

(1997) 09 GAU CK 0049
In the Gauhati High Court
Case No : C.R. No. 105 of 1997

Ashuli Kashipri and Another

APPELLANT

Vs

Manipur Cement Limited and Others

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Citation : (1999) 1 GLT 395 : (1999) 1 LLJ 373

Hon'ble Judges : N. Surjamani, J

Bench : Single Bench

Advocate : N. Nilmani Singh and A. Bimol, for the Appellant; L. Shyamkishore and B.K. Bana Singh, for the Respondent

Judgement

Surjamani, J.—Upon hearing the learned counsel on both sides, it appears to me that the Writ petitioners namely Shri Ashuli Kashipri and Shri Seram Dineshwar Singh, made a prayer in this writ petition for a direction to the respondents to regularise their services, as Mines Manager in case of Petitioner No. 1 and Mining Mate in case of Petitioner No. 2 in The Manipur Cements Limited (a Government of Manipur Undertaking & Government Company), Hundung Cement Factory, Hundung, District PS Huhurul, Manipur, w.e.f. the dates on which each of them had successfully completed the required course of their training, i.e. November 11, 1995 in the case of the Petitioner No. 1 and August 11, 1995 in the case of the Petitioner No. 2. According to the writ petitioners, Petitioner No. 1 is a member of Scheduled Tribe of Manipur, and the Petitioner No.2 is a member of Meitei OBC of Manipur. Petitioner No. 1 is a holder of Degree of E.E.(mining) of a recognised university/institute, certificate of competency of 2nd class mines manager, Certificate of Practical experience of 12 years in Limestone Mines, and Certificate of Practical Experience for 6 months in Mines other than Limestone. On the recommendation of the related DPC, the Petitioner No. 1 was appointed as a Trainee for the post of Mines Manager, vide order No. M.CL-002/HD/1990-1991 dated November 13, 1990 issued by the Respondents No. 1 to 3, as Annexure A-1 to the writ petition. Likewise the Petitioner No. 2 is a holder of

Licenciate in Mining Engineering & Diploma of 3 years Course in Mining Engineering of recognised Institute, Foremen's Certificate of Competency; Certificate of Practical Experience for 1 year 3 months in Limestone Mines, and Certificate of Practical experience for 9 months in mines other than Limestone mines. On the recommendation of the concerned DPC the Petitioner No. 2 was appointed as Mining Mate Trainee against the post of Mining Mate, vide, order No. M.C.L.-002/HD 1990-1991 dated November 13, 1990 issued by the Respondents No. 1 to 3, as in Annexure A-2 to the writ petition. All the petitioners were sent out for practical training to Mine recognised by the DGMS for enabling them to obtain the statutory certificate as required under the Metalliferous Mines Regulations, 1961 for their subsequent regular appointment, with a specific term and condition that their services would be regularised on their successful completion of the training course and on production of the required certificates, vide Resolution No. 8(d) of the Board of Directors of the Respondents No. 1 to 3 as communicated to these petitioners under letter No.MCL-002/6/88-89/523 dated March 11, 1994 as in Annexure A-3 to the writ petition. Accordingly the Petitioner No. 1 had undergone the required course of practical training for 1 year 6 months from May 11, 1994 to November 11, 1995, and in testimony whereof a Certificate of Practical Experience was granted by the Manager (Mining), Cement Corporation of India Limited, Dillai Parbat Limestones, Government of India, Ministry of Labour & Employment, Directorate General of Mines Safety. The petitioner submitted the said certificates to the Respondent No. 1 to 3 on completion of the said course of training by requesting them to regularise his service as the Mines Manager. Likewise, the Petitioner No. 2 had undergone the required course of training for a period 1 year 3 months from May 11, 1994 to August 11, 1995, in testimony whereof a Certificate of Practical Experience was granted by the Manager (Mining), Cement Corporation of India Ltd., Dillai Parbat Limestone (Mines), Ministry of Labour & Rehabilitation, Directorate General of Mines Safety, Government of India. The Petitioner No. 2 also submitted the related certificate to the Respondents 1-3 on completion of the said course of training by requesting them to regularise his services as Mining Mate. The true copy of the photostat copy of those certificates are appended to this writ petition and marked as Annexure A-4 and A-5 respectively. Both the petitioners submitted joint representations to the Respondent No. 1,2 and 3 on May 6, 1996 and twice on June 28, 1996 for regularising their services and for paying them their usual scale of pay prescribed for their posts, particularly when other employees of these respondents had been given their salaries and allowances on the prescribed scales of pay of their posts. It is also the case of the writ petitioners that despite their submission of their farther representations dated July 12, 1996 and July 16, 1996 to the Respondent No.2 demanding justice and equality for regularising their services as Mines Manager and Mining Mate respectively in fulfilment of the resolution and promise made by the Respondent Nos. 1, 2 and 3 the concerned respondents paid no heed till date and accordingly, the writ petitioners approached this Court for ventilating their grievances and for appropriate direction in the matter.

2. The case of the writ petitioners is resisted by the Respondent Nos. 1, 2 and 3 by filing affidavit in opposition and contending inter alia that the company has so far not offered any commitment and specific terms and conditions to the petitioners for regularisation of their respective services. The said letter No. MCL-002/6/88-89 dated March 11, 1994 as in Annexure A-3 to the writ petition is an official document and not an order and that the same does not create any right in favour of the writ petitioners for regularisation of their services in the posts of Mines Manager and Mining Mate. As per related provisions of the Staff Rule of the Company, the appointment of permanent staff in the company shall be made in accordance with the organisation chart of the Company recommended from time to time and approved by the Board of Directors. So far as the training is concerned, the employee of the company may be required to undergo training anywhere in India for such period or periods as may be considered necessary to the Board from time to time and upon such terms and conditions as may be determined by the Board. It has been further laid down that an employee directly appointed or promoted to any post, shall by an order in writing communicate the employee concerned that he has been confirmed in the post after the employee has successfully completed the period of probation vide Para 5.1 Chapter II, Para 5.2 and Para 5.3 of the Staff Rules of the Company.

3. It is also the case of the Respondent Nos. 1, 2 and 3, that the Petitioner No. 1 had submitted an application along with a copy of the above Statutory Certificate to the Respondent No. 2 on July 12, 1996 requesting the latter for regularisation of his services and as such, the Company had no opportunity for initiating action for regularisation of the Petitioner No. 1's services before July 12, 1996 in absence of the required statutory Certificate. Similarly, the writ Petitioner No. 2 had also submitted an application along with a copy of the above Statutory Certificate to Respondent No. 2 only on July 16, 1996 requesting the latter for regularisation of his services. Therefore, the company had no opportunity for initiating action for regularisation of the writ Petitioner No.2's services before July 16, 1996. According to the Respondent Nos. 1, 2 and 3, the B.O.D. in its 28th meeting held on October 12, 1995 resolved that in view of the continuing difficult financial health of the company the services of the Staff, Hundung Cement Factory appointed on consolidated basis against the vacant post will remain as it is until the time when condition may be improved. In this regard the State Cabinet Committee in its report, copy furnished to the Company under the Govt. letter No.58/2/96-IND dated June 5, 1996 and received on June 11, 1996 had recommended that an immediate lock-out of the Hundung Cement Factory may be declared and that specially all the casual and consolidated staff should be immediately terminated, and that, further appointment of any nature of whatsoever shall be completely prohibited and banned in the Corporation. However, the company again submitted its proposal to the Govt. for review of the above recommendation for lockout of the Hundung Cement Factory. The Staff strength of Manipur Cements Ltd., Hundung Cement Factory, hereinafter referred to as Hundung Cement Factory, is 63 numbers (excluding casual workers)

including 45 numbers of regular staff and 18 numbers of staff appointed on consolidated pay basis. Out of the above 63 numbers of staff, only 45 numbers of regular staff have been given their salaries and allowances on the prescribed scale of pay of their posts and all the consolidated pay staff, including the present petitioners have not been provided with salaries and allowances on the prescribed scales of pay of their posts because of the nature of their appointment.

4. At the hearing Sri A.Nilmani Singh, the learned Sr. Counsel for the writ petitioners, contended that the respondents are under a legal obligation to fulfil the promise held out by them to the petitioners for regularisation of their services on successful completion of the prescribed course of training and they should not frustrate the legitimate expectation of the writ petitioners after they have been constrained to act on the promise to their peril and at their cost. The letter dated March 11, 1994 as in Annexure A-3 contains the extract of the 22nd meeting of the BOD dated December 15 and 20, 1993, relating to the training of the statutory mining certificate. The said letter of March 11, 1994 speaks about the decisions of the Board of Directors to the effect that the services of the writ petitioners shall be regularised on their successful completion of the training course and the production of the required certificates. Therefore, it is a clear promise and commitment made by the Board of Directors and the same is binding upon the Respondent Nos. 1, 2 and 3. However, the Respondent Nos. 1, 2 and 3 have failed to perform their lawful duties in the matter conferred upon them by the resolution taken and adopted in the 22nd Meeting of the Board of Directors held on December 15 and 20, 1993. The Chairman of the Board, the Hon'ble Minister of Industries had already approved the regularisation of the services of the petitioners on August 2, 1996 and as such, the Respondent Nos. 1, 2 and 3 ought to have issued necessary order for regularisation of the services of the writ petitioners in their respective posts but the said respondents had failed to perform their lawful duties, Shri Nilmani argued.

5. At the hearing, Shri B.K.Bana Singh, the learned counsel for the Respondent Nos. 1, 2 and 3 submitted that the appointment or regularisation of the services of the employees of the respondent/cement factory is governed by the staff regulation of the company and as such, the services of the writ petitioners cannot be regularised on the basis of the company's letter dated March 11, 1994 as in Annexure A-3 to the writ petition as the same does not confer any legal right upon the writ petitioners. Shri Bana Singh further contended, that as soon as the financial condition of the respondent/company is improved, the case of regularisation of the services of the writ petitioners may be considered in accordance with the related Staff Rules/Regulation. But, the writ petitioner cannot claim for regularisation of their respective services as of right and, moreover, the present writ petition is premature and the same deserves its outright dismissal.

6. Now this Court is to examine as to whether the writ petitioners have enforceable rights or not and, whether their cases deserve consideration or not in

view of the letter dated March 11, 1994 as in Annexure A-3 of the writ petition containing/highlighting the resolution and decision of the Board of Directors in its 22nd Meeting held on December 15 & 20, 1993, relating to the training for Statutory Mining Certificate, vide, Item No. 8(d) of the resolution of the Board of Directors.

7. On perusal of the said document marked as Annexure A-3, it has been revealed that the Board of Directors decided that the Mines Manager and Mine Mate, Hundung Cement Factory be sent for practical training under a bond to any Mine recognised by the DCMS to enable them to obtain statutory certificates as required under Metalliferous Mines Regulation, 1961 for regular appointment and their consolidated pay be hiked by Rs. 900/-per month each during their training course and their services be regularised on their successful completion of the training course and on production of the required certificate. It is an admitted position that the writ petitioners had completed their training course and they have produced the required certificates before the Respondent Nos. 1 to 3. In my considered view, the writ petitioners have legitimate expectations of the said promise and commitment made under the said resolution of the Board of Directors that the services of the writ petitioner shall be regularised on their successful completion of their training course and on their production of the required certificates, and as such, such expectations may include expectation which goes beyond enforceable legal rights provided they have some reasonable basis. In the instant case there is reasonable basis of such expectation. In *U.P. Awas Evam Vikas Parishad v. Gyan Devi and Ors.* as reported in 1996 LLJ 697 the Apex Court held thus:

"In situations where even though a person has no enforceable right yet he is affected or likely to be affected by the order passed by a public authority the Courts have evolved the principle of legitimate expectation. The expression which is said to have originated from the judgment of Lord Denning in *Schmidt v. Secretary of State of Home Affairs* is now well established in public law. In *Attorney General of Hong Kong v. Ng. Yuen Shiu* Privy Council applied this principle where expectations were based upon some statement or undertaking by or on behalf of, the public authority" and observed:

"Accordingly "legitimate expectations" in this context are capable of including expectations which go beyond enforceable legal rights provided they have some basis. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment."

8. In another case namely, *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, the Apex Court held that the legitimate expectation becomes an enforceable right in case of failure of State or its instrumentality to give due weight to it. In the instant case also, the respondents particularly Respondent Nos. 1 to 3 have failed to give the weight to the aforementioned resolution contained in the letter dated March 11, 1997 as in Annexure A-3 of the writ

petition to the prejudice of the writ petitioners. Moreover no bonafide decision has been made by the respondents concerned in order to satisfy the requirement of non-arbitrariness in the matter till today.

9. For the reasons and discussions made above, and also applying the established principles of law laid down in the Apex Court, I direct the Respondents No. 1 to 3 to regularise the services of the writ petitioner No. 1 in the post of Mines Manager on and from November II, 1995 and the services of writ Petitioner No.2 in the post of Mining Mate on and from August 11, 1995 under the Respondents 1 to 3 within a period of 1 (one) month from the date of receipt of this judgment and order. It is made clear that the writ petitioners shall not be entitled to any arrear salary by virtue of the regularisation of their services. The parties shall bear their own costs.

10. With the above observation and direction this writ petition is disposed of.