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AFR

Reserved on 20.01.2025

Delivered on 31.01.2025

Chief Justice's Court

Case :- WRIT - A No. - 11282 of 2018

Petitioner :- Ramesh Chandra Bari and 13 others

Respondent :- Union of India and 4 others

Counsel for Petitioner :- Aparna Burman, Birendra Kumar Mishra, Diwan Saifullah Khan

Counsel for Respondent :- Dileep Kumar Pandey, Rajnish Kumar Rai, Vivek Kumar Rai

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

(Per: Hon'ble Vikas Budhwar, J.)

1. Impugned in the present proceedings at the instance of Ramesh Chandra Bari (since deceased) through its legal heirs and 13 others (in short 'writ petitioners') is an order dated 16.02.2018 passed in Original Application No. 330/00370 of 2015 (Raj Bahadur Singh and 24 others vs. Union of India & 4 others) passed by Central Administrative Tribunal Allahabad Bench, Allahabad (in short 'Tribunal') whereby the original application preferred by the original applicants/writ petitioners questioning the Screening Test Result dated 18.04.2013 declaring them unsuccessful and for a direction to consider the case for regular appointment was rejected.

2. The facts of the case as discernible from the records are that the writ petitioners claim to have worked in broken spells as casual labour in Railways while completing more than 120 days of engagement making them eligible for assignment of regular status. According to the writ petitioners, the respondent-railways published a notification in widely circulated newspaper Amar Ujala on 17.12.2005 requiring the ex-casual labours to appear for screening for according regular appointments against clear vacancies. As per the notification dated 17.12.2005 those ex-casual labours who were engaged in the

Railways for the period of 120 days and at the time of their induction they were not more than 28 years of age were to be considered for regular appointment. The notification further provided that there was a relaxation in the upper age limit for General Category 40 years, OBC 43 years and SC/ST 45 years, the cut off date for determining eligibility was 01.01.2006 and the last date of submission of the application forms was 15.01.2006. The writ petitioners who claimed to be the ex-casual labours who were assigned works in different spells participated in the screening test which was conducted from 10.10.2007 to 16.11.2007 along with others totaling to 359 candidates. The results of the screening test was declared on 10.12.2007 wherein only one candidate namely Avinishi Prasad was declared successful. The writ petitioners being aggrieved against non declaration of their results preferred representations/request letters but the same remained undecided compelling them to prefer OA No. 738 of 2009 and OA No. 741 of 2009 seeking relief for declaration of the result of the screening test and for according regular status of the services, in case, they were successful.

3. The aforesaid original applications came to be disposed of granting liberty to the writ petitioners to prefer representation for redressal of the grievances. Subsequently on 10.09.2009 and 07.09.2009 the representations preferred by the writ petitioners came to be rejected.

4. Questioning the same, the writ petitioners preferred OA No. 1568 of 2009 (Ramesh Chandra Bari & 18 others Vs. Union of India) before the Tribunal which was connected with OA No. 1233 of 2009 (Raj Bahadur Singh and 13 others vs. Union of India and another) which after exchange of the affidavits came to be decided on 12.05.2011, relevant extract thereof is being quoted hereinunder:-

6. It is an admitted fact that Railway Board issued several notification for absorption/regularization of the ex-casual labour; annexure-A-2 is the extract of relevant rules from R.E.M. Vol.II this is the copy of the

notification/circular letters issued by the Railway Board for regularization/absorption of the ex-casual labour, it has been published in rules 2001-2007 of chapter XX of R.E.M. Vol.II. It is also material that the respondents have not disputed issuing of these circular letters by the Railway Board in para No.3 (iv) of the Counter Affidavit it has been admitted by the respondents that there is rule regarding absorption/re-engagement/regularization of ex-casual labour available in I.R.E.M. Vol.-II (1990 Edition) in para 2001 to 2007. Hence admittedly there was a scheme framed by the Railway Board in pursuance of the direction of the Hon'ble Apex Court in the case of Indra Pal Yadav that the ex-casual labour should be regularized providedly they are fulfilling the conditions. From perusal of the order passed by the respondents on the representation of the applicants and from perusal of the Counter Reply it is evident that the respondents have not denied from the fact that there is no scheme or policy issued by the Railway Board for regularization/absorption of the ex-casual labour, who are fulfilling the requisite qualifications. But the representation of the applicants' was rejected merely on the basis of the judgment of the Hon'ble Apex Court delivered in the case of Uma Devi. It has also been admitted by the respondents that vide notification annexure-A-4 applications were invited by the respondent No.2 from the ex-casual labour for regularization/absorptions providedly they are fulfilling the requisite qualifications. There is also extract of Newspaper (Amar Ujala) dated 17th December, 2005 inviting applications from the ex-casual labour for regularization/absorption those who had put in 120 days as ex-casual labour in broken spells and were at least 28 years of age at the time of initial appointment and certain relaxation of age shall also be admissible to the ex-casual labour. The maximum age of the ex-casual labour 40 years (General Category), 43years (O.B.C.) and 45years (S.C./S.T.). The last date of submission of application on the prescribed format was 15th January, 2006. It has not been alleged by the respondents and also it has been alleged in the order passed by the respondent No.2 that these applicants were eligible to participate in the screening test in pursuance of the notification issued in the Newspaper (Amar Ujala) and pasted on the notice board of the office. It has also not been alleged that these applicants are above the maximum age limit. But the representation of the applicants' was rejected merely on the ground that; a judgment was delivered by Hon'ble Apex Court in the case of Uma Devi and in view of the judgment

of Hon'ble Apex Court applicants can not claim regularization/absorption as a matter of right, efforts have also been made by the respondents in order to allege that applicants' appointment was not in accordance with law and their appointments were irregular and they cannot be regularized and accordingly representation was rejected and the applicants were also not found fit for absorption. It is not a case of the respondents that the applicants were not fulfilling the requisite qualification provided in the circular letters of the Railway Board for regularization of the ex-casual labour and also in the notification published and pasted on 17th December, 2005/21st December, 2005. It is also an admitted fact that the applicants participated in the screening test in the month of the October, 2007 it means that the applicants were fulfilling all the requisite qualifications as prescribed in the Railway Board's scheme and also notification issued by the respondent No. 2.

7. The perusal of the Counter Reply shows that the stand of the respondent is not clear and respondents are blowing hot and cold in the same breath that they admitted that Railway Board issued circular letters for regularization/absorption of the ex-casual labours. On different dates respondents have admitted that the applications were invited from the ex-casual labour by D.R.M., Allahabad. And the applicants' submitted application well within time and they faced the screening test. But at the same time the respondents alleged that the appointment of the applicants was irregular and hence they were not found fit for regularization, but how the appointment of the applicants as casual labour was irregular has not been shown. Because a judgment has been delivered by Hon'ble Apex Court prohibiting the service of the ad-hoc employees or the employees who have been appointed irregularly without sanction of the competent authority can not be regularized. But the respondents have not alleged that there was no policy of the Railway Board for regularization of the ex-casual labour who are fulfilling the requisite qualification. And the applications were invited from the ex-casual labour by the respondent No.2 but at the same rejected the application/representation of the applicants on the law delivered by the Hon'ble Apex Court in the case of Uma Devi. Although, there is no case of the respondents that these applicants were overage or they were not fulfilling the requisite qualification on the date of the submission of application form in pursuance of the notification, hence I am of the opinion that the eligibility

of the applicants was not disputed by the respondents.....

10. Admittedly, there was a policy and scheme of the Railway. It was framed in pursuance of the direction of the Hon'ble Apex Court in the case of Indra Pal Yadav and subsequently reiterated in different other judgments. Under these circumstances in my opinion the law laid down by the Hon'ble Apex Court in the case of Uma Devi is not applicable to ex-casual labour borne on casual live register, because for regularization/absorption of these casual labours there is a policy of the Railway Board and that applicants also submitted applications fulfilling requisite qualification on the date of submission of application form in pursuance of the notification issued by Respondent No.2. Only result is to be declared of the screening test and when the applicants were permitted to participate in the screening test hence presumption can be drawn that these applicants were fulfilling all the requisite qualification and entitled to be participated in the screening test, then result must be declared of the screening test and the respondents cannot be permitted to reject the application of the applicants for absorption/regularization submitted in pursuance of the notification issued by Respondent No.2 and the respondent No.2 also alleged that the applications are being invited in pursuance of the Railway Board's policy.

12. Hence perusal of the order shows that the representation of the applicant was rejected merely on the ground of law laid down by the Hon'ble Supreme Court in the case of Uma Devi and also in view of the judgment laid down by the Hon'ble High Court of Allahabad. But in the matter of regularization/absorption of the ex-casual labour who submitted their application in pursuance of the notification issued by Respondent No.2 in pursuance of the policy of the Railway Board their representation cannot be rejected merely on the ground of law and in my opinion result of the screening test must be declared.

13. For the reasons mentioned above I am of the opinion that the representation of the applicants was rejected only on the basis of the judgment of Hon'ble High and Hon'ble Apex Court in violation of the policy/scheme of the Railway Board for regularization of the ex-casual labour born on the live casual labour register. Because the representation was not rejected on the ground that the applicants were not fit or not eligible as per policy of the Railway Board to participate in the screening test rather the applicants were permitted to participate in the screening test

and this fact itself shows that the applicants were found eligible to participate in the screening test hence the respondent No.2 had illegally rejected the representation of the applicant on the ground not available to him. The regularization/absorption had not been claimed as matter of right it is being claimed in pursuance of the policy/scheme of the Railway Board. It is immaterial that the applicants were not engaged as casual labour after conducting the proper selection. Because the Railway Board framed policy in pursuance of the direction of the Hon'ble Apex Court in the case of Indra Pal Yadav for regularization of the ex-casual labours and the policy updated from time to time and the applications were invited from the ex-casual labours for screening test. O.A. deserves to be allowed and the order deserves to be quashed.

14. O.As. are allowed, order dated 17th September, 2009 (in O.A. No. 1568 of 2009) and impugned order dated 10th September, 2009 (in O.A. No. 1233 of 2009) passed by the respondent No.2 on the representation of the applicants Annexure-A-1 are quashed. The respondent is further directed to declare the result of the screening test held in the month of October, 2007 in pursuance of the notification dated 21 December, 2005 Annexure-A-5, and in case the applicants were found successful in the screening test then they must be regularized as per their service record and according to rules. The respondents are directed to declare the result of the screening test within a period of two months from the date when the copy of this order is produced before them, and within that period the applicants who are found successful they shall also be regularized and engaged. The applicants shall Produce the copy of this order before the respondent No.2 forthwith. No order as to costs.”

5. It is also the case of the writ petitioners that the order of the Tribunal passed in OA Nos. 1568 of 2009 and 1233 of 2009 was not implemented by the respondent-Railways which constrained the writ petitioners to file execution application No. 12 of 2011 before the Tribunal. The respondents-railways being aggrieved against the judgment and order of the Tribunal dated 12.05.2011 passed in OA Nos. 1568 of 2009 and 1233 of 2009 approached the Hon'ble High Court by way of filing **Writ-A No. 49441 of 2011 (Union of India through G.M. N.C.R. & others Vs. Raj Bahadur Singh & others)**

wherein on 30.08.2011 the following orders were passed.-

“1. The respondents had worked with the Railways in the past. Subsequently they were called for the screening test to be held on 12.10.2010. The screening test was held but the result was not declared.

2. The respondents filed OA No. 741 of 2009 before the Central Administrative Tribunal, Allahabad. It was disposed of on 7.8.2009, granting liberty to them to file a representation. The respondents filed representation. It was dismissed on 10.9.2009. The respondents filed another OA No. 1568 of 2009. It was allowed on 12.5.2011. Hence the present writ petition.

3. We have heard the counsel for the parties.

4. It is not disputed that the screening test was held and it was not cancelled by the petitioner. The Tribunal has merely directed to declare the result and in case the respondents are successful in the test they may be given the benefit according to the rules. There is no illegality in the judgment.

5. The writ petition has no merit. It is dismissed.”

6. Another writ petition was also preferred by the respondent-railways, **Writ-A No. 48102 of 2011 (Union of India through G.M. N.C.R. & another Vs. Ramesh Chandra Bari)** in which on 24.08.2012, the following order was passed.-

“Sri A.K.Gaur, learned counsel for the petitioner submits that this petition has become infructuous and the same be dismissed as not pressed. This petition is dismissed as not pressed.”

7. In the execution application No. 12 of 2011, series of orders were passed one of which was on 05.10.2012 for attaching the bank account for the purpose of execution of the order of the Tribunal passed on original side. The said order was subject to challenge at the instance of the respondent-railways while filing **Writ-A No. 6879 of 2013 (Union of India through G.M. N.C.R. and another Vs. Ramesh Chandra Bari & Others)** in which on 12.02.2013 the following orders were passed.-

“Heard learned counsel for the petitioners and have perused the record. This case has a chequered history. In the year 2009, Original Applications No. 1233 and 1568 were filed by the respondents herein which were allowed on 12.5.2011 with the following directions:-

" OAs are allowed. Order dated 17th September 2009 (in OA No. 1568 of 2009) and impugned order dated 10th September 2009 (in OA No. 1233 of 2009) passed by the respondent no. 2 on the representation of the applicants

Annexure A-1 are quashed. The respondent no.1 is further directed to declare the result of the screening test held in the month of October 2007 in pursuance of the notification dated 21st December 2005 Annexure A-5 and in case the applicants were found successful in the screening test then they must be regularized as per their service record and according to Rules. The respondents are directed to declare the result of the screening test within a period of two months from the date when the copy of this order is produced before them, and within that period the applicants who are found successful they shall also be regularized and engaged. The applicants shall produce the copy of this order before the respondent No.23 forthwith. No order as to costs."

Challenging the said order the petitioner-Union of India filed Civil Misc. Writ Petition No. 49441 of 2011 which was dismissed by order dated 24.8.2012 at the admission stage itself with the following directions:-

"It is not disputed that the screening test was held and it was not cancelled by the petitioner. The Tribunal has merely directed to declare the result and in case the respondents are successful in the test they may be given the benefit according to the rules. There is no illegality in the judgment."

Once the petition was dismissed, it was obligatory on the part of the petitioners-herein to comply with the directions dated 12.5.2011 issued by the Tribunal. When the said directions were not complied with, the respondents filed Execution application No. 12 of 2011 which was decided on 5.10.2012. The petitioner had taken a stand in the execution case that on 24.2.2012 two persons were declared successful and by implication the others were unsuccessful. Sri A.K.Gaur, learned counsel for the petitioners, states that by declaration of the result of successful candidates the order dated 12.5.2011 had been complied with. Such submission of the learned counsel for the petitioners has been taken note of in the order dated 5.10.2012 passed in the execution case whereby, after considering all the pleas, the Tribunal observed that "the order dated 12.5.2011 has not yet been fully complied with in letter and spirit. The intention of the execution application is to concretize the relief that has been bestowed on the applicants by virtue of order dated 27.10.2007. Therefore, one last opportunity is given to the respondents to disclose the result as are available with them consequent upon the screening held on 27.10.2007 with regard to all the candidates of O.A. Nos. 1568/09 and 1233/09 within a period of three months and thereafter taken action for their regularization in accordance with relevant Rules". Sri Gaur has

specifically stated that the said order dated 5.10.2012 is not being challenged even though such a prayer has been made. What is under challenge in the present petition is the subsequent order dated 30.10.2012 passed by the Tribunal on a correction application filed by the respondents. By the said order the Tribunal has fixed a date for filing a compliance report. What is contended by the learned counsel for the petitioner is that once execution application had been disposed of, the Tribunal had become functus officio and could not have fixed a date for filing of the compliance report. In support of his submission learned counsel for the petitioner relies on the judgment of the Apex Court in the case of Narpat Singh vs. Rajasthan Financial Corporation AIR 2008 SC 77. We have gone through the aforesaid order of the Apex Court and are of the opinion that the facts of the said case are not applicable to the present case as in the present case all what has been directed by the Tribunal is that the compliance of their order be made within three months as had already directed by the order dated 5.10.2012. No further directions have been issued and only a report of compliance has been called for. Even otherwise, we would not be inclined to exercise our extra ordinary discretionary jurisdiction in favour of a petitioner who takes up a technical ground for not complying with the directions issued by the Tribunal and comes up with a plea for not complying with the directions on the ground that the Tribunal did not have jurisdiction to pass any further order after 5.10.2012 even though the said order may be only for reporting compliance of the parent order i.e. 5.10.2012.

In such view of the matter, we dismiss this petition and direct the petitioners to declare the result forthwith. In case the compliance of the order dated 5.10.2012 is made within a period of two months from today, the same shall be treated as sufficient compliance of the said order.”

8. In the execution application application No. 12 of 2011, the Tribunal after perusing the record so produced by the respondent-railways proceeded to pass an order dated 25.07.2013 which reads as under.-

“Shri T.S. Pandey, learned counsel for the applicant. Shri K.P. Singh, along with Shri B. Tiwari, learned counsel for the respondents.

As per the court’s direction Shri Jata Shankar Tripathi, was present in

court with original records.

On perusal of the original record, it is found that applicants herein in this original application, almost everybody is found suitable in the screening except two or three persons who were declared unsuitable.

The respondents are directed to file an affidavit before this court clarifying how the applicants herein have become ineligible after being found suitable, what was the basis of their being unsuitable after being found suitable in comparison of who are found eligible.

List on 29.08.2013. The respondents are directed to place the photocopy of the entire screening report before this court.

The counsel for the applicant Mr. T.S. Pandey objected about the verification of number of days. The applicants are directed to make photocopy of their Identity Card through which it can be proved that how long they are working.

Copy of the order be given Dasti to counsel for the respondents.”

9. The respondent-railways filed their objection in the proceedings in execution application No. 12 of 2011 while coming up with the stand that the order passed in OA Nos. 1568 of 2009 and 1233 of 2009 stands complied with, since, in the screening test result declared on 18.04.2013 the writ petitioners were found to be unsuitable. Taking note of the said fact, the tribunal disposed of the execution application No. 12 of 2011 on 03.09.2014 observing that since a fresh cause of action has arisen so it is left open for the writ petitioners to take recourse to the law if so advised. The order dated 03.09.2014 passed in execution application No. 12 of 2011 is being quoted hereinunder.-

“This is an application made by the applicants who happened to be a section not only the most downtrodden members of our teeming society but also among those who have been consistently given raw deals by the powerful on the higher ladder despite the Railways formulating a benevolent piece of legislation in order to provide some succor to these persons who have to put in hardest labour in order to feed the hungry mouth of the members of their family.

2. On 12.5.2011 a detailed order was passed by this Tribunal allowing both the OAs wherein the applicants prayed before this Tribunal a direction towards the respondents to declare the result of the screening test

held in the month of October, 2007 in pursuance of the notification dated 2.12.2005. They also claimed for giving a direction to the respondents to provide duty to the applicants in case they are found successful in the aforesaid screening test and further consider them for regularization of their services as per the existing rules.

The OAs were allowed with the following directions:-

"14. OAs are allowed, order dated 17th September 2009 (in OA No.1568 of 2009) and impugned order dated 10th September, 2009 (in OA No.1233 of 2009) passed by the respondent No.2 on the representation of the applicant Annexure A-1 are quashed. The respondent is further directed to declare the result of the screening test held in the month of October, 2007 in pursuance of the notification dated 21 December, 2005 Annexure A-5, and in case the applicants were found successful in the screening test then they must be regularized as per their service record and according to rules. The respondents are directed to declare the result of the screening test within a period of two months from the date when the copy of this order is produced before them, and within that period the applicants who are found successful they shall also be regularized and engaged. The applicants shall produce the copy of this order before the respondent no. 2 forthwith. No order as to costs."

3. I would now like to refer to the salient features of the judgment rendered by this Tribunal which in my considered opinion go to the root of the matter. The same are therefore set out here under:-

a) That this Tribunal has in certain terms held that the ex-casual labourer need not have been engaged or deployed after specific approval by the General Manager.

(b) That this Tribunal has specifically recorded a finding relating to non applicability of the Hon'ble Apex Court's ruling in the case of Uma Devi to the facts of the present case in the light of the fact that the applicants once claiming reliefs by virtue of a specific scheme framed by the Railway Board to provide succer to them in terms of regularization and consequential benefits there under.

c) That in the operative part of the order there is a categorical direction to the respondents (Railways) to regularize the applicants herein subject only to one condition i.e. their being found

successful in the screening test and no more.

d) That in any case since all that the applicants are seeking is to have their decades old grievances ameliorated based on a development legislation passed by the Railway Board. In the face of repeated rulings of the Hon'ble Apex Court which say that a benevolent legislation should always be interpreted and construed liberally.

(e) That the Full Bench of this Tribunal in the case of Mahabir and Others Versus U.O.I. and Others has categorically rejected the contention of the Railways that the Casual Labourer engaged without the approval of the General Manager cannot claim to have their names kept in the casual Labour Register.

4. In the light of the aforesaid position in fact and law, the conclusion as emerges is that these labourers are entitled to regularization merely by virtue of their being found suitable in the screening, is inescapable.

5. Against this order the respondents filed two writ petitions before the Hon'ble High Court by Writ petition No.48102/2011 (U.O.I. and another Versus Ramesh Chandra Bari & others) and other W.P. No. 49441 of 2011 (U.O.I. and another Versus Raj Bahadur Singh and others). The W.P. No. 49441/2011 was dismissed by the Hon'ble High Court. The respondents proposed to file SLP before the Hon'ble Apex Court but never filed it.

6. The Hon'ble High Court while dismissing the W.P. No. 49441/2011 states as under:-

"4. It is not disputed that the screening test was held and it was not cancelled by the petitioner. The Tribunal has merely directed to declare the result and in case the respondents are successful in the test they may be given the benefit according to the rules. There is no illegality in the judgment."

7. The Writ Petition No.48102/2011 was also dismissed on 24.8.2012 which was filed before the Hon'ble High Court. When the Writ petition No.49441/2011 was dismissed by the applicants filed this execution petition which was disposed of on 5.10.2012 with the below direction:-

"20. Therefore, I find that the order dated 12.5.2011 has not yet been fully complied with in letter and spirit. The intention of the execution application is to concretize the relief that has been bestowed on the applicants by virtue of order dated 27.10.2007. Therefore, one last opportunity is given to the respondents to disclose the result as are available with them consequent upon the screening held on 27.10.2007 with regard to all the candidates of O.A. Nos.1568/2009 and 1233/2009 within a period of three months and

thereafter taken action for their regularization in accordance with relevant Rules.

21. The Execution Application is disposed of with the above observations/directions. No Costs."

8. The respondents again filed another writ petition No.6879/2013 before the Hon'ble High Court of Allahabad. The Hon'ble High Court on 12.02.2013 dismissed the writ petition with the observation which is as under:-

"In such view of the matter, we dismiss this petition and direct the petitioners to declare the result forthwith. In case the compliance of the order dated 5.10.2012 is made within a period of two months from today, the same shall be treated as sufficient compliance of the said order."

9. The respondents have now declared the result and the result was produced before this Tribunal as per the order of this Court. The counsel for the appellants raised various issues about the screening and also about the result. He has tried to point out irregularities and contradiction of multiple affidavits filed on behalf of the respondents. But the operative portion of the order was only to declare the result of the screening test. I have perused the documents produced before me.

10. But as the result has been declared and the regularization of service is a condition precedent if they (applicants) are found successful hence in an execution application the court cannot go beyond the original order passed. The Hon'ble Apex Court has held in various judgments, if as per direction of the Tribunal an order has been passed/complied by the respondents then it cannot be looked into that it is not in conformity with a direction issued by the Tribunal, it gives rise to a fresh cause of action to the applicant. More so our powers are, however, also fettered by the Hon'ble High Court in its order dated 13.2.2013 by recording the last few lines as follows:-

"..... In case the compliance of the order dated 5.10.2012 is made within a period of two months from today, the same shall be treated as sufficient compliance of the said order."

11. The order/result passed/declared by the respondents unfortunately does not provide any succer to these unfortunate litigants. An erroneous order passed bona fide cannot be corrected either in execution proceedings or in contempt proceedings. It is, however, given rise to a fresh cause of action and the applicants may seek recourse of law if so advised. Accordingly, the execution application is disposed of. No-Costs."

10. The writ petitioners thereafter preferred OA No. 330/00370 of 2015 seeking following reliefs.-

“i. to quash the screening result declared on 18.04.2013 [Ann- A- 2] in view of the submission and grounds taken above at least pertaining to the applicants of the present OA.

ii. to direct the respondents to consider the applicants for regular appointments in view of the original report/record of the screening which was produced before the Hon’ble Tribunal on 25.07.2013 by Sri Jata Shankar Tripathi and after perusal of the same Hon’ble Tribunal found that almost every body has been found suitable except two of three persons.

iii. to direct the respondents to issue appointment orders to the applicants against regular vacancies immediately in pursuant to the aforesaid and to allow them duty without any further delay.

Any other order or direction to which this Court may deem fit and proper in the facts and circumstances of the present case may also be passed.”

11. The original application was contested by the respondent-railways by filing their response to which rejoinder affidavit was also filed. The original application came up for consideration before the Tribunal on 09.02.2018 on which date the Tribunal reserved the judgment and ultimately by virtue of the judgment and order dated 16.02.2018 the original application was dismissed.

12. Questioning the said order, the writ petitioners have filed the present writ petition seeking following reliefs.-

“(a) Issue a writ, order or direction, in the nature of Certiorari to quash the impugned order dated 16.02.2018, passed by Central Administrative Tribunal Allahabad in original application no. 330/0370 of 2015, by means of which the original application of the petitioners has been dismissed.

(b) Issue a writ, order or direction in the nature of mandamus commanding the respondents to issue appointment order to the petitioners against regular vacancies immediately in pursuance of advertisement dated 17.12.2005 and the screening test held pursuant thereto i.e. October, 2007.

(c) Issue any other writ, order or direction which this Hon’ble court may deem fit and proper in the present fact and circumstances of the case.

(d) Award cost of the petition.”

13. However, during the pendency of the present writ petition, the writ petitioner No. 1, Ramesh Chandra Bari expired, a substitution application came to be filed which was allowed and the legal heirs of the deceased were put on record. An amendment application also came to be filed by the writ petitioners seeking amendments in the facts, grounds and the prayer which also came to be allowed. The amendment sought in the relief clause is being quoted hereinunder.-

“(e) Order direction to summon the original records of Screening Test Result of total 359 Candidates-Applicants, which has been produced by Sri Jata Shanker Tripathi, the then Personal Inspector (S & W1-II/Policy) [Staff Welfare Inspector], before Hon’ble Court of Hon’ble Ms. Jasmine Ahmed (Member (J)), Central Administrative Tribunal, Bench at Allahabad, on dated 25.07.2013, [In Execution Application No. 12 of 2011, filed by the applicants-Petitioners in O.A. No. 1568 of 2009, with O.A. No. 1233 of 2009], in view of learned Tribunals direction/order dated 10.07.2013, in Execution Case No. 12 of 2011, as mentioned above.”

(f) Direct the respondents, to pay compensation to poor applicants-petitioners, for their redressal and support for minising their financial stringencies, mercifully, in the light several judgments of Hon’ble Apex Court, to meet the ends of justice.”

14. The matter was heard at length on several dates and on 13.08.2024, the respondents were required to prepare a tabular chart disclosing the reasons for unsuitability of the writ petitioners as indicated in the schedule appended to the writ petition. Pursuant to the directions of the Writ Court, the respondents have filed a tabular chart.

15. A joint statement has been made by the counsel appearing for the rival parties that the pleadings are complete and they do not propose to file any further affidavits and the writ petition be decided on the basis of the documents available on record. With the consent of the parties, the writ petition is being decided at the admission stage.

16. Ms. Aparna Burman, learned counsel for the writ petitioners has sought to argue that the judgment and order of the Tribunal impugned

in the present writ petition cannot be sustained for a single moment inasmuch as the Tribunal has misconstrued the entire controversy and has adopted an incorrect approach. Elaborating the said submission, it is submitted that once in the previous spell of litigation in OA Nos. 1568 of 2009 and 1233 of 2009 decided on 12.05.2011, the claim of the writ petitioners stood endorsed with a specific finding that the writ petitioners were fully eligible and qualified to participate in the screening as they had to their credit more than 120 days of working as casual labour and at that time of their induction as casual labours they were within 28 years of age and then there happens to be no reason for the respondents to have negated the claim of the writ petitioners while holding that the writ petitioners were not eligible or qualified as there was no ex facto approval regarding their engagement.

17. Submission is that once a Coordinate Bench of the Tribunal in an earlier spell of litigation has accorded relief to the writ petitioners and a clear cut categorical finding has been recorded in favour of the writ petitioners which on challenge before the High Court in **Writ-A No. 49441 of 2011** and **Writ-A No. 48102 of 2011** resulted in dismissal at the instance of the respondent-railways then on the same objections so sought to be raised by the respondent-railways, the Tribunal was not justified to negate the claim of the writ petitioners. Argument is that even in execution proceedings in execution application No. 12 of 2011, orders were passed on 05.10.2012 requiring the respondent-railways to declare the result within the specified period and once the said order on challenge at the instance of the respondent-railways in **Writ A No. 6879 of 2013** came to be affirmed on 12.02.2013 and it was not carried in appeal before any higher judicial forum then what was required to be done was only to declare the result, treating the writ petitioners to be fully qualified and eligible particularly when the eligibility of the writ petitioners stood tested in the earlier spell of litigation in OA Nos. 1568 of 2009 and

1233 of 2009. In a nutshell, the submission is that in a subsequent proceeding it is not open for the respondent to change their stand and to take a U-turn while declaring the writ petitioners to be unsuccessful principally on those grounds which are not available as they stood decided in favour of the writ petitioners. It is, thus, prayed that the order of the Tribunal be set aside and direction be issued to accord reliefs in toto.

18. Countering the submission of the learned counsel for the writ petitioners, Sri Dilip Kumar Pandey, learned counsel who appears for the respondent-railways has submitted that the judgment and order of the Tribunal needs no interference in the present proceedings. According to him, the writ petitioners are not eligible and qualified and they have been rightly held to be unsuitable pursuant to declaration of the result of the screening dated 18.04.2013. Submission is that the only direction contained in the order dated 12.05.2011 passed in OA Nos. 1568 of 2009 and 1233 of 2009 was for declaration of the results and, in case, the writ petitioners were found successful, they shall be engaged and regularized. He submits that once the writ petitioners were found to be unsuccessful in the screening test result declared on 18.04.2013 then they are not entitled to any relief as it was never the intention of the Tribunal to accord benefit to the writ petitioners despite the fact that they were unsuccessful. Argument is that the writ petitioners are only ex-casual labours who had worked in different spells and some of the writ petitioners' engagement is either below 120 days which is mandatorily required and in other case there has been no ex post facto approval which is required under the provisions contained in Indian Railway Establishment Code. Contention is that the right of the writ petitioners cannot be said to be akin to a regular employee as merely because they had worked for a certain spell as an ex-casual labour would at best, in case, they are suitable, transform their status as temporary

employees but in no way they can be said to be entitled to regularization as the same is subject to suitability and also availability of vacancy.

19. Reference has also been made to the counter affidavit as well as the supplementary counter affidavit filed by them showing the fact that the writ petitioners had not completed 120 days of engagement as an ex-casual employee and their engagement had made without ex facto approval and further they are overage and, thus, they cannot be considered for either grant of temporary status or be made regular. Reliance has been placed upon the decision in **Writ- A No. 1006 of 2016 (Union of India & 4 others Vs. Ashok Kumar & 9 others)** decided on 04.02.2016 so as to contend that in view of the decision in **Secretary, State of Karnataka Vs. Uma Devi 2006 (4) SCC 1** as well as the provisions of Para 2511(c) of Chapter 25 (I.R.E.M.) and Rule 102 (13) R-1 casual labours are not to be treated as Railway Servants. Further with regard to the same notification dated 17.12.2005 similar challenge was raised for grant of temporary status and regularization by similarly situated incumbents which came to be turned down by this Court holding that casual labours do not possess the status akin to regular employee.

20. We have given thoughtful consideration to the submissions advanced across the bar and perused the record carefully.

21. The facts are not in issue. It is not in dispute that the writ petitioners are ex-casual labours who were at certain point of time engaged with the respondent-railways. It is also not in dispute that a notification came to be published on 17.12.2005 requiring the ex-casual labours who had completed 120 days of engagement as casual labours either in one spell or in different spells to appear for screening subject to the eligibility that at the time of their initial induction as casual labour they were not over and above 28 years and with respect to consideration of the upper age limit, the same should not be over 40

years in case of General 43, OBC and 45 SC/ST on the cut off date, 01.01.2006 and the last date of submission of the application form was 15.01.2006. It is also admitted to the parties that the writ petitioners participated in the screening test along with others totalling 359 candidates which was held between 10.10.2007 and 06.11.2007. The result of the screening was declared on 10.12.2007 of only one candidate, Avinishi Prasad, who was declared successful. The OA Nos. 738 of 2009 and 741 of 2009 was preferred by the writ petitioners for declaration of the result and for regularization of the services, in case, they were successful which came to be disposed of requiring the respondent-railways to decide the representation preferred by the writ petitioners, which came to be rejected on 10.09.2009/17.09.2009. Original application Nos. 1568 of 2009 and 1233 of 2009 were preferred by the writ petitioners along with others questioning the said order which was consolidated and came to be allowed on 12.05.2011. The salient features of the order dated 12.05.2011 passed in OA Nos. 1568 of 2009 and 1233 of 2009 are recapitulated as under.-

“(a) Ex-casual labours need not be engaged or deployed after specific approval by General Manager;

(b) applicants(writ petitioners) have completed 120 days of working;

(c) they are not overage.

(b) non-applicability of the judgment in the case of Uma Devi (supra);

(c) the direction to the respondent-railways to regularize the writ petitioners subject to one condition of their being found successful in the screening test and no more.”

22. The said order came to be challenged by way of writ petitions, **Writ-A No. 49441 of 2011** and **Writ-A No. 48102 of 2011** by the respondent-railways which came to be dismissed on 30.08.2011 and 24.08.2012. In execution application No. 12 of 2011 orders were passed for execution of the orders passed on the original side on 05.10.2012 which came to be challenged by the respondent-railways in **Writ-A No. 6879 of 2013** which resulted in dismissal on 12.02.2013

requiring the respondent-railways to declare the result forthwith. Order dated 25.07.2013 of the Tribunal in execution application No. 12 of 2011 also goes to show that the Tribunal after perusing the record so produced by the respondent-railways came to the conclusion that everybody was found suitable except two or three candidates who were unsuitable. Thereafter, the respondents filed their response to the execution application coming up with the stand that the writ petitioners were unsuccessful in the screening test result declared on 18.04.2013. The Tribunal vide order dated 03.09.2014 passed in execution application No. 12 of 2011 disposed of the execution application granting liberty to the writ petitioners to approach the Tribunal on original side which emanated in the passing of the impugned order which is subject matter of challenge in the present writ petition.

23. The first and foremost question which arises for determination before us is whether the Tribunal was justified in endorsing the stand of the respondent-railways that the writ petitioners were unsuitable on the face of the fact that there happened to be a positive finding in favour of the writ petitioners in the earlier spell of litigation which remains intact while holding that the writ petitioners are suitable.

24. To test the said issue, what is required to be seen is the stand of the Railways in the earlier spell of litigation in OA Nos. 1568 of 2009 and 1233 of 2009. Pertinently, there were four objections of the respondent-railways firstly, the writ petitioners were the ex-casual labours who had not completed 120 days of working, secondly, they were overage, thirdly, in absence of any ex post facto approval of the General Manager, the engagement of the writ petitioners was illegal and fourthly, the judgment in the case of **Uma Devi (supra)** will come in the way of the writ petitioners for according relief. The Tribunal in its judgment dated 12.05.2011 in OA Nos. 1368 of 2009 and 1233 of 2009 decided the said objections against the respondent-railways

while holding that the writ petitioners are eligible as they had to their credit more than 120 days of working as ex-casual labours, they were not overage, there is no requirement of taking ex post facto approval, the judgment in the case of **Uma Devi (supra)** will not come in the way of the writ petitioners and there exists a scheme which accords benefits for screening and regular employment.

25. Interestingly, the said finding of fact though were put to challenge by the respondent-railways before the High Court by way of **Writ- A No. 49441 of 2011** and **Writ-A No. 48102 of 2011** which resulted in dismissal by virtue of order dated 30.08.2011 and 24.08.2012. The position might have been different, in case, there was a direction simpliciter for declaration of the result of the screening test without determination on the merits regarding the entitlement of the writ petitioners, but the position is otherwise as in the present case, the Tribunal has adjudicated upon the eligibility of the writ petitioners and directed for declaration of the result. However, the respondents are again raising the same objections questioning the eligibility of writ petitioners while alleging that the writ petitioners do not possess 120 days of minimum required engagement, there had been no ex post facto approval of the General Manager, they are overage and the judgment in the case of **Uma Devi (supra)** would come in their way. In the opinion of the Court, once the said objections regarding the eligibility of the writ petitioners stands decided by a judicial forum and the same has attained finality by dismissal of the writ petition preferred by the respondent-railways then the same cannot be used as a tool to deny the benefits to the writ petitioners. Apparently, we find that barring the said objections, no new objections have been raised which goes into the root of the matter regarding the eligibility of the writ petitioners and the position being so the Tribunal was not justified in negating the claim of the writ petitioners.

26. A Division Bench of this Court in **Civil Misc. Writ Petition No.**

22808 of 2003 (Union of India vs. Shri Praveen Kumar and others) decided on 22.05.2003 had the occasion to consider the facts which are similar to of in the present case and it was observed as under:-

*“Thus in view of the above, whatever may be the merits and correctness of the findings of fact recorded by the Tribunal earlier in its judgment and order dated 2.4.2002 it was not open to the petitioner Union of India to reopen the issue sitting as an appellate authority over and above the Tribunal. It had been assigned a limited role of execution/implementation of the order passed by the Tribunal and by no stretch of imagination it could have the competence to sit in appeal against the said judgment, and thus, the order dated 7.5.2002 passed by the petitioner Union of India has rightly been set aside by the judgment and order dated 31.3.2003. We find no force in the submissions made by Shri B.N.Singh placing reliance upon the judgment in **Rajiv Yadav (supra)** as the facts of the said case are quite distinguishable and the ratio of the said judgment has no application in the instant case. Once it is held that one vacancy available for insider candidate in U.P. was meant for the candidate of the general category that could not be filled up by the reserved category candidate. The respondent no. 1 had legitimate expectation for allocation against the said vacancy.*

Thus in view of the above, we are of the considered opinion that the petitioner Union of India while passing the order dated 7.5.2002 had acted without competence/jurisdiction as it had never been assigned the role to function as an appellate authority over the judgment and order of the Tribunal. It has been assigned a limited role of the execution of the judgment and order dated 2.4.2002. The order has rightly been set aside by the Tribunal vide judgment and order dated 31.3.2002. The case does not present any special feature warranting interference by this Court in a limited jurisdiction of judicial review.

The petition is, therefore, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

27. The judgment in the case of **Praveen Kumar (supra)** was subject matter of challenge in **Special Leave to Appeal (Civil) No 3004 of 2004 (Union of India Vs. Praveen Kumar and another)** which came to be dismissed on 29.11.2004.

28. Applying the principles of law as culled out in the above noted decisions in the facts of the case, an irresistible, conclusion stands drawn that it is not open for the respondent-railways to question the suitability of the writ petitioners on the grounds which had already been adjudicated. Might be, there appears to be certain relevant grounds regarding the objection to the suitability of a candidate which in the facts and circumstances of the case may occur due to various factors, however, in the present case we find that the same old objections are being raised questioning the eligibility of the writ petitioners who had already been adjudicated and laid to rest on a challenge to the higher forum.

29. As regards the judgment of the Coordinate Bench in the case of **Ashok Kumar (supra)** is concerned, there is no quarrel to the proposition that an ex-casual employee/labour has no legal indefeasible right to be accorded temporary status or to be made regular and the same is subject to compliance of the rules so framed therein and also fulfillment of legal requirement as the employer may by rule provide. However, in the present case there lies a slight distinction that in the case in hand, the eligibility of the writ petitioners for screening had been adjudicated by a Court of law holding them to be eligible while negating the objections so raised by the respondent-railways and the only direction was to declare the result of the screening, in case, the writ petitioners are to be successful, but, the respondents have not taken any new objection regarding entitlement other than what was already decided. In **Ashok Kumar (supra)**, the Division Bench was confronted with the situation wherein the casual labours had not put in 120 days of working and further the Division Bench had proceeded to hold that merely on asking an ex-casual labour status cannot be transformed to regular employee of the Railways.

30. Apparently, in the present case there happens to be a positive

finding in favour of the writ petitioners holding them to be eligible and the only task which was entrusted to the respondent-railways by virtue of the order of the Tribunal in the earlier spell of litigation was to declare their result, in case, they were successful, but by no stretch of imagination it can be said to have granted any leverage to the respondent-railways to reopen the issues which had already been decided.

31. Now a question arises as to what relief is to be accorded to the writ petitioners. A counter affidavit has been filed on behalf of the respondent-railways sworn by Divisional Personnel Officer, North Central Railway, Prayagraj Division dated 31.03.2023 in which a chart has been recapitulated showing the age at the time of consideration with relation to the screening as on 01.01.2006. The same for the reference is being quoted hereinunder.-

Sr. No.	Name of candidate	Screening Sr. No.	Caste	Date of Birth	Date of Appointment	Educational Qualification	Age at the time of consideration i.e. on 01.01.2006 (YY/MM/DD)
1	2	3	4	5	6	7	8
1	Ramesh Chandra Bari	162	OBC	19.03.64	16.04.82	12 th	41/09/11
2	Prakash Kumar	113	OBC	08.08.65	10.08.86	12 th	41/04/10
3	Vijai Singh	149	OBC	13.05.67	08.04.86	9 th	38/07/16
4	Upendra Kumar	324	SC	06.11.66	09.11.85	8 th	39/01/23
5	Ram Abhilash Singh	128	OBC	05.01.66	24.04.84	10 th	39/01/24
6	Chetan Raj	15	OBC	05.02.64	30.06.82	10 th	41/10/25
7	Rais Ahmad	165	OBC	08.07.64	16.04.84	8 th	41/05/22
8	Zahid Ali	52	OBC	06.07.68	09.07.86	10 th	37/04/24
9	Ram Gopal	81	OBC	03.01.64	16.07.86	12 th	41/08/27
10	Rakesh Kumar	123	OBC	06.12.64	11.05.85	12 th /ITI	41/00/24
11	Anil Kumar	41	SC	17.06.62	01.01.81	8 th	43/06/12
12	Suresh	70	Genl.	13.07.67	17.04.85	10 th	38/09/16

	Chand						
13	Ram Chandra	125	OBC	15.08.63	29.05.84	8 th	42/04/14
14	Bhola Nath	26	SC	04.07.63	27.05.93	10 th	42/05/25

32. So far as Ramesh Chandra Bari the original applicant, he has expired and as regards the rest of the writ petitioners they as on date are beyond the prescribed age for being accorded temporary/regular status. Since the writ petitioners are out of employment for a long time, for several decades, thus, it would not be appropriate for this Court to issue direction for according regular status to them. The Court is also mindful of the fact that the writ petitioners had been agitating their claims before the judicial forums and they possess positive order declaring them to be eligible coupled with an order for declaration of results and bearing in mind the fact that the objections raised by the respondent-railways regarding the entitlement of the writ petitioners are the same which stood adjudicated by the Court of law and there is no new and valid objections available on record so as to deny benefits to the writ petitioners, thus, keeping in mind the overall facts and circumstances of the case it would be appropriate to award compensation in lieu of reinstatement.

33. Accordingly, the writ petition is **partly allowed**. The judgment and order dated 16.02.2018 passed in OA No. 330/00370 of 2015 is set aside. The relief for issuance of the appointment order to the writ petitioners against the regular vacancies in pursuance of the notification dated 17.12.2005 and the screening test held in the year 2007 is declined. A mandamus is issued to the respondent-Railway to pay compensation to each of the writ petitioners/their legal heirs to the tune of Rs. 5 lacs within a period of two months from the date of production of certified copy of the order.

Order Date :- 31.01.2025

Rajesh

(Vikas Budhwar, J) (Arun Bhansali, CJ)