated 30th January, 2014, again common, of dismissal of Review Petition No.426/2013 and CM No.79/2013 also for review / clarification filed by the appellants respectively.

2. The appeals are accompanied with applications for condonation of 45 days delay in filing thereof and 13 days delay in re-filing thereof. However the said delay has been computed treating the appeals as one against the order dated 30th January, 2014 only when in the prayer paragraph in the appeals, partial setting aside of the order dated 5th November, 2012 has also been sought. The appeals in so far as against the order dated 5th November, 2012 are palpably barred by time and there are no applications for condonation of the said delay in filing the appeals. As far as the order dated 30th January, 2014 is concerned, the same is merely an order of dismissal of applications filed seeking review of the order dated 5th November, 2012. Against a dismissal of a review application, no appeal is maintainable. Thus the appeals in fact are against the order dated 5th November, 2012 only and qua which they are time barred and there are no applications for condonation of delay.

3. Upon our pointing out so, the counsel for the appellants stated that the hearing be adjourned to enable him to file applications for condonation of delay in filing the appeals against the order dated 5th November, 2012.

4. However having gone through the paper books and notwithstanding the aforesaid, not finding any merit in these appeals, rather than adjourning the matter, we heard the counsel for the appellants at length on merits of the appeals.

5. The appellants are commission vendors / heirs of commission vendors of the respondent Railways. The counsel for the appellants has argued:(i) that the rights of the commission vendors, as per the terms of their appointment, were heritable and were transferred from time to time in favour of the heirs; (ii) that the respondent Railways came out with a policy for absorption of the commission vendors in the employment of the Railways; (iii) however the commission vendors were sought to be absorbed in the Group D posts and not in the Group C posts as represented by them; (iv) that a large number of writ petitions came to be filed in this regard including by the appellants and all of which were decided by the

common order dated 5th November, 2012 supra; (v) that though the learned Single Judge in the order dated 5 th November, 2012 upheld the claim of the commission vendors to be absorbed in Group C posts and issued a mandamus to the said effect but rejected the alternative claim made for regularization of the services of the commission vendors; (vi) that the appellants did not prefer any appeal against the aforesaid order; (vii) however others who had also filed writ petitions, preferred appeals and of which LPA No.798/2012 and LPA No.800/2012 were dismissed vide common order dated 18th December, 2012 of the Division Bench of this Court; (viii) that the appellants on coming to know of the order dated 18 th December, 2012 of the Division Bench, filed applications before the learned Single Judge seeking review, a) of that part of the order dated 5th November, 2012 fixing a retirement age of 60 for commission vendors and for a direction that the absorption of the commission vendors in Group C posts as had been directed by the learned Single Judge would be with retrospective effect from 1989 when the offer for Group D posts was made by the respondent Railways and which offer had been found to be illegal in the order date 5th November, 2012; and, b) seeking a direction to the respondent Railways for transfer of vendorship in the name of the legal heirs concerned and to the said extent the learned Single Judge had relied on Secretary, State of Karnataka Vs. Umadevi (2006) 4 SCC1 and, (ix) that the learned Single Judge however dismissed the review applications.

6. The learned Single Judge has dismissed the review applications holding that not only LPA No.798/2012 & LPA No.800/2012 supra but LPA No.452/2013 and LPA No.306/2013 also preferred against the order dated 5 th November, 2012 had been dismissed by different Division Benches vide orders dated 12th August, 2013 and 19th September, 2013 respectively. The learned Single Judge held that the judgment dated 5th November, 2012 having been so affirmed in appeal, the review petitions / clarification applications were bereft of any merit and thus dismissed the same.

7. The counsel for the appellants was however unable to produce copies of the orders dated 12th August, 2013 and 19th September, 2013 of the Division Benches though handed over copy of the order dated 18th December, 2012 supra.

8. We do not find any flaw in the reasoning aforesaid of the learned Single Judge while dismissing the review applications / clarification applications.
9. The appellants in these appeals invite us to hold and declare, i) that the judgment in the case of Umadevi has no application to the facts of the case; ii) that the commission vendors cannot be retired at the age of 60 years and that their legal heirs / dependents are entitled for transfer of vendorship, in the event of death to their heirs or even during the lifetime to their dependents; and, iii) that the absorption of the commission vendors in Group C posts would be with retrospective effect from 1989.
10. However we did not find any averment in the memorandum of appeals to the effect that any of the appellants had applied to the respondent Railways within the time prescribed therefor under the scheme brought about by the respondent Railways for absorption of the commission vendors, whether in Group D or in Group C posts. We thus enquired from the counsel for the appellants whether any of the appellants had so applied. On the contrary, the order dated 5th November, 2012 records that in response to the scheme, only three persons had applied.
11. The counsel for the appellants replied in the negative. He however contended that the appellants did not apply at the relevant time in the year 1989 because they were being offered Group D instead of Group C posts.
12. Even if the said stand of the appellants were to be accepted, we further enquired from the counsel whether any of the appellants had after the order 5th November, 2012 exercised the option for absorption in Group C posts and had been so refused.
13. The answer was again in the negative.
14. We thus enquired from the counsel for the appellants that if none of the appellants had so applied for absorption, what was their locus to seek the relief claimed in the appeals for retrospective absorption from the year 1989.
15. The counsel for the appellants gave up the said relief and argued only on the aspect of the rights of the commission vendors being heritable and transferable as

claimed. However no document making such rights as commission vendors heritable and transferable was shown.

16. As far as the aforesaid aspect is concerned, the Division Bench of this Court, of which one of us (R.S.Endlaw, J.) was a member, in order dated 18th December, 2012 has recorded that the appellants in that appeal also were unable to show any right for continuing as a commission vendors for their life time and / or till they become infirm and further claim that upon their infirmity or death their heirs should be allowed to continue as commission vendors for their life time. Accordingly the said relief claimed in those LPAs also was declined.

17. We see no reason to take any different view.

18. There is no merit in the appeals which are dismissed. RAJIV SAHAI ENDLAW,
J CHIEF JUSTICE JULY22 2014 pp

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