

Ramesh Vs Calcutta Tramways Company Ltd.

Court: Calcutta High Court

Date of Decision: June 24, 1998

Acts Referred: Constitution of India, 1950 " Article 14

Citation: (1999) 2 ILR (Cal) 122

Hon'ble Judges: Amitava Lata, J

Bench: Single Bench

Advocate: Sk. Abu Sufian, for the Appellant; Milan Bhattacharjee, for the Respondent

Final Decision: Allowed

Judgement

Amitava Lala, J.

Two writ Petitioners were moved by the writ Petitioners before this Hon"ble Court sometimes in 1992. One of such is as

above and another is numbered as CO. No. 9998(W) of 1992 (Ram Nandan Das and Ors. v. The Calcutta Tramways Company (1978) Ltd. and

Ors.). At all material times both the applications were proceeded for an analogous hearing as transpired from the record.

2. Reliefs of the writ Petitioners in both the writ petitions are almost similar i.e. for the purpose of appointment and/or absorption of the casual

workers on permanent basis.

3. Table of Petitioners under CO. No. 8686(W) of 1992 is as follows:

Name Father's Name Duration of Service

1. Ramesh Baldev 14 years

2. Dani Jago 12 years

3. ShibShankar Jagodish Singh 14 years

4. Sundar Budhan 14 years

5. Gopal Rameswar 15 years

6. Balchand Meghu 15 years

7. NetaiChand Ganesh Pal 15 years

Paul

8. Mansoor AlamMd. ZaffirAlam4 years

9. Surjoo ShibuDas 21 years

10. Ganga-1 Garbhu 21 years

11. Mohan Ray 18 years

12. Baloo Ramdhani 15 years

13. NandaLal Chirkut Ram 8 Years

14. Sita Ram Salad 15 years

15. Babu Ram DasBabajiDas 12 years

4. Table of the Petitioners under CO. No. 9998(W) of 1992 is as follows:

Name Father"s Name Father"s Petitioners how

designation long works

1 Ram Late Raghu worked as 1981

NandanDas retired on 1989 PWD point

Mistri 538

2. Rajendra Mati~Â¿½retired Head Mistry no.Since 1979

Rabi Das on 1989 529

3. Ram ChandraLate Panchu Head Mistry no.Since 1973

Das retired on 1988 528

4. Chandrika JagoSahis Now working as1975

working PWD no. 513

5. Naresh Ram Bepon working Head Mistry 1975

NO. 527

6. Mahindra Banshi retired onRolla Driver no. 1976

Ram 1989 527

7. Arjun Kali Ram retired PWD Mistry no.1988

on 1989 420

8. Bejoy Ram Girdhari Ram Lorry Driver no.1986

retired on 1989 523

9. Yakub Khan Abbas Khan No. 512 1981

retired on 1977

10. RajuDas Late ChulaiDas Mistry, PWD 1973

nbsp;

retired on 1988 no. 524

11. Kamal Dev Pointman. 8.11.1988

SambhuNathSaharetired on 1989 PWD no. 469

12. Rojan Mia retiredHead Mistry, 7.3.1988

AnwarHossain on 1989 PWD no. 466

13. BiswanathLalPanchamlal 13.10.1979

retired on 1987

Later table is seems to be much- more detail than earlier one.

5. In and from 1992 till 1998 time to time matters appeared before the different single benches of the Court having appropriate determination

wherein Courts were satisfied as regards to service and several directions were given to file the respective affidavits by the contesting Respondents

but all were in vain.

6. Ultimately both the matters assigned before this Court analogously when this Court was pleased to direct the Respondents to file their respective

affidavits within a prescribed period therein with a clear understanding that in case of non-filing of the affidavits-in-opposition on the part of the

Respondents the matter will be dealt with by the Court without giving further opportunity.

7. The Respondent No. 4 has filed an affidavit stated to be affidavit on behalf of the Respondent Nos. 1-5 i.e. The Calcutta Tramways Company

(1978) Ltd. & their other officers but that too without any affidavit of competency. Neither the State nor the private Respondents filed their

affidavits. Moreover the affidavit is full of evasive denials without supported by any material particulars as to the Recruitment Rules and

Regulations, if any. Keeping in the mind the aforesaid facts now I am dealing with the submissions made by the parties.

8. The writ Petitioners contended that the works of the writ Petitioners are perennial in nature. They were engaged for work for 89 days and

thereafter they were put off from employment by artificial break for 15-20 days then re-engaged to work. Sometime the break up period was a

week. Sometimes, for a period of 15-20 days which have gradually increased from days to months together even sometimes upto 8-9 months.

According to them, though their nature of job is permanent and there is no dearth of work, the Petitioners were kept as temporary/These Petitioners

are workers in P.W.D. Section of the Calcutta Tramways and work in the road to maintain Traffic and there is huge work in hand yet the

Petitioners are not given regular continuous work. At present the Respondent Tramways Company is doing all road work through private

contractors. There is no norms in respect of regular permanent employee. These temporary workers were given ostensible hope to make them

permanent when some outsiders were given permanent employment.

9. It is to be noted that the writ Petitioners made the above employees as party Respondents to the writ petition but no affidavit was filed by them

contradicting such statements.

10. Writ Petitioners further contended that the company is getting the works from the Petitioners by defrauding or escaping "the bindings of labour

laws inspite of work in hand unjustly temporarily laid off the workers to break the continuity. These breaks are artificial. The company is extending

their service but making fool to the workers by saying that they are going to abolish trams from the Calcutta Metropolitan Area while, on the other

hand, they are extending the lines on various places. The Respondent company is maintaining hirind"and firing policy. This is absolutely illegal and

opposite to the principles of natural justice.

11. Under the circumstances, the writ petition was moved for the purpose of absorption of the Petitioners in the service permanently.

12. The contesting Respondent took the plea that the writ petitions are not maintainable since they are not engaged as per the Recruitment Rules

and against any sanctioned posts but they were engaged on no work no pay basis for required period and they have never performed any job

anywhere permanently and their jobs are not perennial in nature. The writ Petitioners worked for different period, therefore, the grievances cannot

be made jointly by making single writ petition. Excepting one, none was nominated by their father. There is no artificial break up. There is no

availability of the fund. There is no necessary of such job workers in the company. The documents with regard to the two private Respondents

have not been found due to haste.

13. So far the Civil Order No. 9998 (W) of 1992 is concerned, writ Petitioners contained that as per the rule, the workers were engaged

temporarily for some years and after retirement of their respective fathers, they were absorbed in their permanent posts. In the case of the

Petitioners, they are working for the last 16 to 18 years as temporary labourers and in the case of some of their fathers either retired or dead but

their sons have not been made permanent till today.

14. It is significant that as the Petitioners are old temporary workers, a panel of 16 permanent vacancies was hung on the notice board in the name

of the Petitioners in the month of March, 1990 and the Petitioners were asked for their papers with regard to their date, place of birth and

residence. In or about June, 1990 all the Petitioners deposited all the testimonials required by the Respondent company except three who left the

job and interviews were taken in respect of the Petitioners. Respective medical examinations were done in respect of some of the Petitioners but

postponed in respect of other Petitioners. Surprisingly, the Respondent company declared in the month of March, 1990 that the filling up the

vacancy of the Petitioners were postponed. But in the month of July, 1990 some of the persons were directly recruited to that post.

15. The Respondents took the similar defence. They also contended that there was no such rule, system of appointment as nominees but the same

has been abolished since 1991. It was further contended that there was no panel of 16 permanent vacancy and no notice to such extent was hung

up in the notice board in the month of March, 1990. It was further contended that no panel was prepared, no interview was held, no permanent

vacancy was notified, no medical test was held, there was no posts, no recruitment etc. The Respondents again contended that the private

Respondents, as appointed permanently are not similarly situated with the writ Petitioners. The Petitioners have no legal right. There was no

sanction on behalf of the government and there is no necessity of further employees.

16. This Court did not allow time to the writ Petitioners to file affidavit-in-reply contradicting such statements in the affidavit-in-opposition to avoid

further delay since such affidavits will seem to be denials of denials alone in the circumstances.

17. However, in support of Petitioners' contentions, Sk. Abu Sufian, Learned Counsel appearing for them relied upon a judgment reported in

Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, with another matter to highlight the point that practical experience would

always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. Once the appointments of Petitioners were

made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the

confirmation in the respective posts. It can be said that three years experience, ignoring artificial break in service for short period/periods created

by the management, in the circumstances, would be sufficient for confirmation. The Petitioners further relied upon a judgment reported in Rattan

Lal and Others Vs. State of Haryana and Others, to establish that hiring and firing policy by the State in giving employment cannot be treated as a

sound personnel policy. Supreme Court has strongly deprecated the policy.

18. The Respondent contended, by citing a judgment reported in State of U.P. and Others Vs. Ajay Kumar, that there must be exist of a post and

either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily wage appointment will obviously be

in relation to contingent establishment in which there can not be any post and it continues so long as the work exist. They have further relied upon a

judgment reported in Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others, to establish that eligibility and continuous working for

howsoever long period should not be permitted to overreach the law. Requirement of Rules of Selection through commission cannot be substituted

by humane considerations. They have also cited another decision reported in E. Ramakrishnan and Others Vs. State of Kerala and Others, again

on a question that regularisation of service de hors the rule of the Selection Rules under the Public Service Commission can be refused. They have

also cited another judgment reported in Workmen employed in the canteen in (1997) 10 SCC 565 by saying that the writ Petitioners can have

their remedy before the industrial tribunal.

19. I am afraid that these principles have any say in respect of the subject matter herein. Neither the works of the Petitioners are made for

contingent establishment nor regulation prescribes services should be regularised through any Public Service Commission nor this is a case of

bypassing the Tribunal. So far the third point is concerned it is the case of the Petitioners themselves that to avoid industrial dispute artificial breaks

were made by the Respondent company.

20. I say that establishment of socialistic pattern of the country is basic need of Directive Principles of State Policy.

21. It would be pertinent to mention that in case of abolition of contract labour Supreme Court hold considerably to that extent not restricting the

question as to contract labour alone. There is no law which can say that workers working for considerable periods as above, will be treated as the

casual workers indefinitely. Court of equity cannot stay hands when can feel the services are perennial in nature but cannot see because of various

artificial break up. Technicalities are not even basic parameters for equitable justice, far to say about social justice.

22. Directive principles of State policy prescribes that the state shall strive to promote the welfare of the people by securing and protecting as

effectively as it may a social order in which justice social, economic and political shall inform all the institutions

23. The state shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and

opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. The state

shall, in particular, direct its policy towards securing -- the citizens, men and women equality, have the right to an adequate means of livelihood.

24. There shall be equality of opportunity of all citizens in matters relating to employment or appointment to any office under the state.

25. The state shall not deny to person equality before the law or the equal protection of the laws within the territory of India.

26. The concept of "social justice" which the constitution of India engrafted, consists of diverse principles essential for the orderly growth and

development of personality of every citizen. "Social justice" is thus an integral part of justice in the generic sense. Justice is the genus, of which

social justice is one of its species. Social Justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribals and deprived

sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social Justice is not a simple or single idea of

a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life

livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and

political equality, which is the legitimate expectation and constitutional goal. In a developing society like ours, steeped with unbridgeable and ever

widening gaps of inequality in status and of opportunity, law is a catalyst, rubicon to the poor etc. to reach the ladder of social justice. What is due

cannot be ascertained by an absolute standard which keeps changing, depending upon the time, place and circumstances. The constitutional

concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to

remove handicaps and disabilities with which the poor, the workmen etc. are languishing and to secure dignity of their person. The constitution,

therefore, mandate the state to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds

equality to flavour and enliven the practical content of life. Social Justice and equality are complementary to each other so that both should maintain

their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results.

27. All essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comforts, food,

shelter, clothing and health. Due to economic constraints, though right to work was not declared as fundamental right, right to work of workmen,

lower class, middle class and poor people is means to development and source to earn livelihood. Though, right to employment cannot, as a right,

be claimed but after the appointment to a post or an office, be it under the state, its agency instrumentality, juristic person or private entrepreneur it

is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and all other

concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful. In a socialist democracy

governed by the rule of law, private property, right of the citizen for development and his right to employment and his entitlement for employment

to the labour, would all harmoniously be blended to serve larger social interest and public purpose.

28. In view of the circumstances, I hold in favour of the Petitioners. I, therefore, direct the Calcutta Tramways Company (1978) Ltd. to take up

immediate steps for absorption of the casual workers ignoring artificial break in service for the periods created by the Management and treating

equally with the persons appointed on regular basis to the similar post or discharge similar duties and will be entitled to the scale of pay and all

along revised scale of pay from time to time and all service benefits as are applicable for SLch services.

29. Thus the writ petitions are allowed.

30. No order is passed as to costs.

31. Liberty is also given to the learned Advocate for the Petitioners for taking note of the gist of this order for the purpose of communication and

compliance thereof.

Let urgent certified xerox copy of this judgment be handed over to the learned Advocates for the appearing parties. If the same is applied for.