

V.CHARULATHA AND OTHERS

v.

S. GUNALAN, CHAIRMAN, RAILWAY RECRUITMENT BOARD,
MADRAS AND ORS.

APRIL 4, 1995

[R.M. SAHAI AND S.B. MAJMUDAR, JJ.]

Service Law—Contempt Petition—Railways—Selection for posts in non-technical categories—Results published—Decision to hold second examination—Quashed—Appeal—Direction of Supreme Court to appoint selected candidates within a period of two weeks—Non-Compliance—Lapse of eight years—Explanation for not implementing order not satisfactory—Commitment to appoint candidates by March 1995 not honoured—Direction made to appoint all remaining candidates within a period of twelve weeks.

Contempt of Courts Act, 1971—Service matter—Railways—Selection of posts in non-technical categories—Results published—Decision to hold second examination—Quashed—Direction of Supreme Court to appoint selected candidates—Non compliance—Commitment to appoint candidates by March 1995 not honoured—Direction made to appoint all remaining candidates within a period of twelve weeks.

In 1987 the Railway Recruitment Board, Madras, advertised nearly 500 posts in the non-technical categories in the Indian Railways. Written examinations were held on 15-11-1987. On the next day a news item was published in one of the newspapers expressing concern about the possible leakage of the question papers. However, results were published and interviews were held. Since some of the candidates who had secured very high marks in the written examination secured very poor marks in the interview, the authorities decided to hold a second written examination. Some of the candidates, who had appeared in the examination challenged the order before the Central Administrative Tribunal. Some candidates approached the High Court. The Tribunal held that the Railway Recruitment Board was entitled to conduct the second examination. Objection filed before the High Court that after constitution of Tribunal, the High Court had no jurisdiction, was negatived. Against this order the Railways filed SLP. No interim order was granted by this Court. The High Court

quashed the order passed for holding second examination. This judgment affirmed by the Division Bench was challenged before the Supreme Court.

On 18.9.1992 this court directed the appellants to appoint the selected candidates according to their merits in the existing vacancies within a period of two weeks from the date the order was passed. But nothing substantial was done. Contempt applications were filed on 30.4.1993, i.e. after a lapse of nearly two years since the order was passed that it was brought to the notice of the Court that the appellant had nothing to do with appointments and it was the responsibility of the appointing authority. On 27.9.1993 this Court directed issue of notice to the appointing authority. An assurance was given that all the candidates selected will be appointed according to the merit list in a phased manner by March'95. On 1.9.1994 this Court directed the Railways to explain as to why the order passed by this court had not been complied with. It was prayed that extension of one year may be granted to comply with the order. Reason stated for non-compliance of the order were that number of posts had been abolished due to introduction of computers and closing down of various works units; that by the time the writ petitions were decided by the High Court and the order that no fresh examinations could be held became final, the Railway Recruitment Board had received two panels of 1989 and 1990 consisting of 998 candidates; that the availability of the vacancies totally changed and it became impossible to appoint the selected candidates and that there was no way out except to appoint these persons as and when vacancies arise. It was stated that the candidates who were selected for Southern Railway had been offered appointment in other Railways, they had expressed unwillingness to join the post.

Disposing of the matter, this Court

HELD: 1.1. In the instant case eight years had elapsed since advertisement was issued by the Railway Recruitment Board for the selection in the non-technical categories in the Indian Railways. The result was declared in 1988. The explanation for not implementing the order passed by this court was not satisfactory. The authorities had not honoured their own commitments to appoint the candidates by March, 1995. 775 candidates were selected in 1987. Decision to hold fresh examination was taken in 1989. Immediately the candidates approached the Tribunal and the High Court. The Railways were, therefore, aware that

disputes in respect of these vacancies were pending adjudication before courts. They could not, therefore, hold a fresh selection subsequently for these posts either in 1989 or in 1990. [148-C-D]

Two panels received in 1989 and 1990 could have been only in respect of vacancies which could have accrued after 1987. It was nowhere stated either in the advertisement issued in 1989 or 1990 nor it was stated before the High Court that vacancies for which selection was held in 1987 were again put up for advertisement in 1989 or 1990. It was thus not understandable how these vacancies which existed in 1987 vanished in 1989, 1990 and 1992. The order for holding second examination was quashed as far back as 1991. In absence of any stay order obtained from any court, the Railways were not entitled to take a decision not to appoint these persons or to act in such a manner as to deprive the candidates selected in 1987 of the opportunity of being appointed. Even the claim of abolition of posts or a reduction in number appeared to have been made with little responsibility. It was not stated before the High Court when petition was decided in 1991. Nor it was stated in Special Leave Petition. The abolition of posts according to affidavit of the Chief Personnel Officer took place between 1987 and 1993-94. Yet till the petitions were decided, no such difficulty was raised. Explanation of the appellants that the candidates who were selected for Southern Railway having been offered appointment in other Railways and they having expressed unwillingness to join the post, they had no claim to be appointed was unsatisfactory. The entire exercise of the appellants was wholly contrary to fairplay.

[148-E to G, 149-A]

1.2. Railways shall appoint all the remaining candidates within a period of twelve weeks. [149-C]

CIVIL APPELLATE JURISDICTION : I.A. Nos. 160-238 of 1993
Etc.

IN

Civil Appeal Nos. 2577-2616 & 32-70 of 1991 Etc.

From the Judgment and Order dated 15.4.1991 of the Madras High Court in W.A.No. 533 of 1991.

V.R.Reddy, Additional Solicitor General, Arvind Kr. Sharma, B.

Krishna Prasad, Hemant Sharma, V. Balachandran, V. Ramasubramaniam, K. Rajendra Choudhury, Rakesh Sharma and Ambrish Kumar for the appearing parties.

The following Order of the Court was delivered:

R.M. SAHAI, J. These applications have arisen in extremely unfortunate circumstance. The anxiety of this Court to avoid taking any drastic action appears to have not been properly appreciated and even though two years have elapsed since the learned Additional Solicitor General assured the Court that the orders passed by the High Court and this Court shall be complied with latest by March, 1995 and persuaded the Court to frame a time schedule, but we are sorry to say that except gaining time and putting excuses nothing has been done leaving no option to this Court except to pass this order.

A little background is necessary to appreciate the unpleasant observation made by us. In 1987 the Railway Recruitment Board, Madras, advertised nearly 500 posts in the non-technical categories like Commercial Clerks, Ticket Collectors, Train Clerks, Etc. in the Indian Railways. Written examinations were held on 15th November, 1987 in 3997 centres as large number of candidates had applied pursuant to the employment notice. On the next day a news item was published in one of the newspapers expressing concern about the possible leakage of the question papers, but nothing happened and the results were published on 7th September, 1988. Interviews were held on 10th October, 1988. Since some of the candidates who had secured very high marks in the written examination secured very poor marks in the interview, the authorities decided to hold a second written examination. Letters were issued in April, 1989. On the very next day, some of the aggrieved candidates, who had appeared in the examination and had been called for interview approached the Central Administrative Tribunal and some others approached the High Court. On 13th June, 1989 the Central Administrative Tribunal held that the Railway Recruitment Board was entitled to conduct the second written examination in respect of those candidates who had been declared eligible for interview. It further held that the marks obtained in the first written examination as well as in the second written examination should be totalled and the average be obtained and it should be considered to be the final marks for purposes of selection. Other batch of petitions was heard by the High

Court. The appellants claimed that after constitution of Tribunal, the High Court had no jurisdiction. It was negated. The appeals filed before the Division Bench were also dismissed. Against this order the Railways approached this Court and obtained leave (C.A.Nos. 32-70/91). Since no interim order was granted by this Court, the learned Single Judge of the Madras High Court heard writ petitions and quashed the order passed by the authorities on 15th April, 1989 for holding second examination. He further directed that the list of successful candidates may be published on or before 31st March, 1991. This judgment was affirmed by the Division Bench on 15th April, 1991. Against this judgment the Railways approached this Court and leave was granted on 3rd June, 1991 and it was directed that these appeals may be connected with the earlier Civil Appeals which were directed against the order passed by the High Court repelling the claim of the appellants that the High Court had no jurisdiction to decide the petitions. Both the sets of appeals were listed on various dates in 1991 but they could not be decided.

Therefore, on 18th September, 1992 this Court directed the appellants to appoint the selected candidates according to their merits in the existing vacancies within a period of two weeks from the date the order was passed. But nothing substantial was done with the result that contempt applications were filed. These applications and the appeals came to be disposed of on 30th April, 1993. The order is extracted below:

"The learned Additional Solicitor General appearing on behalf of the appellant (Chairman, Railway Recruitment Board, Madras) and for the respondents (alleged contemnor in the contempt petitions) states that the appellant has selected the candidates and sent a list containing 775 selected candidates as per the original requisition pursuant to the order of this Court to three authorities, namely, (1) Chief Personnel Officer, Southern Railway, Madras (2) Financial Advisor and Chief Accounts Officer, Southern Railway, Madras, (3) Chief Personnel Officer, Integral Coach, Parambur, Madras. He further states that as on present date the appellant has nothing to do with the appointment of the selected candidates and it is for the appointing authorities to appoint and fill up the vacancies as notified from the list of the selected candidates according to their merit.

Since this matter is pending for quite a long time since the institution of the proceedings before the High Court, we hope and trust that the appointing authorities to whom a separate selected list of candidates is stated to have been sent, would take appropriate and expeditious steps in appointing the candidates, if necessary, by relaxing their age limit by taking into consideration their age on the date of submission of the applications. The interim order passed on 18.9.92 is modified to this extent.

As the learned Solicitor General has stated that the appellant has nothing to do with the appointments and the selected list has already been forwarded, under these circumstances, the appeals have practically become infructuous and hence the appeals are dismissed. I.As. in the appeals consequently stand dismissed.

The Office is directed to send a copy of the order to above mentioned appointing authorities.

As we have now dismissed the appeals, no action is called for in the contempt petitions. Accordingly, these contempt petitions are disposed of."

Thus it was after a lapse of nearly two years since the order was passed that it was brought to the notice of this Court that the appellant had nothing to do with appointments and it was the responsibility of the appointing authority. Therefore, on 27th September, 1993 this Court directed notice to be issued to the Chief Personnel Officer, Southern Railway, Madras, Financial Advisor and Chief Accounts Officer, Southern Railway, Madras, and the Chief Personnel Officer, Integral Coach, Parambur, Madras. It was only after the notices were issued to these officers that a counter-affidavit was filed by the Deputy Chief Personnel Officer, Southern Railway, Madras. After hearing parties, this Court passed an order on 8th December, 1993 which is extracted below:-

"Learned Additional Solicitor Gen. appearing on behalf of respondents, i.e., appointing authorities assure before us that all the candidates selected in pursuance of notice No. 1/87 dated 15th of April, 1987 amounting to a number of 775 vacancies will be appointed according to the merit list already prepared and that some of these candidates will be absorbed under first phase by

10th march, 1994. Out of them 100 are going to the posts of artisans and the remaining shall be absorbed in the posts namely, Commercial Clerks, Ticket Collectors, Train Clerks in the Indian Railways on or before the end of March, 1995. Regarding these other artisans posts amounting to 100 will be filled up by the selected candidates only if the candidates are willing to accept that post otherwise they will be appointed only in the posts for which the selection was made. The respondents have given also an undertaking that till all the selected candidates are appointed no selection will be made in the normal course and no other new appointments will be made except the appointments on the compassionate grounds.

These selections as assured should be made without fail. All the candidates should be given the age relaxation till their appointments are complete. List this matter on 11th of March, 1994".

When these applications came up for hearing, it was stated on behalf of the appellants that 197 letters of appointment had been issued. On 1st September, 1994 this Court directed the Railways to explain as to why the Order passed by this Court has not been complied with. The additional affidavit was filed on 15th September, 1994. It was stated that 105 unreserved, 70 Scheduled Castes and 4 Scheduled Tribes were offered appointment in Non-Technical Popular Category in Southern Railway and Integral Coach Factory. 70 unreserved, 26 Scheduled Castes and 4 Scheduled Tribes were offered to express willingness for the post Skilled-Artisan in Southern Railway on 8th March, 1994. Out of this, 46 gave their consent. It is further stated that since there were large number of candidates it became necessary to locate vacancies in the Indian Railways and a reference was made to Railway Board accordingly. It agreed to employ them in Central railway. Therefore, 40 unreserved, 12 scheduled castes and 2 scheduled tribes candidates who did not express their willingness for acceptance of Skilled Artisan post as stated earlier were offered to express their willingness to join the Central Railway as Ticket Collector. Over and above these 54 candidates, 53 unreserved, 40 scheduled castes and 18 scheduled tribes candidates were also offered to express their willingness to join the Central Railway. Out of these 17 scheduled castes and 4 scheduled tribes and 41 unreserved candidates expressed their willingness. The affidavit stated that after ascertaining the number of candidates who

actually joined the Central Railway the shortfall was proposed to be made good by appointing the willing candidates in order of merit. The affidavit stated that even after all this and excluding those candidates who expressed their unwillingness to join Central Railway approximately 319 candidates remained who were proposed to be offered appointment before March 1995. It was, therefore, prayed that extension of one year may be granted to comply with the order.

From a chart filed by the learned Additional Solicitor General on the last day of hearing, 27th March 1995, it appears 147 candidates have been appointed in non-technical categories in Southern Railways and Integral Coach Factory, Madras, and 38 have been appointed as Skilled-Artisans in Southern Railways. Reason for non-compliance of the order, as stated in the affidavit of the Chief Personnel Officer filed in November 1993, is two fold; one, that number of posts had been abolished due to introduction of computer and closing down of various works units. Second reason explained in the affidavit and which has been vehemently pressed by the learned Additional Solicitor General is that by the time the writ petitions were decided by the High Court and the order that no fresh examinations could be held became final, it became 1992 and by that time the appellants/Railway Recruitment Board had received two panels of 1989 and 1990 consisting of 998 candidates on 8th August, 1990 and 28th March, 1991 respectively. According to the learned Additional Solicitor General, the availability of the vacancies thus totally changed and by the time the disputed panels were received by the Southern Railway on 23rd September, 1992 the number of vacancies got so reduced that it became impossible to appoint the selected candidates. The affidavit further states that for this change in situation the Railways cannot be blamed. Consequently, the learned Additional Solicitor General urged that there was no way out except to appoint these persons as and when vacancies arise. He also stated that so long as all the candidates are not absorbed, no further selection shall be held. He produced a Chart showing that out of 775 candidates, 106 expressed unwillingness to accept the offer of appointment made and 66 should be deemed to be unwilling to accept the offer of appointment in NTPC category in Southern Railway or the post of Skilled-Artisan in Southern Railway followed by the post of NTPC category in Central Railway in spite of repeated offers. The Chart further indicates that offer is being made to 111 willing candidates for the post of NTPC category in Central Railway and in 1995-96 it is estimated to offer appointment for the

left over numbering 304 in NTPC category in Western Railway, numbering about 70 in Southern Railway, numbering about 50 in South Eastern Railway and the balance in different Railways suitably.

From what has been narrated above, it is more than apparent that the problem is the creation of the Railways themselves. Consequently difficulties have arisen. But they cannot be permitted to remain unsolved for such a long time that the purpose of selection and its benefit stand frustrated. Eight years have elapsed since advertisement was issued. Even the result was declared in 1988. The explanation in the affidavit for not implementing the order passed by this Court is not satisfactory. The authorities have not honoured their own commitments to appoint the candidates by March, 1995. It is not disputed that 775 candidates were selected in 1987. Decision to hold fresh examination was taken in 1989. Immediately the candidates approached the Tribunal and the High Court. The Railways were, therefore, aware that disputes in respect of these vacancies were pending adjudication before courts. They could not, therefore, hold a fresh selection subsequently for these posts either in 1989 or in 1990. The statement in the affidavit of the Chief Personnel Officer that two panels were received in 1989 and 1990 is indeed surprising. These panels could have been only in respect of vacancies which could have accrued after 1987. It was nowhere stated either in the advertisement issued in 1989 or 1990 nor it was stated before the High Court that vacancies for which selection was held in 1987 were again put up for advertisement in 1989 or 1990. It is thus not understandable how these vacancies which existed in 1987 were again put up for advertisement in 1989 or 1990. It is thus not understandable how these vacancies which existed in 1987 vanished in 1989, 1990 and 1992. The learned Single Judge had quashed the order for holding second examination as far back as 1991. In absence of any stay order obtained from any court, the Railways were not entitled to take upon themselves a decision not to appoint these persons or to act in such a manner as to deprive the candidates selected in 1987 from being appointed. Even the claim of abolition of posts or a reduction in number appears to have been made with little responsibility. It was not stated before the High Court when petition was decided in 1991. Nor it was stated in Special Leave Petition. The abolition of posts according to affidavit of the Chief Personnel Officer took place between 1987 to 1993-94. Yet till the petitions were decided, no such difficulty was raised. In any case, even if this be so then how selections were held in 1989-90. We are

further not satisfied by the explanation of the appellants that the candidates who were selected for Southern railway having been offered appointment in other Railways and they having expressed unwillingness to join the post, they have no claim to be appointed. The entire exercise of the appellants was wholly contrary to fairplay. It may not be out of place to mention that it was brought to our notice that some of the selected candidates due to delay and the attitude of the Railways were so frustrated that they committed suicide.

We accordingly direct the appellant-the Railways to appoint all the remaining candidates within a period of twelve weeks from today. The letters of appointment shall be issued for appointment in Southern Zone. Letters shall be issued even to those candidates who did not agree to go outside as we are informed that they are now willing to join even other zones. But so far as female candidates are concerned they shall be offered appointment only in Southern Zone. Those who have joined outside the zone shall have no claim for Southern Zone by virtue of this order. In case there are no vacancies, the Railways may take appropriate steps to get the vacancies created within the same time. It is made clear that no further time shall be granted and in case the appointments are not made of all the candidates within twelve weeks, it shall be taken as violation of the order passed by this Court and the persons responsible shall be proceeded against. We are not very happy to pass this order. But the Railways have not left any option in view of the order passed in September, 1992 and then the order passed in December, 1993 on the assurances given by the learned Additional Solicitor General that all the selected candidates shall be accommodated in a phased manner by March, 1995. These appointments shall not be subject to question in any further proceedings.

The I.As. are disposed of accordingly.

Matters disposed of.