CASE NO.:
Writ Petition (civil) 433 of 1998

PETITIONER:
A.I. Railway Parcel & Goods Porters Union
Versus
Union of India & Ors.
@
August 22, 2003.
#
S. Rajendra Babu, Dr. AR. Lakshmanan & G.P. Mathur.
&
J U D G M E N T

WITH

Writ Petition (Civil) Nos. 457 of 1998, 278 of 1999, 530 of 2000, 599 of 2000, 45 of 2001, 121 of 2000, 262 of 2002 and 19 of 2003, Civil Appeal No. 57 of 2001 and
Civil Appeal No._____of 2003 @ Special Leave Petition (Civil) No. 6560 of 2001

Dr. AR. LAKSHMANAN, J.

Leave granted in Special Leave Petition No. 6560 of 2001.

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:

"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;

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;

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

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 vs. Union of India and Others 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.

"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."

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.

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.

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 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.

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.

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.

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 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. 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 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)â\200\223(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 Railway Authorities, they cannot be treated as contract labourers.

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. 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 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 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.

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.

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.

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

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 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 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. 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 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, 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 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 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.

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 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 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.

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 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:

"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."

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:-

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

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 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

I have reached to the conclusion that the work of parcel handling/loading/un-loading is an activity that is not separate and detatched 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. The parcel handling work being performed by the petitioners is of a perennial nature.

Submitted."

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 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.

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.
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.

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.

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 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.

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.

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 Others vs. Steel Authority of India and Others 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.

In Gujarat Electricity Board, Thermal Power Station, Ukai vs. Hind Mazdoor Sabha and Others 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 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.

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.

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.

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.

8. While absorbing them as regular employees their inter se seniority shall be determined department/job-wise on the basis of their continuous employment.

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.

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.

11. This judgment does not relate to the persons who have already been absorbed.

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.

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.

However, there will be no order as to costs.

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VINOD KUMAR

RESPONDENT:
Vs.
PREM LATA

DATE OF JUDGMENT: 19/08/2003

BENCH:
R.C. LAHOTI, SHIVARAJ V. PATIL & BRIJESH KUMAR.

JUDGMENT:
JUDGMENT

R.C. LAHOTI, J.

Proceedings for eviction were initiated under clause (i) of sub-section (2) of Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as the 'Haryana Act' for short) and culminated in favour of the landlord, directing the tenant to be evicted from the premises in his occupation, on the finding that he had not paid or tendered the rent due from him in respect of the rented premises. The tenant preferred Appeal by Special Leave. By judgment dated 16.12.2002 this Court allowed the tenant's appeal, set aside the judgments of the High Court and the authorities below and directed the case to be sent back to the Controller for hearing and decision afresh in accordance with the law laid down by this Court in Rakesh Wadhawan & Ors. Vs. Jagdamba Industrial Corporation & Ors. (2002) 5 SCC 440. This petition for review of the judgment dated 16.12.2002 seeks to question the correctness of the law laid down by this Court in Rakesh Wadhawan's case.

We have heard the learned counsel for both the parties. The principal submission, rather the only one, made by the learned senior counsel for the Review-petitioner is that two earlier decisions of this Court, namely, M/s. Rubber House Vs. M/s. Excelsior Needle Industries Pvt. Ltd. (1989) 2 SCC 413 and Rajinder Kumar Joshi Vs. Veena Rani (1990) 4 SCC 526, were not brought to the notice of this Court while deciding Rakesh Wadhawan's case and, therefore, Rakesh Wadhawan's case does not lay down the correct law. All the three decisions, namely, the decisions in Rakesh Wadhawan's case (supra), M/s. Rubber House's case (supra) and Rajinder Kumar Joshi's case (supra), are two-Judges Bench decisions and, therefore, the matter has been placed for consideration by a three-Judges Bench.

In Rakesh Wadhawan's case, the decree for eviction was passed under Section 13(2)(i) of the East Punjab Urban Rent & Restriction Act, 1949 (hereinafter referred to as 'the Punjab Act' for short). It is, therefore, necessary to consider the relevant provisions of the two Acts. The same are extracted and re-produced hereunder:

PUNJAB ACT

HARYANA ACT

S.13. Eviction of tenants.-

(1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in

pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1949 as subsequently amended.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied â\200\223

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the applications for ejectment after due service pays or tenders the arrears of rent and interest at 6% per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid;

X X X

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may given the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate."

S.13. EVICTION OF TENANTS.-

1. A tenant in possession of a building or a rented land shall not be evicted there-from except in accordance with the provisions of this

Section.

2. A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied -

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable:

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight percentum per annum on such arrears together with such costs of the application, if any as may be allowed by the controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provision of this Act.

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate."

The learned senior counsel for the Review-petitioner tried to draw a

distinction between the provisions of the Punjab Act and the Haryana Act, submitting that the phraseology employed in the two Acts is different, and, therefore, the decision in Rakesh Wadhawan's case which is under the Punjab Act has no relevance and applicability insofar as the provisions of the Haryana Act are concerned. We find no merit in the submission so made. Except for a difference in the manner of constructing the sentences there is no substantial difference in effect between the two provisions and the crux of the issue emerging for decision under the relevant provisions of the two Acts remains the same.

In Rakesh Wadhawan's case, this Court noticed a lacuna in the drafting of Section 13(2)(i) of the Punjab Act and resolved the same by applying well-settled principles of statutory interpretation so as to cull out the legislative intent and then held that the expression "assessed by the Controller" as occurring in the proviso to Section 13(2)(i) of the Act qualifies all the three things, i.e., (i) the arrears of rent, (ii) interest at 6% per annum on such arrears, and (iii) the cost of application, which are included in the preceding part of the sentence. The order of assessment made by the Controller is not an assessment of costs alone; it is an assessment of the arrears and interest as well. The Court further held that such order of the Rent Controller making an assessment shall, in the scheme of the section, be an interim or provisional order which would be based on a summary enquiry leading to the formation of a prima facie opinion based on the consideration of relevant material brought on record by the parties, which may consist of the documents, affidavits and pleadings which would enable the Controller to make a provisional and yet judicial assessment, and place it on record by way of an order to satisfy the spirit of the proviso. Having said so, the Court explained the mechanism to be followed by the Controller in this regard and the meaning to be assigned to the expression "the first date of hearing" so as to make it practical and workable. Failing the interpretation adopted by the Court in Rakesh Wadhawan's case, the provision under consideration could have run the risk of being struck down, because it would be unworkable and lead to uncertainty. The provision had remained on the statute book for more than 50 years but was creating practical difficulties in its working and applicability to different sets of facts. Such meaning has been placed on the language of the proviso to Section 13(2)(i) as would make it workable and sensible and would least offend the sense of justice. Care has been taken to protect the interests of both the landlord and the tenant. The interpretation protects the landlord from frivolous pleas raised by recalcitrant tenants and at the same time saves the tenants from undue hardship likely to be caused by unscrupulous landlords accusing the tenants of such default as may not exist.

In M/s. Rubber House's case (supra), the provisions of the Haryana Act came up for the consideration of the Court. Having scrutinized Section 13(2)(i) and the first proviso thereto, the Court held that there is no statutory duty cast on the Controller even in the first instance to determine and calculate the arrears of rent and the interest but, on the contrary, the proviso requires the tenant to pay or tender the actual arrears of rent within 15 days of the hearing of the application for ejectment after due service. The calculation by the Controller is confined only to calculating the interest at 8% per annum on such arrears together with the cost of the application. The argument advanced by the learned counsel for the tenant in that case that the proviso casts a statutory duty on the Controller to calculate and determine the arrears of rent as well as the interest to be paid by the tenant within a period of 15 days of the first hearing of the application for ejectment after due service was rejected by the Court on the reasoning that such an argument, if accepted, would result in the Rent Controller holding an enquiry at the first instance in every case and determining the arrears of rent even on the first date of hearing which is in the nature of things not possible without any evidence, nor is contemplated under the scheme of the Act. We find it difficult to agree with the above-said reasoning in M/s. Rubber House's case. On the plain language of the Haryana Act, the expression "to be calculated by the Controller" qualifies both the arrears of rent and interest. The succeeding expression "such costs of the application" is again qualified by the expression "if any, as may be allowed by the Controller". Thus the provision itself casts an obligation on the Controller to calculate and

determine by its order (i) the arrears of rent; (ii) the interest; and (iii) the costs, quantifying the amount which should be paid or tendered by the tenant (at that stage) to comply with the proviso. The words 'calculated' and 'allowed' occurring in the proviso imply a duty cast on the Controller which has to be discharged judicially. Such determination will be only for the purpose of securing compliance by the tenant on 'the first date of hearing' succeeding the date of order by the Controller, which order would be based on a summary enquiry and would obviously be subject to final determination by the Controller at the end of the regular full-fledged enquiry. Thus it is not correct to say that the provision does not contemplate an enquiry, nor is it correct to say that such an interpretation would result in the holding of a full-fledged enquiry on the first date of hearing, which is not possible.

In M/s. Rubber House's case, the Court further held that it is for the tenant to calculate the exact arrears of rent due and to pay or tender the same and if the tenant fails to do so, he is deemed not to have paid or made the valid tender of the rent. However, the case does not answer the question as to what would happen if the tenant, having paid or tendered the arrears of rent as per his own calculation, is found at the end of the enquiry to have made a wrong - if not a deliberately wrong - calculation of the arrears.

Rajinder Kumar Joshi's case is under the Punjab Act. There also the Court had noticed a lacuna in the legislative drafting raising a contention worthy of serious consideration and the hardship to which a tenant may be put where the landlord makes a demand on the tenant for rent which is not due from him, as was found to have been done in that case. The Court was faced with a dilemma in adopting either interpretation. If the provisions of Section 13(2)(i) of the Act were to be so interpreted as to require the tenant to tender the rent as demanded (though the demand is exaggerated by reference to the rate of rent or the period of default) or to face the consequences of eviction from the rented premises, the provision would result in causing hardship to the tenant. On the other hand, to hold the requirement of the proviso to Section 13(2)(i) to tender the rent as meaning the tender of the rent as the tenant thinks he is in arrears of, would render nugatory the requirements of the said proviso. The Court felt the need for striking a balance between the two situations so as not to render the protection given by the Act to the tenant illusory, and at the same time not to deprive the landlord of his minimum legitimate expectation to be paid regularly the rent for the use and occupation of his premises. The solution which the Court provided was in the background of the facts of that case, and is hence a limited one. The Court said that if the rate of rent is not fixed or becomes the subject matter of dispute, the tenant may have resort to Section 4 of the Act and apply to the Controller to fix the fair rent failing which he must deposit the rent at the rate as demanded by the landlord. If there is any dispute as to the period of default, the tenant may deposit the rent which he thinks to be in arrears, but he must take the risk for doing so. If it is proved ultimately that the rent paid or tendered by him was less than what was due, he must face eviction. Such an interpretation gives an uncertainty to the litigation and does not take care of several situations which may emerge in a litigation other than the one as arose in that case before the Court.

It is true that the decisions in M/s. Rubber House (supra) and Rajinder Kumar Joshi (supra) were not brought to the notice of the Court deciding Rakesh Wadhawan's case (supra) and it would have been better if that would have been done at the Bar. However, the present petition has given us the opportunity of examining afresh the merits of the three decisions under consideration and also for making a comparative study of the provisions contained in the Punjab Act and the Haryana Act insofar as the ground for eviction on account of default in payment or tendering the arrears of rent by the tenant is concerned. We are of the opinion that M/s. Rubber House's case and Rajinder Kumar Joshi's case do not place a correct interpretation upon the provisions. The decision in Rakesh Wadhawan's case correctly lays down the law and is re-affirmed. The interepretation placed by this Court in Rakesh Wadhawan's case on Section 13(2)(i) with the proviso in the Punjab Act applies for interpreting Section 13(2)(i) and the proviso as contained in the Haryana Act.

The petition is held devoid of any merit and is dismissed.