

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1382 OF 2019

[Arising out of S.L.P.(C)No.22212 of 2018]

Union of India & Ors.

... Appellants

Versus

Md. Samim Azad

... Respondent

J U D G M E N T

R. Subhash Reddy, J.

1. Leave granted.

2. This civil appeal is filed by the Union of India through the General Manager, Eastern Railway and others, aggrieved by the order of the Division Bench of Calcutta High Court passed on 31st August 2017 in F.M.A. No.878 of 2017.

3. The dispute relates to appointment of a halt contractor at the railway station. On instructions, we were informed by the learned Additional Solicitor General that there are three types of railway stations, viz., Block Station, Flag Station and Halt Station. Halt station, is a station where signalling system is not

available and train stoppages are controlled by railway time table. Halt contractor is a contractor who is appointed by Railways to sell tickets (printed card tickets) on commission basis and as per the terms of the contract.

4. The deceased father of the respondent-original petitioner in Writ Petition No.12126 (W) of 2017, filed before the Calcutta High Court, was appointed as a halt contractor and the contract period had expired in the year 2010. There was no renewal of the contract for the period beyond 2010. Father of the respondent-original writ petitioner had died on 05th December 2016. On the request made by the respondent-original writ petitioner, during the lifetime of his father he was allowed to sell tickets in the halt station at Pirtala. By notification dated 16th February 2017, the appellants have issued advertisement inviting applications for appointing the contractor. The respondent-original writ petitioner also participated in the selection process for the purpose of appointment as a contractor. Though he was one of the shortlisted candidates, in the method adopted for finalisation of contract by draw of lots, he was not successful.

5. When the respondent-original writ petitioner was not appointed, having participated in the selection process, he filed abovementioned Writ Petition before High Court of Calcutta mainly on the ground that as he has continued as a halt contractor in the place of his father and having regard to guidelines issued in Circular no.99/TIV/Halts/Policy dated 17.05.1999, he is entitled for preference in appointment. The learned Single Judge of the Calcutta High Court, by order dated 25.04.2017, by recording a finding that on the date of death of the father of writ petitioner, the contract between Railways and the deceased father of the original writ petitioner, was not existing, rejected the claim made by the respondent-original writ petitioner.

6. Against the said order, the respondent-original writ petitioner has filed intra-Court appeal before the High Court and Division Bench of the High Court has allowed the appeal by setting aside the order impugned in the petition with the direction to the Railway authorities to grant preference to the original writ petitioner in terms of clause VI of the Circular dated 17.05.1999 and to appoint him as a halt contractor at Pirtala Halt Station within a period of four weeks from the date of the order.

7. We have heard Ms. Pinky Anand, learned Additional Solicitor General assisted by Mrs. Anil Katiyar, learned counsel for the appellants and Mr. R.K. Gupta, assisted by Mr. Shekhar Kumar, learned counsel appearing for the respondent-original writ petitioner.

8. Having heard the learned counsel on both sides, we have perused the order passed by the learned Single Judge and also the impugned order passed by the Division Bench of the Calcutta High Court and other material placed on record.

9. It is not in dispute that the father of the respondent-original writ petitioner was appointed as a halt contractor, but contract period expired in the year 2010. Thereafter, there was no renewal of contract either in the name of the deceased father or in the name of the writ petitioner. The father of respondent-original writ petitioner died on 05.12.2016. Though the contract in favour of the original petitioner expired in the year 2010, on request made by the respondent-original writ petitioner, he was allowed to sell tickets on behalf of the Railways. Clause VI of the circular dated 17.05.1999 of which benefit is claimed by the respondent-original writ petitioner, reads as under :

“VI. Appointment of heirs and successors of deceased halt contractors :

Appointment of heirs and successors of deceased halt contractors, in the event of death of the halt contractor, may be considered along with other applicants and preference will be given to the heirs, all other things being equal.”

10. In the impugned order, the Division Bench of the Calcutta High Court has held that as the appellants have permitted the respondent-original writ petitioner to work in the place of his ailing father, as such, he is to be given the benefit of the circular. It is not in dispute that the contract was valid only up to the year 2010. Merely because the respondent-original petitioner was permitted by the appellant-Railway authorities to work in the place of his ailing father, he cannot, as a matter of right, claim preference as an heir of contractor. Further, it is also to be noticed that when the notification was issued inviting applications, he has participated in the selection process but when he was not emerged as a successful person for award of the contract, he has filed writ petition questioning the appointment of new contractor. As the contract which expired in the year 2010, was not renewed either in the name of the deceased

father of the original writ petitioner or in the name of the writ petitioner, we are of the view that the High Court committed error in directing to give preference and to appoint him as the halt contractor. Merely because, the respondent-original writ petitioner was permitted to act as a halt contractor on his request, he cannot be treated as an existing contractor. Undoubtedly, the contract which was granted to his late father was expired in the year 2010. It appears from the notification issued by the appellant authorities inviting applications for award of contract for selling tickets that they have permitted, the existing contractors and the contractors whose term is coming to an end within a period of 90 days, to apply in response to notification.

11. In view of the expiry of the contract of his late father in the year 2010, the respondent cannot claim as an heir of contractor for giving preference, as pleaded by him. In any event, we are of the view that no right of the writ petitioner, much less any fundamental right, is violated so as to seek directions for his appointment as a halt contractor as granted by the Division Bench of the High Court.

12. It is also brought to our notice by the learned Additional Solicitor General, in the course of hearing, by referring to the rejoinder affidavit filed by the appellants, that the respondent was allowed only on his request when it was represented that his father was sick and in his place he was allowed to work temporarily on sympathetic and humanitarian grounds. It is specifically stated in the rejoinder that the father of the writ petitioner was also working as a Primary School Teacher under the Department of Primary School Education, Government of West Bengal and gained unlawfully pecuniary benefits from both Central Government and State Government organisations.

13. For the aforesaid reasons, we are of the view that the order impugned is liable to be set aside. Accordingly, same is hereby set aside. Civil appeal is allowed with no order as to costs.

..... J.
[R. Banumathi]

..... J.
[R. Subhash Reddy]

New Delhi
February 01, 2019