

## **National Federation Of Railway Porters ... vs Union Of India And Ors on 9 May, 1995**

**Equivalent citations: AIR 1995 SUPREME COURT 1617, 1995 AIR SCW 2541, 1995 LAB. I. C. 2062, (1995) 87 FJR 319, (1995) 71 FACLR 75, (1995) 2 LAB LJ 712, (1995) 2 LAB LN 634, (1995) 3 SCT 580, 1995 SCC (L&S) 1119, (1995) 2 SERV LR 709, (1995) 2 CURLR 214, (1995) 2 SCJ 258, 1995 SCC (SUPP) 3 152, (1995) 4 JT 568 (SC)**

**Bench: K. Ramaswamy, N.Venkatachala**

CASE NO.:

Writ Petition (civil) 507 of 1992

PETITIONER:

NATIONAL FEDERATION OF RAILWAY PORTERS VENDORS AND BEARERS

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 09/05/1995

BENCH:

K. RAMASWAMY & N.VENKATACHALA

JUDGMENT:

JUDGMENT 1995 (1) Suppl. SCR 165 The Judgment of the Court was delivered by VENKATACHALA, J. In a writ petition, W.P. No. 277'of 1988, filed in this Court under Article 32 of the Constitution of India 166 Railway Parcel Porters, working on contract labour in certain Railway Stations of Indian Railways had claimed for therein issuance directions to the Union of India and its Railway Administration for their permanent absorption by Indian Railways as Railway Parcel Porters on a regular basis. When the claim in that writ petition was contested by the Union of Indian Railway Administration and societies of Railways Employees, this Court by its Order dated October 4, 1989 directed the Labour Commissioner, Uttar Pradesh to enquire as to whether the writ petitioner were contract labour working in Railway Stations for several years as claimed by them and submit his report. Pursuant thereto, the Labour Commissioner, Uttar Pradesh, who held an elaborate enquiry after affording opportunity to the contesting parties in the writ petition to have their say, submitted his report dated October 17, 1990 to this Court. This Court, which examined the findings recorded in the said Report of the Labour Commissioner which reference to the arguments of learned counsel for parties, decided the writ petition by its order dated April 15, 1991, the material portion of which read:

"In this Report, the Labour Commissioner has recorded findings that there was no evidence that the petitioners were the employees of the Society instead the

petitioners were contract labourers provided by the Society under the agreement by the Northern Railway. The Labour Commissioner has held that the petitioners have been working as Parcel Porters with effect from the date they claimed to be working with the Northern Railway. A list showing the names and addresses of each of the petitioners is annexed to the finding which shows the date from which the petitioners have been working as parcel porters. On a perusal of the list, we find that most of the petitioners have been working since 1972 and some of them since 1980 and a few of them were employed in 1985. In this view all the petitioners have completed more than 240 days of continued service.

In view of the Labour Commissioner's finding, we allow the petition and direct the respondent, Railway Administration to treat the petitioners as regular Parcel Porters w.e.f. 15.4.1991 and to grant them the same salary which is being paid to regular Parcel Porters. There will be no order as to costs."

In the present writ petitions the prayers of the petitioners, who are working as Railways Parcel Porters in Railway Stations of Northern Railway, North Eastern Railway and Eastern Railway on contract labour is, that their writ petitions also should be disposed of in terms of the order dated 15th April, 1991 made by this Court in the aforesaid writ petition filed by Railway Parcel Porters who were in no way different from them.

Taking into consideration the nature of prayer in the present writ petitions, this Court made an order therein on November 30, 1992, which read thus:

"We have heard learned counsel on either side and also the respondent No. 7 in person. On the facts and circumstances in this case, we are of the view that it is appropriate that the Assistant Commissioner (Labour), Central Govt. at Lucknow would conduct an enquiry into the allegations whether the petitioners who are porters ? working continuously and whether the work is a perennial source and the requirements of Section 10 of the Contract Labour (Abolition and Regulation) Act, 1972 have been satisfied. The Assistant Labour Commissioner is directed to issue notice to the respondents and M/s. Purshottam and Shivapujan Yadav, the petitioners in this case, after giving reasonable opportunity to adduce evidence in proof of other respective case, consider the evidence placed by the parties and to submit a report in this behalf within six months from the date of the receipt of this order. The enquiry would be confined to the parcel porters only. List the matter after the receipt of the report."

Pursuant to the above order of this Court and another similar Order dated April 26, 1993 made by this Court, a detailed enquiry being held by the Assistant Labour Commissioner (Central), Ministry of Labour, Government of India, after affording to all the parties concerned opportunity of participation in it, a report dated August 31, 1993 is submitted by him with the following Findings:

- (i) Writ petitioners have been working as contract labour Railway Parcel Porters continuously for a number of years.
- (ii) The work of parcel handling is permanent and perennial in its nature and in could keep at the petitioners - parcel porters continuously engaged.
- (iii) In certain Railway Stations the Parcel handling work is done by Railway Parcel Porters, regularly and permanently employed by Railways.
- (iv) Contract labour for parcel handling is done by labour supplied to Railway through societies or private contractors:

We have carefully examined the above report of the Assistant Labour Commissioner and his findings recorded therein. The facts disclosed in the report and the findings recorded therein stand unrebutted. Though we have heard at length the learned counsel appearing for the respondents in the present' writ petitions including the, representative of the societies supplying contract labour to Railways, they were not sale to point out to us any valid reason why the present writ petitions should be allowed in terms of the Order dated April 15, 1991 made by this Court in similar Writ Petition No.277 of 1988, already adverted to by us, particularly when in the matter of absorption of contract labour by a public undertaking on a permanent basis, an order is made by a three-Judge Bench of this Court in R.K. Pande and Other v. State Authority of India and Others, JT (1994) 4 SC 151 in the following terms:

"All the labourers who have-been initially engaged through contractors but have been continuously working with the respondent for the last 10 years on different jobs assigned to them in spite of the replacement/change of the contractors, shall be absorbed by the respondent as their regular employees subject to being found medically fit and if they are below 58 years of age, which is the age of superannuation under the Respondent."

However, when in the course of the arguments addressed before us in the present writ petitions we questioned the learned counsel for the petitioners whether the petitioners in the writ petitions would be satisfied by regularisation a few of them only if the Railway Administration concerned is not able to absorb all of them on regular basis having regard to the insufficiency of parcel handling work in a Railway Station concerned, the learned counsel for the writ petitioners, told us in categorical and unequivocal terms that the petitioners are ready and willing for absorption only a few of them as Railway Parcel Porters on a permanent basis at the cost of others loosing their employment, whenever the Railway Administration comes to the conclusion that all the Railway Parcel Porters working in the particular Railway Station on contract basis will not have sufficient work for employing them on a permanent basis and the decision of the Railway Administration made in that behalf will not be questioned. The claim of the writ petitioners for absorption as Railway Parcel Porters on a Permanent basis by the concerned railway administration, being considered as above and regard being given to the fact that the railway Administration concerned

has in most of the Railway Stations of the country employed Railway Parcel Porters on regular and permanent basis, and Railway Stations left out without such porters are hardly a few, we have thought it most just and appropriate to issue the following directions to the respondent - Union of India and its Railway Administration. Units :

(1) That the Unit of the Railway Administration having control over the Railway Stations where the petitioners in the present writ petitions are doing the work of Railway Parcel Porters on contract labour should be absorbed permanently as regular Railway Parcel porters of those Stations, the number to be so appointed being limited to the quantum of work which may become available to them on a personal basis.

(2) When the petitioners in the writ petitions or any of them are appointed as Railway Parcel Porters on Permanent basis, they shall be entitled to get from the dates of their absorption the minimum scale of pay or wages and other service benefits which the regularly appointed Railway Parcel Porters are already getting.

3. The Units of Railway Administration may absorb on permanent basis only such, of those Railway Parcel Porters (petitioners) working in the concerned Railway Stations on contract labour who have not completed the superannuation age of 58 years.

4. The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway Parcel Porters (Petitioners) who are not found medically fit for such employment.

5. That the absorption of the petitioners in the writ petitions on a regular and permanent basis by the Railway Administration as Railway Parcel Porters does not disable the Railway Administration from utilising their services for any other manual work of the Railway depending upon its needs.

6. In the matter of absorption of Railway Parcel Porters on contract labour as permanent and regular Railway Parcel Porters, the persons who have worked for longer periods as contract labour shall be preferred to those are put in shorter period of work.

7. The report dated August 31, 1993 of the Assistant Labour Commissioner (Central) can be made the basis in deciding period of contract labour work done by them in the Railway stations. Further, as far as possible, the Railway Stations where the writ petitioners are working should be the places where they could be absorbed on permanent and regular basis and the information available in this regard in the report dated August 31, 1993 of the Assistant Labour Commissioner, could be utilised for the purpose.

8. The absorption and regularisation of the petitioners in the writ petitions, who could be appointed as permanent Railway Parcel Porters shall be done according to the terms indicated above and on such other terms to which they may be subjected to according to the rules or circulars of the railway Board as expeditiously as possible, not being later than six months from today, those who have put in longer periods of work as Railway Parcel Porters on contract labour getting preference in the

matter of earlier appointment.

All the writ petitions are, therefore, allowed by issue of the above directions to the respondents. No costs.

Petition disposed of.