

**Ram Chandra Chanda and Anr Vs. Union of India Through the General Manager South Eastern Railway and Ors**

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**Court :** Jharkhand

**Decided On :** Oct-13-2015

**Appellant :** Ram Chandra Chanda and Anr

**Respondent :** Union of India Through the General Manager South Eastern Railway and Ors

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 4881 of 2015 1. Ram Chandra Chanda, son of late P.C. Chanda, R/o Railway Qtr. No. G-28/1, Near Itwari Bazar, CKP, District-West Singhbhum (Jharkhand).

2. V. Rama Krishna, son of Late V.A.N. Swamy, Railway Qtr. No. H-2/6, near Mahila Samity, Chakradharpur, District-West Singhbhum (Jharkhand). Applicants/Petitioners Versus 1. Union of India through the General Manager, South Eastern Railway, Garden Reach, Kolkata-43 2. Chief Personnel Officer (RP), Sough Eastern Railway, Garden Reach, Kolkata-43 3. Senior Divisional Engineer (Co-ordination), S.E. Railway, CKP Division, West Singhbhum (Jharkhand).

4. Assistant Engineer, S.E. Railway, CKP Division, West Singhbhum (Jharkhand).

5. Permanent Way Inspector, S.E. Railway, Dumerta 6. Divisional Railway Manager, S.E. Railway, CKP Division, District-West Singhbhum (Jharkhand). ... .. Respondents/Respondents ----- CORAM: HON'BLE MR. JUSTICE D.N. PATEL HON'BLE MR. JUSTICE RATNAKER BHENGRA ----- For the Petitioners: M/s M.M.Pal, Sr. Advocate Mohua Palit, Advocate Ruby Pandey, Advocate For the Respondents: M/s Mahesh Tewari, S.C. Bhaskar Trivedi, Advocate ----- th 03/Dated 13 October, 2015 Per D.N.Patel,J.

1. This writ petition has been preferred challenging the order dated 25th October, 2013 delivered by the Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi (Hereinafter to be referred to as the 'CAT') in O.A. No. 106 of 2011(R). The Original Application preferred by these petitioners before the CAT challenging the termination of the services of the petitioners was dismissed by the CAT and hence, these applicants before CAT has preferred this writ petition. Submissions made on behalf of the petitioners 2. Counsel for the petitioners submitted that these petitioners were initially appointed as Casual Labour for four days and thereafter, regular appointment was given to these petitioners vide order dated 8th February, 1990 as Fresh Faces. This order of appointment is at Annexure 2 series -2- to the memo of the writ petition. Thereafter, there was termination of the services of these petitioners vide order dated 10th April, 1990. The said termination order is at Annexure 3 to the memo of this writ petition. This termination order was passed without holding any enquiry or without giving any notice. Appointments of these petitioners were made against General Manager Quota. Thereafter, O.A. No. 649 of 1991 was preferred before the Central Administrative Tribunal, Kolkata and direction was given by the Central Administrative Tribunal, Kolkata in the said original application to decide the representation of these petitioners. The same being not decided, again O.A. No. 17 of 1998 was preferred and said O.A. was decided vide order dated 22nd March, 2007 in which a direction was given to the respondents to decide the representation of the these petitioners and Senior Divisional Engineer (Coordination), Chakradharpur vide Order dated 8th November, 2007, rejected the representation of these petitioners. Thereafter, these petitioners again filed O.A. No. 106/2011 (R ) before the CAT and the CAT dismissed the O.A. preferred by these petitioners bearing O.A. No.106/2011(R) vide order dated 25th October,

2013 mainly on the ground of delay without appreciating the fact that there were a number of correspondences exchanged between the parties to this litigation even after rejection of the representation dated 8th November, 2007. Moreover, there was no need of any experience certificate for the appointment of these petitioners as Fresh Faces, who were wrongly terminated on 10th April, 1990. No fabricated certificate was required by these petitioners at all. This aspect of the matter has not been appreciated by the CAT and therefore, order delivered by the CAT in O.A. No. 106 of 2011(R), dated 25th October, 2013 deserves to be quashed and set aside. Submissions made on behalf of the Respondents 3. Counsel for the respondents submitted that no error has been committed by the CAT in dismissing O.A. No.106 of 2011(R ) because there was gross delay on the part of the petitioners which has not been explained at all. The representation was decided on 8th November, 2007, whereas O.A. No. 106 of 2011 ( R ) was preferred after four years. The termination order, which was passed by the respondents on 10th April, 1990, cannot be adjudicated in 2013 in O.A. No. 106 of 2011(R ) and no order can be passed for re-engagement after a lapse of 23 years. Even otherwise, on merit also, a false and fabricated certificate of experience -3- was presented by these petitioners and therefore, their services were terminated on 10th April, 1990 after their appointment on 8th February, 1990, i.e. just within a period of two months. Moreover, no advertisement was published for the post in question. Hence, no error has been committed by the CAT in deciding O.A. No.106 of 2011(R) vide Order dated 25th October, 2013. Even this writ petition has been preferred after two years of dismissal of O.A. No. 106 of 2011 ( R ). REASONS :

4. Having heard counsel for both sides and looking to the facts and circumstances of the case, we see no ground to entertain this writ petition mainly for the following facts and reasons:- (I) Petitioners were initially appointed as Casual Labour for four days as submitted by learned counsel for the petitioners and thereafter, they were appointed on regular basis vide order dated 8th February, 1990 (Annexure 2 Series to the memo of the writ petition). It appears that their services were immediately terminated, within two months, vide order dated 10th April, 1990 (Annexure 3 to the memo of the writ petition) mainly for the reason that the experience certificates presented by these petitioners were false and fabricated. It further appears from the facts of the case that after termination of services on 10th

April, 1990, they have preferred O.A. No. 649 of 1991 in which no relief was granted by the Central Administrative Tribunal, Kolkata vide order dated 12th July, 1994 and the only direction given was to decide the representation. Again O.A. NO. 17 of 1998 was preferred by these petitioners and again no relief was granted, as prayed for, by the Central Administrative Tribunal vide order dated 22nd March, 2007. This O.A. was disposed of with a direction to decide the representation. Thus, O.A. was preferred earlier twice with no relief, as prayed for, given by the CAT on two different occasions. Now the representation preferred by these petitioners was decided vide order dated 8th November, 2007 by Senior Divisional Engineer (Coordination), Chakaradharpur and representation preferred by these petitioners was rejected and termination order dated 10th April, 1991 was held as a valid one because there was false and fabricated documents preferred by these petitioners. Thereafter, O.A. No. 106 of 2011(R) was instituted by these petitioners before the CAT. In this O.A. also no -4- relief was granted, as prayed for by the petitioners, and the O.A. was dismissed on 25th October, 2013 against which present writ petition has been preferred. (II) It appears that these petitioners were appointed on 8th February, 1990 as Fresh Faces as stated in Appointment Letter (Annexure 2 series to the writ petition) in which it has been argued out that these petitioners were appointed against the General Manager's Quota. We deprecate this practice of appointment adopted by the Railway Authorities against General Manager's Quota without public advertisement. Public Advertisement for a public post is sine qua non for appointment of any candidate in due compliance of Article 14 to be read with Article 16 of the Constitution of India and respondent authorities should not have made appointments in violation of the provisions of the aforesaid Articles. In the facts of the present case, there was no public advertisement and these petitioners were appointed against the General Manager's quota, as submitted by the counsel for the petitioners. This is in clear violation of the Article 14 and 16 of the Constitution of India and hence their appointment is bad in law. Further it appears from the facts of the case that immediately after the appointment of these petitioners on 8th February, 1990, respondents, on verification of the documents, were of the opinion that the experience certificates given by these petitioners were false and fabricated and therefore, on 10th April, 1990 their services were terminated (Annexure 3 to the

memo of the writ petition). There is no illegality committed by these respondents because fraud vitiates the whole proceeding. (III) It has been held by Hon'ble the Supreme Court in the case of STATE OF BIHAR AND OTHERS vs. CHANDRESHWAR PATHAK reported in (2014) 13 SCC232 in para no.s 11, 12 and 13 as under:

10. The order of appointment, in the present case, is as follows: In the light of the order passed by the Inspector General of Police, Criminal Investigation Department, Bihar, Patna, vide his Letter No. 6/86 F3 Shri Chandeshwar Pathak, s/o Shri Devnarayam Pathak of Village Haraji, PO Haraji, PS Dimbara, District Chhapra was appointed as Constable temporarily from 14-1-1988 afternoon on the condition that his previous character found satisfactory and -5- as and when necessary, his service shall be terminated without assigning any reason or show cause. His pay scale shall be Rs 425-10,565 EB-10-605 with the basic pay of Rs 425. He has been allotted CT No. 390. It is clear from the above order that the appointment has been given only on the asking of the Inspector General of Police. There is nothing to show that any advertisement was issued giving opportunity to all eligible candidates to compete or any selection process was undertaken before appointment of the respondent.

11. In State of Orissa v. Mamata Mohanty, it was observed as under: (SCC pp. 451-52, paras 35-36) Appointment/employment without advertisement 35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide Delhi

Development Horticulture Employees Union v. Delhi Admn., State of Haryana v. Piara Singh, Excise Supt. v. K.B.N. Visweshwara Rao, Arun Tewari v. Zila Mansavi Shikshak Sangh, Binod Kumar Gupta v. Ram Ashray Mahoto, National Fertilizers Ltd. v. Somvir Singh, Deptt. of Telecommunications v. Keshab Deb, State of Bihar v. Upendra Narayan Singh and State of M.P. v. Mohd. Abraham.) 36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.

12. No contrary view of this Court has been cited on behalf of the respondent. Moreover, another Division Bench of the same High Court has upheld termination in similar matter as noted earlier against which SLP has been dismissed by this Court as mentioned earlier.

13. Accordingly, it has to be held that in the absence of any advertisement or selection process, the appointment of the respondent is not protected and could be validly terminated. The learned Single Judge -6- was justified in dismissing the writ petition while the Division Bench erred in interfering with the same. (Emphasis supplied) Thus, without a public advertisement if anybody is appointed on a public post, such type of illegal appointment shall be terminated forthwith. Public advertisement is indispensable even in case of any quota for appointment of handicaps or sports-persons, because out of several such handicaps or sport-persons, because out of several such handicaps or sports-persons, as the case may be, few are to be selected. For scrutinizing few from several candidates and to rule out nepotism and favouritism, public advertisement is a must. A definite

procedure is to be followed, either in the form of written test or oral interview or both, but, in no circumstances, on the pretext of appointment against General Manager's quota public posts can be given to anybody without public advertisement and if such an appointment is made, it will be known as back door entry. This type of back door appointees should go out by the same entry. (IV) These petitioners have preferred O.A. No. 649 of 1991 and no relief was granted and said O.A. was disposed of by the CAT vide order dated 12th July, 1994 giving direction to decide the representation. Similarly, again another O.A. was preferred by these petitioners bearing O.A. No. 17/98. No relief, as prayed for in the memo of this O.A., was granted to these petitioners and was dismissed on 22th March, 2007 giving direction to the respondents to decide the representation. The representation preferred by these petitioners was dismissed vide order dated 8th November, 2007 by Senior Divisional Engineer (Coordination, Chakradharpur and again O.A. No. 106 of 2006 (R ) was preferred after four long years and after 21 long years from the very date of termination. This is the only delay caused by these petitioners and even after dismissal of the O.A. No.106 of 2006 (R ) dated 25th October, 2013 this writ petition has been preferred after two long years. This lapse of time is an unexplained delay on the part of the petitioners and that too a very very long one. No error has been committed, therefore, by the CAT in dismissing O.A. No.25th October, 2013 vide order dated 25th October, 2013 on the ground of unexplained delay. -7- (V) Even otherwise also, as stated herein above, false and fabricated documents were presented and therefore, their services were terminated after 2 months of the appointment. Termination was in the month of April, 1990. Moreover, on the pretext of appointment against General Manager's quota (as submitted by the counsel for the petitioner), petitioners were appointed in violation of Article 14 and 16 of the Constitution of India, i.e. they were appointed without any public advertisement.

5. As a cumulative effect of aforesaid facts, reasons and judicial pronouncements, we see no reason to entertain this writ petition as there is no substance in it.

6. This writ petition is, accordingly, dismissed. (D.N.Patel, J.) (Ratnaker Bhengra, J.) s.m.