

# Rahul Kumar vs The State Of Uttar Pradesh on 20 January, 2020

**Bench: D.Y. Chandrachud, Hrishikesh Roy**

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ITEM NO.19

COURT NO.7

SECTI

S U P R E M E C O U R T O F  
RECORD OF PROCEEDINGS

I N D I A

Writ Petition(s)(Civil)

No(s).40/2020

RAHUL KUMAR & ORS.

Peti

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Resp

(WITH IA No.4303/2020-EXEMPTION FROM FILING O.T.)

Date : 20-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s)

Mr. Pawan Reley, Adv.  
Mr. Vinod Sharma, AOR  
Mr. Sajal Awasthi, Adv.  
Mr. Vishal Soni, Adv.  
Ms. Vaishali Pandion, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

1 By a petition under Article 32 of the Constitution, the petitioners have sought the relief of being regularized in the service of the Greater Noida Industrial Development Authority on sanctioned regular and permanent posts. Consequential benefits have been sought at par with other permanent employees. 2 At the outset, we had called upon the learned counsel appearing on behalf of the petitioners to explain why a petition under Article 32 should be entertained when an efficacious remedy under Article 226 of the Constitution is available by invoking the writ jurisdiction of the High Court.

3 Learned counsel submitted that since the issue which has been raised turns upon the previous orders passed by this Court and having regard to the fact that the cause for regularization has been

agitated for a considerable amount of time, it would be appropriate for this Court to entertain the Writ Petition under Article 32. We have in the circumstances proceeded to consider the submissions. 4 There has been some litigation on the issue of regularization. Initially, by an order dated 21 April 2011, the High Court had directed the second respondent to consider the case of the members of the Rajkiya Vahan Chalak Mahasangh for regularization on the post of driver within a period of three months.

5 In a Special Leave Petition<sup>1</sup>, which was instituted in order to challenge this order, the following order was passed by this Court on 6 February 2012:

“Delay condoned.

Having heard learned counsel for the petitioner and respondent No.1, we dispose of this petition at this stage itself with the following directions:

i) The petitioner-authority shall immediately undertake the exercise of

recruitment for the posts of Drivers, strictly as per the procedure prescribed in Greater Noida Industrial Development Authority Service Regulations, 1993;

ii) Till the said process is completed, the services of the members of respondent No.1 – Sangh whose cause was being pursued by them shall not be terminated;

iii) Since the said Drivers have been working with the authority for quite some time, in the selection process, the Selection Committee shall consider granting age relaxation to these 11 candidates, in case any one of them is over-aged.

The special leave petition stands disposed of in above terms.

In light of the above order, the contempt proceedings initiated by the respondents shall stand closed.” 6 Pursuant to the order of this Court dated 6 February 2012, the second respondent issued letters of appointment to eleven drivers who were regularized. The Rajkiya Vahan Chalak Mahasangh filed a Writ Petition before the High Court in 2016, which was withdrawn on 17 February 2016. Subsequently, the petitioners instituted a Writ Petition before the Allahabad High Court, which was also dismissed as withdrawn on 7 April 2016. A contempt application was filed, which was dismissed by the High Court on 13 January 2017. In a Special Leave Petition 2 filed before this Court, the following directions were issued on 23 February 2018:

“Delay condoned.

Having heard learned counsel for the petitioners, we are only inclined to observe that the respondent-authority shall consider 2SLP(Civil) No 5925 of 2018 the cases of the left out applicants in view of our order dated 06.02.2012 passed in S.L.P.(C)No.5796 of 2012 so that they do not have any grievance with regard to regularisation, if they

are covered by the said order of this Court.

Saying so, we part with the case for the present.

If there would be any grievance on the part of the petitioners, they may approach this Court. We are sure, the respondent-authority shall consider their cases in proper perspective.

Special Leave Petition stands disposed of accordingly.” The issue whether the “left out applicants” were covered by the earlier order was to be considered by the authority.

7 Representations were then moved by the petitioners for compliance and eventually a contempt petition was filed before this Court in which an order was passed on 8 July 2019 directing consideration of the representations within a period of three months. In pursuance thereof, an order was passed by the Chief Executive Officer of the second respondent on 9 September 2019. The representations which have been filed by the petitioners have been disposed of on the ground that, as a matter of fact, the petitioners were not in the list of eleven persons who formed the subject matter of the order passed by this Court in SLP(C) No 5796 of 2012.

8 From the record, it is evident that by the order of this Court dated 6 February 2012, the second respondent was directed to undertake the exercise of recruitment for the post of drivers and until then, the members of the Rajkiya Vahan Chalak Mahasangh whose cause was being pursued were not to be terminated. However, the order made it clear that in the selection process the Selection Committee would consider the case for age relaxation of “these 11 candidates, in case any of them is overaged”. This makes it abundantly clear that the petitioners in the present proceedings were not covered by the earlier litigation. Those eleven candidates were regularised. The Chief Executive Officer of the second respondent has on examining the record come to the following determination in its order dated 9 September, 2019:

“On perusal of that Paper Book of SLP(C) No.5796/2012 and also the Writ Petition No.27553/2005 disposal whereof vide Order dt.21.4.2011 which led to the filing of the aforesaid SLP it is clear that the petitioner in Writ Petition No.27553/2005 had been filed by Rajkiya Vahan Chalak Maha Sangh. This Sangh was espousing the cause of 11 persons. The names of these 11 persons are mentioned in Annexure I to the Writ Petition No.27553 of 2005. Sanction of the State Govt. was sought for regularization of the services of the 11 persons, whose cause was being espoused by the said Rajkiya Vahan Chalak Maha Sangh. The State Government, vide order dated 25.8.2004, granted sanction for creation of 13 no. posts of Driver. None of the present representationist were, thus, parties/beneficiaries of the order passed in SLP(C) No.5796/2012.” The petitioners have not drawn to the notice of the Court any material to displace the above finding.

9 For the above reasons, we see no reason to entertain the Writ Petition under Article 32 of the Constitution. The Writ Petition is accordingly dismissed. 10 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)  
AR-CUM-PS

(SAROJ KUMARI GAUR)  
COURT MASTER