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A.I. RAILWAY PARCEL & GOODS PORTERS UNION

v

UNION OF INDIA AND ORS.

B

AUGUST 22, 2003

[S. RAJENDRA BABU, DR. AR. LAKSHMANAN AND  
G.P. MATHUR, JJ.]

C

*Labour Laws:*

D

*Regularisation of services of Porters in Railways—Supreme Court's earlier direction for abolition of contract system of labour and regularization of Porters—Assistant Labour Commissioner recommending their claim on the basis that the work handled by them was of permanent and perennial nature—*

E

*Not considered by the Railway Administration on ground of their policy of downsizing the cadre on economic consideration—Challenge to—Held: The Assistant Labour Commissioner has failed to appreciate the preposition of law that non-production of documentary evidence in opposition would not support their claim for absorption—Contractors directed to produce original records of services of Porters working under them for verification to the Assistant Labour Commissioner—An opportunity to cross-examine contractors should be afforded to the Railways—Assistant Labour Commissioner to examine genuineness and authenticity of the claimants—The Railway Administration on the basis of recommendation of the authority should regularize the services of such Porters who fulfills the eligibility conditions—*

F

*Contractor would be having no claim against Railways for premature termination of contract—Railways could retrench the workmen so absorbed in accordance with law.*

G

**The main issue which arose in these writ petitions and appeals was regularization of services of Railway Parcel and Goods Porters in connection with earlier directions of this Court relating to the abolition of contract system of labour in parcel handling work and to regularize their services.**

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**It was contended for the petitioners/appellants that in spite of the directions of this Court for the abolition of contract system in parcel handling**

work and their permanent absorption, the Railways neither abolished the parcel handling work nor regularized their services; and that even though Assistant Labour Commissioner had recommended their claim recording the finding that the work of parcel handling was permanent and perennial in nature. A

On behalf of the Railways, it was submitted that the parcel handling work was seasonal in nature; that the Railway Administration was taking measures for downsizing its cadre on economic consideration due to financial crisis; and that in view of the huge number of Porters, non-production of documentary proof by the Porters of having worked continuously, and the meager parcel handling charges, their regularization was financially not viable. B C

Disposing of the petitions/appeals, the Court

**HELD:** 1.1. Non-production of evidence in opposition will not support the claim of the petitioners/appellants even by legal fiction. The Assistant Labour Commissioner has failed to appreciate this proposition of law while recommending the claim of the petitioners/appellants. [855-F] D

1.2. The burden of proving the claim of continuous working rests on the claimants for which they are required to furnish concrete proof and reliable document; that an opportunity to cross-examine the claimants and to peruse the records produced by them should be afforded to the Railways. Since the contractors did not produce the original records and the Railways had no opportunity to cross-examine the contractors also, they are directed to appear before the Labour Commissioner and to produce the records for the relevant period and the claim could again be verified. The Labour Commissioner is directed to afford an opportunity to the Railway Administration and the contractors and the petitioners/appellants and verify the authenticity and genuineness of the claim made by the petitioners with reference to the records that might be produced by the Railway Administration and the contractors and submit a report to the Railways. This would resolve the disputed claim. On the basis of the report, the Railway Administration should consider the claim of the individual petitioners/appellants. [855-G, H; 856-A-C] E F G

1.3. The facts disclosed in the Assistant Labour Commissioner's report and the findings recorded in regard to the perennial nature of work cannot be overruled. [858-A, B] H

**A** 1.4. The Railway Administration should absorb permanently those Railway Parcel Porters who have not attained the age of superannuation and found medically fit. The persons to be so appointed could be limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the dates of their absorption, the minimum scale of pay or wages and other service benefits which the regularly appointed Railway Parcel Porters were already getting. [858-E, F]

**B** 1.5. The services of Railway Parcel Porters, on regularization on permanent basis, could be utilized by the Railway Administration for any other manual work of the Railways depending upon its needs. [859-B]

**C** 1.6. In the matter of absorption of Railway Parcel Porters on contract labour as permanent and regular Railway Parcel Porters, the persons who have worked for longer period as contract labour shall be preferred to those who have put in shorter period of work. [859-C]

**D** 1.7. While absorbing Railway Parcel Porters as regular employees their inter se seniority shall be determined department/job-wise on the basis of their continuous employment. [859-E]

**E** 1.8. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by the Railway Administration for its own employees irrespective of any existing contract or agreement between the respondent and the contractors. No claim shall be made by the contractors against the Railway Administration for premature termination of their contracts in respect of the contract labourers absorbed permanently. [859-F]

**F** 1.9. The Railway Administration shall be at liberty to retrench the workmen so absorbed in accordance with law. This order shall not be pleaded as a bar to such retrenchment. This judgment does not relate to the persons who have already been absorbed. [859-G, H]

**G** *National Federation of Railway Porters, Vendors and Bearers v. Union of India and Ors.*, [1995] Supp 3 SCC 152; *R.K. Panda and Ors. v. Steel Authority of India and Ors.*, JT (1994) 4 SC 151 and *Gujarat Electricity Board, Thermal Power Station, Ukai v. Hind Mazdoor Sabha and Ors.*, AIR (1995) SC 1893, referred to.

**H** CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 433 of 1998.

Under Article 32 of the Constitution of India.

A

WITH

W.P. (C) Nos 457/98, 278/99, 530, 599/2000, 45/2001, 121/2000, 262/2002, 19/2003, and C.A.No. 57/2001, 6608 of 2003.

B

Raju Ramchandran, Additional Solicitor General, P.P. Malhotra, Dinesh Kumar Garg, Ms. Ritu Puri, Rohit, Ashok Sharma, R.D. Upadhyay, Imtiaz Ahmed, Ms. Nagma Imtiaz, Ranbir Yadav, V.N. Raghupathy, Dr. Sumant Bharadwaj, Ms. Mridula Ray Bhardwaj, Ms. Indra Sawhney, Amit Mahajan, Ms. Smita Inna, Ms. Anjani Aiyangari, Ms. Anil Katiyar, Ms. Sushma Suri, Mr. D.S. Mahara, Mrs. Suman Bala Rastogi, R.C. Kaushik, S.K. Bhattacharya, B.M. Goswami and Ms. Sarla Chandra for the appearing parties.

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The Judgment of the Court was delivered by

**Dr. AR. LAKSHMANAN, J.** Leave granted in Special Leave Petition No. 6560 of 2001.

D

This group of writ petitions and appeals raise common questions of law relating to the abolition of contract system of labour. Writ Petition No. 433 of 1998 was filed by the All India Railway Parcel and Goods Porters Union praying for the following reliefs:

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“(a) Issue appropriate writ in the nature of mandamus or any other writ, direction or order commanding the respondents to treat the petitioners who are working as Parcel Porters as permanent employees of the Northern Railway as has been directed by this Hon’ble Court in various petitions filed by the colleagues of the petitioners and a further direction may be given to abolish contract system in parcel handling work at different Railway Stations in Northern Railway and all the Parcel Porters working at different Railway Stations of Northern Railway may be treated as regular employees of the Railways;

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(b) Issue an appropriate writ, direction or order commanding the respondents to treat the petitioners as employees of Northern Railway and give them the same benefits which have been given to other parcel porters working at different Railway Stations of Northern Railway as regular employees of Northern Railway;

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(c) Issue an appropriate writ, direction or order commanding the

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A respondents to stop treating the petitioners as contract labour at Railway Stations of Northern Railway for loading and unloading of parcels as this work done by the petitioners is of permanent and perennial nature.”

B Similar prayers have been asked for by the petitioners union in other writ petitions. Civil Appeal No. 57 of 2001 was filed by the Union of India and Others questioning the correctness of the final judgment and order dated 07.07.2000 passed by the High Court of Delhi in Writ Petition No.5595 of 1998. In the said case, the Central Administrative Tribunal allowed the claim of the respondents therein by following the judgment of this Court in *National Federation of Railway Porters, Vendors and Bearers v. Union of India and*

C *Ors.*, reported in [1995] Supp 3 SCC 152. Since the issue raised in the said writ petition before the Delhi High Court is pending consideration of this Court in Writ Petition No. 433 of 1998 wherein this Court on 08.09.2000, passed the following interim order.

D “Pending disposal of these petitions, there shall be no regularization of parcel porters working at different railway stations notwithstanding any order of any Court, Tribunal or other authorities. Call after six weeks.”

E Since the High Court dismissed the writ petition filed by the Union of India holding that there is no legal infirmity in the order of the Tribunal, the Union of India has preferred the above civil appeal.

F Appeal @ Special Leave Petition No. 6560 of 2001 was filed by one Radhey Shyam and Others against the Union of India and Others questioning the correctness of the judgment and order dated 10.11.2000 passed by the High Court of Judicature at Allahabad in Writ Petition No.1760 of 2000 dismissing the writ petition and affirming the order passed by the Central Administrative Tribunal.

G For the sake of convenience, we will first deal with the facts in Writ Petition No. 433 of 1998 and the questions of law as they arise therefrom. The petitioners in this writ petition is the Union. The writ petition was filed seeking the same relief which has been granted by this Court to the colleagues of the petitioners similarly situated and working as Parcel Porters in Northern Railways at different railway stations for the last 10-30 years onwards continuously. However, they have not been treated as the permanent

H employees of the Railway so far, though they are discharging the duties of

permanent and perennial nature. A list containing the names of Parcel Porters who have been engaged by the Northern Railways as contract labour at different railway stations along with their service details was also filed and marked as Annexure-A. A

Mr. Dinesh Kumar Garg, learned counsel appearing for the writ petitioners, submitted that this Court in the case of *National Federation of Railway Porters, Vendors and Bearers*, (supra) (vide its judgment and order dated 09.05.1995) gave directions to absorb all Parcel Porters as permanent employees of the Railway. He also invited our attention to the judgment and order dated 15.04.1991 in Writ Petition No. 277 of 1988 in which this Court while directing to abolish the Contract Labour system in Parcel work on different Railways, directed the Government of India to treat 166 Parcel Porters working at Charbagh Railway Station at Lucknow of Northern Railway to treat them as permanent employees of Northern Railway (Annexure-B). It is further submitted that subsequently this Court in Writ Petition Nos. 568 and 711 of 1995 vide judgment and order dated 08.07.1996 again directed the Railways to absorb parcel porters as permanent employees of the railway according to their seniority (Annexure-D). Learned counsel has also invited our attention to the order dated 19.09.1997 passed by this Court in Writ Petition No. 90 of 1997 directing the Assistant Commissioner (Labour), Central Government to conduct an enquiry as to whether the Parcel Porters in the aforesaid writ petition had been discharging the work of permanent and perennial nature and if so the period for which they have been engaged. The learned counsel also drew our attention to various similar orders passed by this Court directing the Labour Commissioner to conduct an enquiry regarding the working of the Parcel Porters. C D E

Pursuant to the directions given by this Court in the instant case on 30.11.1992, the Assistant Labour Commissioner (Central) Lucknow conducted an elaborate enquiry and submitted a detailed report in which he had recorded the findings that the work of parcel handling Northern Railway is permanent and perennial in nature and sufficient to keep all the Parcel Porters engaged continuously, and the requirements of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 had been satisfied and the petitioner parcel porters were working continuously for long years without any break in service. F G

According to the learned counsel, in spite of the directions given by this Court for the abolition of the Contract System in parcel handling work H

- A and in spite of various orders passed by this Court and of the commitment made by the Northern Railway, the contract system in parcel handling work is neither been abolished nor the parcel porters working in different railway stations have been treated as permanent employees of the railway, though these parcel porters had been working for the last 10-30 years continuously.
- B He would further submit that though the contractors are changed from time to time, the petitioners have been working continuously as Parcel Porters under the direct control of Railways which is the principal employer, therefore, he submitted that the petitioners should be given the relief which has been granted by this Court to their colleagues by absorbing them as permanent employees and also to issue a further direction to abolish contract system in
- C parcel handling work at different railway stations in Northern Railway The learned counsel has also invited our attention to para 12 of the writ petition as to how the petitioners are discharging the work of permanent and perennial nature and as to how it is very essential for the railways to continue its activities as narrated in para 12 (a)-(k). It is also submitted that the conduct and duties of the petitioners are being controlled by the Railway Authorities and if the Authorities are displeased with any of the Parcel Porters, they are empowered to punish such parcel porters and turn them out of the railway station and do not issue entrance passes as well as badges to such parcel porters. It is also contented that since the petitioners have to discharge their loading and unloading and shifting duties under the strict supervision of the
- D Railway Authorities, they cannot be treated as contract labourers.
- E

Counter affidavit was filed on behalf of respondent Nos. 1-7 contending that this Court has ordered for regularization of the required number of persons *to the extent of perennial number of posts ascertained* after conducting work study and not all the petitioners as stated in the annexures.

- F It is further submitted that most of the petitioners of the petitions mentioned have already been regularized against the perennial posts and on the basis of work study report in case any additional post is found as perennial and permanent in nature, the senior-most person(s) will be regularized after completing all other formalities as per the Railway rules. It is also stated in the counter that it is not possible to stop the contract labour system of
- G handling work and that the nature of job which is not perennial and permanent will have to be completed by engaging contract labourers and for the work which has been casual in nature are not permanent in nature it is not possible to engage permanent parcel porters. It is further stated that parcel handling works are awarded to the labour cooperative societies which supply the
- H labour as per the requirement of the Railways on a day to day basis depending

upon the volume of the work to be handled on a particular day, and the payment is made to the cooperative societies and not to the individual labourers on the basis of the total weight handled. A

Another counter affidavit was filed on behalf of respondent Nos. 1, 3 and 8 stating that the muster rolls of the cooperative societies have no sanctity and cannot be taken to show the names of the labour who have been genuinely working and the length of time for which they have been continuously working. B

An additional affidavit was filed by respondent Nos. 1-7 through their Deputy Chief Marketing Manager, Northern Railway stating that the Railways do not have the records of the porters who have been working with the contractors, and in the absence of any documentary proof, they were not in a position to either accept or deny the claims of the petitioners. A rejoinder affidavit was filed by the petitioners' union denying the averments contained in the counter affidavit. C

The Eastern Railway Administration filed an additional affidavit on its behalf. D

Mr. Raju Ramachandran, learned Additional Solicitor General, took us through the statements and averments contained in various affidavits filed by the Railways and submitted that the Railways is not just a commercial concern, but also a public utility concern which carries several essential commodities at a very concessional freights and also gives a lot of concessions in passenger traffic to innumerable categories of persons. This being so, if such economically non-viable acts like regularization of the petitioners is forced upon the railways, public utility and passenger amenity items are bound to suffer. He would further submit that the work performed by the contract labour is of fluctuating nature and the amount of work depends upon the parcels received in a particular day and that no labour is required as the loading and unloading is done by the party itself and in view of the fluctuations and irregular and seasonal type of work, keeping permanent cadre for doing this parcel handling work is not possible. He would further urge that the Railways are facing a financial crisis due to decreasing budgetary support and increasing cost of production and purchase of various items and the Railway Administration is itself contemplating measures for downsizing its present cadre, minimizing the staff cost and operating ratio. This being the case, it will not be feasible for the railway administration to absorb the petitioners in regular service. Moreover, if the present petitioners unreasonable prayers are acceded to by H

- A** this Court, it would lead to several such requests for regularization from many quarters even though the applicants may be working elsewhere and may not have undergone the well laid down procedures for recruitment and may not be fulfilling the eligibility criteria for appointment for the post or may not be adequately trained. It is thus submitted that in view of the huge number of
- B** petitioners, lack of any documentary proof of their having worked continuously, and the meagre parcel handling earnings, their regularization by the Railways is financially not viable. It is further submitted that due to the government policy of downsizing the staff cadre, the Railways is coming up with many schemes of awarding contracts to private parties by leasing of SLRs and BOLT schemes etc. to implement the Fifth Pay Commission recommendations.
- C** Thus, the absorption of such a huge work force of Class IV employees without adequate amount of work will result in a financial crunch. The learned Additional Solicitor General drew our attention to the additional affidavit of Respondent Nos. 1-7 and the statements made thereunder, to the effect that as a result of the present loading/unloading operations being totally uneconomical, a loss of approximately 900 crores is being incurred by the
- D** Railways and, therefore, there is no option but to rationalize the entire operation with regard to the parcel handling business. The learned Additional Solicitor General would further contend that in order to improve services, the Railways introduced the concept of leasing the space in the luggage compartment of the front luggage coach of some of the passengers carrying trains in November,
- E** 1991. However, a comprehensive policy was introduced in the year 1999 in order to attract parcel traffic through the leasing route and as per the master circular issued on 16.11.1999, SLR space in the front SLR was permitted for leasing for all types of trains and SLR space in over 200 trains is being leased out to provide operators, where the loading and unloading is also done by them. The process of leasing was taken one step further with the launch of
- F** the Parcel Express trains known as "Millennium Parcel Express" trains in March, 2001, which envisages running of high speed "time-tabled" parcel trains leased to cargo consolidators on the basis of open tenders and two such weekly trains are already being operated and more are likely to be introduced in future. It is further submitted that the steps taken by the Indian
- G** Railways to encourage handling of parcel by private parties through leasing of the space in SLRs, VPs and parcel trains has helped in increasing the railway earnings and as a result thereof, the earning from parcel traffic has increased from 294.24 crores in 1998 to Rs. 433.46 crores in 2001-02 which according to the learned Additional Solicitor General is proof of the fact that the senders and receivers of parcel prefer handling through their own agency.
- H**

With a view to make the parcel services vibrant business along with better service to its customers, the Government has accepted the recommendation of the Parliamentary Standing Committee on Railways, as contained in their 9th Report (2001) presented in Lok Sabha in April, 2001 to segregate parcel services from passenger services. He would further state that the Government of India's plan of "rightsizing" the workforce has been acted upon by the Railways. Rightsizing automatically involves rationalizing the operations, coming down to redundant areas and outsourcing of "non-core" areas. As loading/unloading of parcels is a non-core activity, the parcel leasing schemes vest the leaseholder with the responsibility of handling the parcel traffic.

Learned Additional Solicitor General further submitted that apart from the losses in parcel business that the Railways are sustaining, they have also to face the mounting wage bill of the employees. The average annual wage bill of a Railway employee during 2000-01 was Rs. 1,21,281/-. As against this overall average for all staff, the annual wage bill of a group D employee was as high as Rs. 84,576/-. The wage bill has been increasing over the years and the average wage bill of group D employee has increased from Rs. 37,344/- in 1994-95 to Rs. 84,576/- in 2000-01. The current wage bill can be estimated to be nearly around Rs. 1 lakh per group D staff. Thus, with a workforce of over 9000 departmental parcel porters, the annual wage bill on this account is over Rs. 90 crore. Thus, though the average number of group D staff has reduced from Rs. 5.06 lakh in 1994-95 to Rs. 4.62 lakh in 2000-01, there is a continuous and heavy increase in the wage bill of the Indian Railways, which is difficult to bear.

It is also submitted in the instant batch of cases, the number of petitioners are again more than 1500. If the judgment of this Court is in favour of the petitioners, there will be spate of litigation with many more parcel porters and other similarly placed workers approaching this Court for similar relief. The financial implication for the Indian Railways in regularization of the petitioners would be Rs. 1 crore for every 100 such private parcel porters.

Concluding his argument, the learned Additional Solicitor General submitted even for the parcel traffic handled departmentally by the Railways by Mail/Express and Passenger trains, the loading/unloading work is of a sporadic and intermittent nature. Even this work is confined only to the time when the various trains originate/terminate/stop at the stations for short duration. Thus, whichever worker is engaged by the contractor, will generally

A be available on the Railway premises for the purpose of loading/unloading only on the day and at the time of arrival/departure of various trains and that the work of loading/unloading is neither regular nor continuous in nature and, therefore, does not require engagement of regular workers. Concluding his argument, the learned Additional Solicitor General submitted that as the railways are sustaining an annual loss of Rs. 900 crores and also have to face

B the mounting wage bill, they have no option but to rationalize the parcel business by leasing out to private cargo operators and will not be in a position to absorb the contract labourers engaged in parcel handling. Our attention was also drawn to the various circulars issued by the Government of India, Ministry of Railways marked as Exhibit-R1, R2 and R3.

C The petitioners have not filed any reply or rejoinder to the additional affidavit of respondent Nos. 1-7 filed on 16.01.03.

Learned counsel for the other writ petitioners have adopted the arguments advanced by learned counsel for the writ petitioner Mr. Dinesh

D Kumar Garg.

Learned counsel for the writ petitioners drew our attention to the order passed by this Court on 14.07.1999 in Writ Petition No. 433 of 1998 which reads thus:

E “The Assistant Labour Commissioner (Central), Lucknow to whom copies of all the previous orders passed in the case, shall be sent, shall conduct an inquiry as to whether the petitioners were working continuously and whether the job which they perform is of a perennial nature. The inquiry may be completed within three months from the date of receipt of this order and a report submitted to this Court.”

F He also invited our attention to the report of the Assistant Labour Commissioner (Central) Lucknow dated 18.01.2000 containing 85 pages. We have perused the same. The Assistant Labour Commissioner framed two issues for enquiry which are as follows:-

- G
1. Whether the petitioners were working continuously and
  2. Whether the job which they perform is of a perennial nature.

H According to the Labour Commissioner, the railways have not produced any records pertaining to the period of working of the parcel porters as no records of the petitioners are maintained at the stations or any other railway office.

Railways have also contended that they have no knowledge as to which of the petitioners were engaged by the contractors and from what date. It is further stated in the report that only six contractors appeared and dozens of them did not even respond to his notice he had sent to them on their addresses which were supplied to him by the petitioners and the railways. A number of registered letters were returned undelivered with the postal department's remarks that either the contractors refused to accept the letters or they were not available at those addresses. The contractors who appeared before the Labour Commissioner did not also produce any records. Under such circumstances, he heard the individual petitioners who appeared before him and recorded their statements. The Labour Commissioner has stated that in fact the contractor is suppressing the records to conceal the fact of the petitioners working and, therefore, he accepted the employment cards/service certificates submitted by the petitioners as proof of their working for the period claimed by them. The findings on issue Nos. 1 and 2 rendered by the Labour Commissioner runs thus:-"

Issue No.1:

The Railways and the contractors have verified the period of working of the petitioner parcel porters in some cases. The period of such verification is very short in many cases, the reason being that the contractors have changed very frequently and the records that might be in possession of earlier contractors could not be obtained. The Railway and the contractors have not produced the records of working of the parcel porters who have claimed to have worked prior to the period as verified by the contractors and the Railway. It appears unjust that the petitioners' interests should be harmed due to non-production of records.

Despite several notices having been issued to the concerned respondent Railways and the contractors that in the event of failure on their part to produce records the claim of the petitioners would be accepted, till 14.1.2000 on which date I finalised this report none of them produced records for the past period to admit or deny the claim of petitioners. I am left with no other option than to conclude that they must have worked.

- (a) The list of petitioners whose period of working has been verified is enclosed as Annexure "A" to this report.
- (b) The list of petitioners who have claimed to have worked but

- A whose working period could not be verified due to non-production of records by the Railway and the contractors is enclosed as Annexure "B" to this report.

Issue No. 2

- B I have reached to the conclusion that the work of parcel handling/loading/un-loading is an activity that is not separate and detached from the complex parcel handling job being done by Railways. Parcel handling is an integral part of the whole system and it has been going on for ages round the clock during day and night for all the 365 days in a year without the break of a single day. In fact the job of parcel handling which is being performed by the petitioners is the foundation on which the gigantic structure of parcel department stands. If the parcel handling work is stopped then the whole work of parcel transportation will come to stand still and all the regular staff and officers whose number is very large will become idle.

- D The parcel handling work being performed by the petitioners is of a perennial nature.

Submitted."

- E The Railways filed opposition to the report of the Labour Commissioner. It is stated therein that the railways came to know about the report only through the Central Agency Section on 08.05.2000 and more surprisingly, the report dated 18.01.2000 appears to have been submitted before this Court in the same week itself but neither the answering respondent nor the railways was afforded any opportunity to either lead evidence or cross-examine the witnesses appeared on behalf of the respondents. According to the railways, from a bare reading of the report it will be clear that the report is not based on any documentary evidence and that the objections raised by the Railway Authorities have either been not entertained and incorporated in the report or have been dealt in most unfair manner and that the Labour Commissioner has not taken pain to summon the contractors along with the relevant records though complete addresses of such contractors were supplied by the Railway Administration. It is, therefore, submitted that in the absence of the documents regarding the particulars of the services rendered by the Porters, the Railway Administration was obviously not in a position either to admit or deny the claim of the petitioner. It is also stated in the opposition that since the contract labour is abolished w.e.f. 30.10.1995 there is no question of any other

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labourers left to be regularized and, therefore, the Assistant Labour Commissioner should be directed to permit the Railway Administration to verify the contents of the documents submitted by the petitioners and ex-contractors by cross-examination; compel all the ex-contractors to be present at the hearing and submit a fresh report based on the documents actually presented before him. A

Per contra, learned counsel for the petitioners submitted that the Labour Commissioner gave repeated adjournments to enable the Railways for finalizing objections or to cross-examine the petitioners and contractors under whom the petitioners have been discharging their duties at different railway stations. However, the officials refused to cross-examine the petitioners or the contractors and, therefore, the Labour Commissioner on the basis of the record available on the file of the Assistant Labour Commissioner as well as with the officials of the Railways have submitted his report. Thus, it is submitted that the objections regarding the report of the Labour Commissioner had been raised for no reason or basis. B C

It is seen from the report of the Labour Commissioner that the contractors have refused to produce the records and cooperate with the Labour Commissioner at the enquiry. Likewise, Railways also complained that the Labour Commissioner has not afforded them sufficient opportunity to verify the veracity of the documents as well as the period for which the petitioners have already worked as parcel porters. Therefore, the report of the Assistant Labour Commissioner cannot be taken as a full and complete report as to whether the petitioners were working continuously and whether the job they perform is of perennial nature. D E

As per the established principle of law, the petitioners in order to succeed will have to substantiate their claim. Non-production of evidence in opposition will not support the claim of the petitioners even by legal fiction. The Assistant Labour Commissioner, in our opinion, has failed to appreciate this proposition of law while recommending the claim of the petitioners. F

The burden of proving the claim of continuous working rests on the claimants for which they are required to furnish concrete proof and reliable documents. We are, therefore, of the view that an opportunity to cross-examine the petitioners and to peruse the records produced by the petitioners should be afforded to the railways. As already noticed, the contractors did not produce the original records and the railways had no opportunity to cross-examine the contractors also. The contractors are, therefore, be directed H

- A to appear before the Labour Commissioner and to produce the records for the relevant period in question and the claim of the petitioners can again be verified and regularize the services of the members of the petitioners association as employees of the Railway Administration. We, therefore, direct the Labour Commissioner to again afford an opportunity to the Railway Administration and the contractors and the petitioners and verify the authenticity and genuineness of the claim made by the petitioners with reference to the records that may be produced by the Railway Administration and the contractors and submit a report to the Railways within six months from the date of receipt of this judgment which, in our opinion, would resolve the disputed claim of the petitioners and the railways and on the basis of the report submitted, the railway administration shall consider the claim of the individual petitioners subject to the terms and conditions to be stated infra in this judgment.

- Along with the writ petition, number of orders passed by this Court on few earlier occasions have also been filed as Annexures. Annexure-B is one such order in Writ Petition No. 277 of 1998 filed by one Raghavendra Gaumastha, under Article 32 of the Constitution. The petitioners claimed relief for issue of writ of mandamus directing the Railway Administration to regularize the petitioners services and to pay them the same salary which is paid to others carrying out the similar duties and functions. This Court, by order dated 04.10.1989, referred the matter to the Labour Commissioner to decide the question whether the petitioners are contract labourers or they are the employees of Railways and also the question as to whether they have been working as labourers for a number of years. This Court, after extracting the report of the Labour Commissioner, directed the railway administration to treat the petitioners as regular parcel porters and to grant them the same salary which is being paid to regular parcel porters in view of the fact that most of the petitioners have been working since 1972 and some of them since 1980 and few of them in 1985.

- The order passed by this Court dated 15.04.1991 in writ petition No. 277 of 1998 was followed by this Court in the case of National Federation of *Railway Porters, Vendors and Bearers*, (supra). This Court, taking into consideration the nature of the prayer in the writ petition, made an order directing the Labour Commissioner to enquire and submit a report and after perusal of the said report issued certain guidelines and directions to the Union of India and the Railway Administration in regard to the absorption of the railway parcel porters on permanent basis.

Again this Court by order dated 08.07.1996 in Writ Petition No.568 and 711 of 1995 filed by National Federation of Railway Porters Union have issued directions for regularization of their services as mentioned in the order if the petitioners are found to be eligible. A

Yet another order can also be profitably looked into in this context which has been passed by this Court in Writ Petition No. 90 of 1997 dated 19.09.1997 in which this Court directed the Assistant Labour Commissioner, Calcutta to conduct an enquiry into the allegations whether the petitioners who were working as parcel porters at various railway stations had been working continuously at the concerned railway stations and the work is of a perennial nature and requirements of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 have been satisfied. Similar direction was issued by this Court on 27.04.1998 in Writ Petition No. 176 of 1995. B C

The learned counsel for the petitioners placed strong reliance on the judgment of this Court in *National Federation of Railway Porters, Vendors and Bearers*, (supra) and the directions given by this Court in absorbing the labourers under certain conditions. This Court in *R.K. Panda and Ors. v. Steel Authority of India and Ors.*, reported in JT (1994) 4 SC 151 issued directions that all labourers who had been initially engaged through contractors but have been continuously working with the respondent for the last 10 years on different jobs assigned to them in respect of the replacement and change of the contractors shall be absorbed by the respondent as regular employees subject to being found medically fit and if they are below 58 years of age being age of superannuation. The Court also gave further directions for fixing *inter se* seniority, absorption of wages and terms and conditions of service. The Court also directed that the respondent shall be at liberty to retrench the workmen so absorbed in accordance with law. D E F

In *Gujarat Electricity Board, Thermal Power Station, Ukai v. Hind Mazdoor Sabha and Ors.*, AIR (1995) SC 1893, this Court held that where the contract labour system is abolished the industrial adjudicator can, depending upon the facts of the case, direct the principal employer to absorb all or any of the workmen of the ex-contractor and on such terms as he may determine. This Court after pointing out the vital lacuna in the Act, namely, no provision as to the fate of workman of ex-contractor after the abolition of contract labour system however issued guidelines for such absorption that the workmen of the ex-contractor, if found suitable can be absorbed by the principal employer after the contract system is abolished. This Court has laid down G H

A guidelines for the same in the said judgment.

We have carefully examined the report of the Assistant Labour Commissioner, the findings recorded therein and the counter affidavits, reply affidavits and rejoinder filed by the respective parties. The facts disclosed in the report and the findings recorded in regard to the perennial nature of work cannot be overruled. Though we have heard at length both the parties, the learned Additional Solicitor General appearing for the Railway Administration was not able to point out to us any valid reason as to why the present writ petitions should not be allowed in terms of the order dated 15.04.1991 made by this Court in similar Writ Petition No. 277 of 1988 particularly when in the matter of absorption of contract labour by a public undertaking on a permanent regular basis. We feel, therefore, it is just and appropriate to issue the following directions to the respondent Union of India and the Railway

Administration Units:

1. The Assistant Labour Commissioner, Lucknow is directed to again scrutinize all the records already placed by the petitioners and also the records to be placed by the respective contractors and the railway administration and discuss and deliberate with all parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for regularization. This exercise shall be done within six months from the date of receipt of this judgment.
2. Subject to the outcome of the fresh enquiry and the report to be submitted by the Assistant Labour Commissioner, the Railway Administration should absorb them permanently and regularize their services. The persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the dates of their absorption, the minimum scale of pay or wages and other service benefits which the regularly appointed railway parcel porters are already getting.
3. The Units of Railway Administration may absorb on permanent basis only such of those Railway Parcel Porters (petitioners in this batch) working in the respective railway stations concerned on contract labour who have not completed the age of superannuation.

4. The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway Parcel Porters who are not found medically fit/unsuitable for such employment. A
5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by the Railway Administration as Railway Parcel Porters does not disable the Railway Administration from utilizing their services for any other manual work of the Railways depending upon its needs. B
6. In the matter of absorption of Railway Parcel Porters on contract labour as permanent and regular Railway Parcel Porters, the persons who have worked for longer periods as contract labour shall be preferred to those who have put in shorter period of work. C
7. The report to be submitted by the Assistant Labour Commissioner should be made the basis in deciding the period of contract labour work done by them in the railway stations. The report shall be finalized and submitted after discussions and deliberations with the railway administration and the contractors and all the representatives of the writ petitioners or writ petitioners themselves. D
8. While absorbing them as regular employees their *inter se* seniority shall be determined department/job-wise on the basis of their continuous employment. E
9. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by the railway administration for its own employees irrespective of any existing contract or agreement between the respondent and the contractors. No claim shall be made by the contractors against the railway administration for premature termination of their contracts in respect of the contract labourers. F
10. The railway administration shall be at liberty to retrench the workmen so absorbed in accordance with law. This order shall not be pleaded as a bar to such retrenchment. G
11. This judgment does not relate to the persons who have already been absorbed. H

**A** Several I.As were filed to modify the order dated 08.09.2000 passed by this Court in Writ Petition No. 433 of 1998 and 457 of 1998. Few I.As were filed seeking certain prayers pending writ petition. Few I.As were filed to implead the proposed parties as parties to the writ petition. Some I.As were filed for intervention.

**B** In view of the disposal of the main matters, no separate direction is necessary in these I.As.

In the result, the writ petitions and the civil appeals including the I.As filed in different writ petitions shall stand disposed of accordingly.

**C** However, there will be no order as to costs.

S.K.S.

Petitions/Appeals disposed of.