

Bhagat Singh and Others Vs. Indian Airlines and Another

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Court : Delhi

Decided On : Oct-05-1999

Reported in : 2000IAD(Delhi)268; 82(1999)DLT697; 1999(51)DRJ729

Judge : M.K. Sharma, J.

Acts : Contempts of Courts Act

Appeal No. : C.C.P.Nos. 329, 330, 331, 332, 344, 346, 347, 374, 375, 376, 377, 378, 379, 380, 383, 384 & 417/

Appellant : Bhagat Singh and Others; Raman Kanajia and Others

Respondent : Indian Airlines and Another;shri P.C. Sen and Another

Advocate for Def. : Mr. Arun Jaitley, ; Ms. Ratna Dhingra and ; Ms. Anita Abrah

Advocate for Pet/Ap. : Ms. Shyamla Pappu,; Mr. M. Krishnamurthi and; Mr. S.M. Trip

Judgement :

ORDER

Dr. M.K. Sharma, J.

1. By this common judgment and order I propose to dispose of all the aforesaid petitions as common issues are involved in all these petitions and similar grounds

were urged before me.

2. In these petitions the petitioners have contended that the respondents have not complied with and /or blatantly violated and disobeyed the directions issued by this court in the judgment and order passed by this court on 9.5.1997 in various writ petitions including civil Writ Petition No. 413/1994. Number of petitioners filed writ petitions in this court contending inter alias that the petitioners had been repeatedly approaching the respondents for their appointment in view of their empanelment in the select panel for appointment to various posts under the respondents. According to them all the petitioners were selected pursuant to the advertisement made by the respondents and they were empanelled, which panel was approved by the Competent Authority on 20.11.1990. It was also contended that although they had been approaching the respondents to give them appointment in terms of their empanelment and not to make any appointment outside the select panel, they were not appointed even on casual basis.

3. This court heard all the writ petitions and by order dated 9.5.1997 held the action of the respondents to be arbitrary in the matter of preparation of panel of casuals and directed the respondents to engage on casual basis for its requirement either for the purpose of ad hoc appointment or on casual basis firstly the persons according to the merit from out of the select panel prepared and approved on 20.11.1990. It was also directed that taking select panel as prepared and approved on 20.11.1990 as the base the respondents would offer employment on ad hoc/casual basis to the petitioners according to their merit in the select panel and the respondents would continue to engage them till posts are filled up on regular basis. In order to appreciate the directions of this court the operative portion of the judgment is extracted below : -

'In view of the above while holding the respondents' action to be arbitrary in the matter of preparation of the panel of casuals in the category of Helper (Engg.), Helper (Comml.), Helper (MT), Helper (Stores), Drivers, Helper (Canteen), Helper (Catering), Safaiwalas, Peon etc. respondents are directed to (I) engage, on casual basis for its requirement either for the purposes of ad hoc employment or on casual basis firstly the persons according to the merit from out of the select

panel prepared and approved on 20.11.1990. Only when after due intimation the persons will decline to work on casual basis that the respondents will be entitled to engage persons from outside the panel. So long such of the persons, whose names appear in the select panel, are prepared to work on casual basis, till appointments are made on regular basis, respondents will not discontinue them. Persons, whose names appear in the select panel if deployed on casual basis or ad hoc basis will be replaced only by regular employees employed on regular basis and not by any other casual worker. Taking the select panel as the base the respondents now will offer employment on ad hoc/casual basis to the petitioners, according to their merit in the select panel. All such petitioners whose names appear in the select panel and are interested to work on casual basis or on ad hoc basis will report to the respondents within a period of fifteen days from today. The respondents will continue to engage them till posts are filled on regular basis. With these directions, writ petitions stand disposed of. '

4. The petitioners filed the present petitions contending inter alia that the respondents have blatantly violated the aforesaid directions by not giving them appointment in spite of the fact that they had complied with all the directions by reporting to the respondents. The respondents however, contested the aforesaid allegations of the petitioners contending inter alia that in compliance of the directions in the aforesaid judgment the respondents duly informed the casuals and invited applications from all those whose names appear on the select panel for preparing a seniority list for the purpose of engaging casuals of daily rated basis in the respondents. It is also stated that the respondents are engaging casuals on daily rated basis strictly from amongst those whose names appear on the select panel according to their seniority position in the panel. It is also stated that as soon as the turn of the petitioners mature the petitioners would be duly considered for such appointments.

5. Mrs. Shyamla Pappu, appearing for the petitioners submitted that from the nature of the directions issued by this court it is established that the said directions were applicable only in respect of the petitioners who approached this court by the aforesaid writ petitions and therefore, while giving appointments in accordance with the seniority position in the merit list only the writ petitioners cases are to be

considered and not of the other persons who although were empanelled did not approach this court by writ petitions. She also submitted that the respondents have been engaging contractors and taking services from persons through the contractors for their requirement without exhausting the select panel in violation of the orders passed by this court. In support of the aforesaid contention the petitioners referred to the agreement entered into by the respondents with M/s. Neha International. She submitted that engagement of persons from private agencies and not engaging the petitioners is in blatant violation of the orders passed by this court. She has also drawn my attention to individual instances as mentioned by the petitioners in their additional affidavit. She has submitted that Shri Bala Datt and Shri Manoj Kumar were engaged on daily wage basis although they were not empanelled in the panel of 1990. She has also stated that Shri M. Raju was appointed on permanent basis as MT Helper. Similar other instances which are mentioned in the aforesaid affidavit were also brought to my notice.

6. Mr. Jaitley, on the other hand appearing for the respondents submitted that the interpretation sought to be given by the counsel for the petitioners to the directions given in the said judgment of this court is erroneous for the judgment was applicable not only to the petitioners but to all those whose names were empanelled in the select panel prepared and approved on 20.11.1990, and therefore, even though the persons who were empanelled did not approach this court by writ petition their cases cannot be overlooked. He also submitted that the respondents have awarded contracts to private contractors for providing labour on casual basis prior to the aforesaid orders passed by this court and therefore, the directions are not applicable to private contracts for providing labour on casual basis, which is taken for handling facilities to a number of foreign Airlines. He also submitted that the aforesaid contracts were awarded for supply of utility hands for loading and unloading jobs only at Indira Gandhi International Airport as the manpower required for loading/unloading for foreign airlines fluctuates from day to day and they were entered into much prior to the litigation in question. He also submitted that the aforesaid contracts were valid for 3 years and the term has expired but the persons employed by the said contractors have filed writ petitions in this Court and in this connection he has referred to the writ petition filed by the persons employed by M/s. Neha International which was registered as C.W.P.

3330/1999, in which this court has granted injunction restraining the respondents from disengaging the said persons. He also submitted that the individual instances referred to by the petitioners have no relevance at all with the allegations made.

7. In the light of the aforesaid submissions and the records placed before me, let me consider whether the actions of the respondents could in any manner be said to be in violation and/or disobedience of the orders of this Court. The interpretation sought to be given by the petitioners that the directions issued by this court on 9.5.1997 are applicable only in respect of the writ petitioners and not to others who were empanelled in the panel prepared and approved on 20.11.1990 when read in the context of the operative portion of the order passed by this court is found to be fallacious. The Division Bench of this court specifically directed the respondents to engage on casual basis for its requirement either for the purpose of ad hoc employment or on casual basis firstly the persons according to the merit from out of the select panel prepared and approved on 20.11.1990. The aforesaid directions, therefore, relate to all the persons included in the select panel and not to the writ petitioners alone. The aforesaid intention also becomes apparent and clear when the subsequent part of the order is read, wherein it was said that the respondent would offer employment on ad hoc/casual basis to the petitioners according to their merit in the select panel. It thus gave a direction to the respondents to adhere to the merit position in the select panel and to offer employment on ad hoc/casual basis to all the persons therein including the petitioners. In the light of the aforesaid direction the respondents have taken steps to appoint all those who were empanelled on the basis of their seniority positions. They have also stated in their reply that while giving appointment they are strictly following the seniority position in the panel. In that view of the matter it cannot be said that the respondents have in any manner violated and/or disobeyed the orders of this court by offering employment to all the persons empanelled in accordance with their merit position in the said panel.

8. With regard to the next contention of the learned counsel appearing for the petitioners that the respondents instead of employing the petitioners in compliance to order dated 9.5.1997 are employing casual labour through contractors and private agencies, the petitioners have placed on record the agreement of the

respondents entered into with one of such private contractors namely with M/s. Neha Interantional. A bare perusal of the said agreement would indicate that the said agreement was entered into on 12.2.1996 i.e. prior to the date of the aforesaid orders passed by this court. The said agreement was valid for a period of 3 years i.e. 12.2.1999. The respondents have also referred to other such contracts which also appear to have been entered into prior to the date of the judgment passed by this court. It was also brought to my notice that the persons employed through private contractors for loading/unloading jobs only at Indira Gandhi International Airport in order to facilitate the number of foreign airlines have filed a petition in this court which is registered as C.W.P. No. 3330/1999. On perusal of the records of the said case I find that this court has passed an interim order in favor of the said employees restraining the respondents from dis-engaging them from their present engagement.

The aforesaid contracts for supply of utility hands for loading/unloading jobs only at IGI Airport are stated to be meant only for coping with the handling facilities in respect of foreign airlines and their requirement fluctuates from day to day. It is also stated that such jobs are not perennial in nature and could be only for a few hours in a particular day. As the aforesaid contracts engaging private contractors were entered into by the respondents prior to the order passed by this court it cannot be said that the respondents in any manner flouted the orders of this court by engaging such persons through the contractors in terms of the aforesaid contracts.

9. The petitioners have referred to certain instances alleging engagement of persons from outside the aforesaid panel. According to the counsel appearing for the petitioners the Alliance Air is a sister concern of Indian Airlines and therefore, the directions issued by this court were equally applicable to the said Alliance Air also and the petitioners are also entitled to be appointed in the vacancies in the said Airlines also. It is an established fact that Alliance Air is a separate legal entity and engagement of persons by the said airlines cannot be said to be relatable to the orders passed by the Division Bench of this court in respect of Indian Airlines. In that view of the matter, any engagement made by Alliance Air to their Airlines for the purpose of coping up with their handling jobs cannot be said to be in

violation and/or disobedience of the orders passed by this court.

10. Reference was also made to the appointment of Shri M. Raju, who was appointed on permanent basis as MT Helper. Shri Raju was appointed as a regular employee of the respondents in the course of special drive to fill up backlog of Scheduled Caste regular vacancies and his appointment was prior to the aforesaid judgment of this court. In respect of other individual cases cited by the petitioners, the respondents have shown by filing a counter affidavit thereto that none of the said instances could be said to be appointments in violation of the orders of this court. The respondents have categorically stated that they have been engaging casuals strictly in accordance with the orders passed by this court and that no juniors in the select panel nor any outsider has been appointed by violating and/or willful disobedience of the orders of this court.

11. Considering the facts as stated above and the documents placed on record, I am satisfied that the respondents have in no manner committed contempt of this court. No violation and/or disobedience of the order passed by this court has been established by the petitioners. The petitions have no merit and are dismissed accordingly.

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