

(2009) 04 MAD CK 0059

In the Madras High Court

Case No : Writ Petition No. 7424 of 2005

A. Rajan and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2009) 04 MAD CK 0059

Hon'ble Judges : P.K. Misra, J;D. Hariparanthaman, J

Bench : Division Bench

Advocate : Parthiban, for the Appellant; A.S. Khan, for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The writ petitioners sought the following relief in O.A.No.442 of 2004 before the 3rd respondent - Tribunal.

a) To quash the order No.1802/LB dated 18.10.2003 issued by the 2nd respondent as illegal and void.

b) To declare that the petitioners are entitled to be appointed as Tailors (Semi-Skilled) on transfer from non-industrial to industrial category.

c) To direct the respondents to treat the appointment of petitioners as unskilled labourers in the industrial category as Tailors (Semi-Skilled) and

grant all attendant benefits like promotion, seniority, pay fixation etc.

2. The third respondent i.e. Tribunal, dismissed the said Original Application on 27.01.2005. Hence the present writ petition.

3. The writ petitioners belonged to the non-industrial establishment of the second respondent i.e. factory. They were appointed as Orderly,

Vendor, Sweeper, Durwan etc., on various dates. Admittedly, the opportunities of

promotion in non-industrial category was remote. The employees in non-industrial establishment, who rendered five years of service were allowed to go over to the industrial establishment and were re-designated as Tailors (Semi-Skilled). On completion of two years of their service as Tailors (Semi-Skilled), they will be promoted as Tailors (Skilled). The writ petitioners enclosed one such order dated 02.08.1991 at page No.1 of the typed set, wherein three employees belonging to non-industrial establishment were re-designated as Tailors (Semi-Skilled).

4. But, in the case of the petitioners, the second respondent brought them to industrial establishment and re-designated them as Labourers (unskilled) instead of Tailors (Semi-Skilled), while the scale of pay for Tailors (Semi-Skilled) is Rs. 2650-65-3300-70-4000 and the scale of pay of Labourer (unskilled) is Rs. 2550-55-2660-60-3200.

5. It is an admitted fact that though the petitioners were re-designated as Labourers (unskilled), the second respondent extracted work of Tailors (Semi-Skilled). After three years of service as Labourers (unskilled), the petitioners were appointed as Tailors (Semi-Skilled) and given the pay scale of Tailors (Semi-Skilled). Therefore, the petitioners wanted the pay scale of Tailors on their transfer to industrial establishment, particularly when they carried out the work of the Tailors and when they passed the trade test meant for Tailors at the time of transfer. However, their request was declined. Therefore, they came with the prayer as mentioned above.

6. The plea of the second respondent is that the second respondent called for option from the employees of non-industrial establishment to be re-designated as Labourer (unskilled) vide their circular dated 17.12.1998. According to the second respondent, the said circular made it very clear that while re-designating the employees as Labourers (unskilled), they would be deployed on Tailoring job. The second respondent further stated that the employees gave their willingness to be re-designated as Labourers (unskilled) and to work as Tailors. Thus, the main contention of the second respondent is that having expressed their willingness for re-designation as Labourers (unskilled) and to work as Tailors, the petitioners should not ask for the pay scale of Tailors. Such plea of the second respondent found acceptance by the third respondent - Tribunal.

7. We have heard at length both sides. We have also perused the materials and

the counter affidavit filed on behalf of the respondents.

8. It is admitted by the first and second respondents before the third respondent as well as this Court that they did the work of Tailors though the employees on transfer to industrial establishment were re-designated as Labourers (unskilled). It is also admitted that the petitioners were trade tested before their transfer to industrial establishment. Since they were found eligible, they were asked to work as Tailors. Once the petitioners were asked to do the work of Tailor after passing the trade test, the second respondent was not justified in refusing the scale of pay for the post of Tailor. The second respondent, being a State under Article 12 of the Constitution should behave like a model employer. Referring to grant benefits such as pay fixation, seniority, promotion etc., for the post of Tailors (Semi-Skilled) in the said circumstances is arbitrary and violative of Article 14 of the Constitution.

9. The third respondent i.e. Tribunal is not correct in relying on the undertakings given by the petitioners agreeing for re-designation as Labourers (unskilled) and to work as Tailors. We are of the considered opinion that such undertakings are illegal and could not be sustained. The second respondent could not deny the benefits available to the post, particularly after extracting work from the employees citing the undertakings. Further, we have also taken note of the earlier orders given to similarly placed employees re-designating them as Tailors (Semi-Skilled). Therefore, the second respondent could not discriminate the writ petitioners.

10. For the aforesaid reasons, we are inclined to allow the writ petition and accordingly, the writ petition is allowed. Since the petitioners approached the Tribunal belatedly after they were appointed as Tailors (Semi-Skilled) after rendering three years of service as Labourers (unskilled) though they carried out the work of Tailor, we have decided to grant only notional fixation of pay. It is made clear that the petitioners would get the notional fixation of the Tailors (Semi-Skilled) from the date of their transfer from non-industrial establishment to industrial establishment and on completion of two years, they would be notionally fixed the pay scale of Tailors (Skilled). However, they are not entitled to arrears of fixation. The second respondent is directed to carry out the exercise of fixation of pay within four weeks from the date of receipt of a

copy of this order. No costs.