
(1992) 08 AHC CK 0061
In the Allahabad High Court
Case No : C.M.W.P. No. 18657 of 1987

Bhola Nath Dubey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-08-1992

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (1994) 2 LLJ 323

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : A.P. Tewari and J.N. Tripathi, for the Appellant; V.R. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

M.L. Bhat, J.—The State Government has refused to refer the dispute raised by the petitioner for adjudication by its order dated April 20, 1987. The said order is impugned in this writ petition.

2. Facts relevant for the decision of this writ petition are briefly summarised.

3. The petitioner claims that he was appointed as Accounts Clerk on the consolidated salary of Rs. 250/- per month, on April 5, 1965. The petitioner, after his appointment, was deputed to perform the duties of Stenographer and on October 1, 1965 he was confirmed on the post of Stenographer. One Mrs. I.P. Shepherd is said to have been promoted as Senior Stenographer in the year 1966. She was junior to the petitioner. In 1976 she was further promoted to the post of Secretary to General Manager. The petitioner's salary also was not fixed for which he was trying hard and without fixing the petitioner's salary he was ignored from consideration for higher post, in 1976. The stenographers working with the respondent No. 3 in different departments belong to one cadre and their seniority was to be fixed as members of one cadre. The petitioner was ignored from consideration in violation of the Rules and the standing orders of the

Company.

4. The petitioner relied on Clause 10-A of the Certified Standing Orders of the Company which provides that "promotion to workman shall be granted without discrimination and with due regard to seniority and objective standards of qualification. "The petitioner is said to have filed various representations which were not considered. Thereafter, the petitioner is said to have filed a case before the Conciliation Officer, Allahabad, through Hind Mazdoor Sabha, U.P. During conciliation proceedings, the management of respondent No. 3 did not enter into the settlement but filed their reply before the Conciliation Officer. The Conciliation Officer is said to have sent his report to the Government.

5. In pursuance of the report of the Conciliation Officer, the State Government is said to have taken a decision on May 17, 1984 refusing to refer the matter before the Tribunal or Labour Court. Upon this, the petitioner filed a representation to the Joint Secretary at Kanpur. The petitioner came to know on May 15, 1986 that his representation has been rejected. The petitioner is said to have made again a representation on February 20, 1987 to the State Government which again was rejected on April 20, 1987. No reason has been given by the State Government in refusing to refer the dispute for adjudication.

6. The petitioner's case is that promotion is a condition of service. The petitioner not having been promoted and instead his junior having been promoted, affects the petitioner's right, therefore, the petitioner was entitled to raise an industrial dispute for proper adjudication. It is submitted by the petitioner that the State Government was obliged to refer the dispute for adjudication as the dispute raised by the petitioner would fall within the ambit of the industrial dispute. It could not reject the matter. The State Government's refusal to refer the dispute for adjudication is said to be without reasons. The State Government could not say that there was no dispute between the petitioner and respondent No. 3. Promotion being condition of service and not promoting the petitioner and his junior having been promoted was violative of Standing Orders which gave rise to the industrial dispute.

7. In their counter-affidavit, respondent No. 3 has stated that Mrs. Shcphard was a better candidate, therefore, she was given higher salary. She had requisite qualification for being promoted to higher grade. The appointment of Mrs. Shephard as Secretary to the General Manager was not bad as she was capable of discharging her duties as the management had reposed trust and confidence in her. She was incharge of Stenos and typists in the pool. It is stated that provisions of Standing Order were followed in promoting the employees including the petitioner. It is contended that respondent No. 3 is a Public Limited Company in Private Sector, therefore, Articles 14, 18 and other provisions of the Constitution did not apply to it. There is no unfair discrimination which would give cause to the petitioner to raise any industrial dispute. The dispute raised by the petitioner was individual dispute as it was not sponsored by the Union of the workmen of the respondent Company.

8. The petitioner has filed rejoinder-affidavit also. He has generally reiterated the assertions made by him in various paras of the writ petition and has stated that he was entitled for promotion and not Mrs. I.P. Shephard.

9. Respondent Nos. 1 and 2 have also filed a counter-affidavit. They have annexed a copy of the G.O. dated May 17, 1984 by which the State Government had declined to refer the dispute for adjudication, to the counter-affidavit. The petitioner is said to have filed a review/representation after a long gap of two years. While declining to refer the dispute for adjudication, it is not necessary to give reasons in the order. Reasons are recorded in the concerned file. The petitioner has no case which could be referred for adjudication. One more counter-affidavit is filed by respondent Nos. 1 and 2. It is stated that promotion to a candidate would depend on his efficiency, trust and confidence. The employers seems to have found Mrs. Shephard suitable to discharge responsibilities, and their trust and confidence was a ground to give her promotion and increments. Seniority alone is not criteria for promotion, nor can promotion be claimed as a matter of right. Seniority has to be taken into consideration but merit and efficiency are the basic requirements for seeking promotion. The Government is said to have applied its mind and found that there is no dispute of the petitioner which could be referred for adjudication.

10. The petitioner has also filed two rejoinder-affidavits and has denied the assertion of the respondents.

11. u/s 4-K of the U.P. Industrial Disputes Act, if the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, to a Labour Court if the matter of industrial dispute is one of those contained in the first schedule or the second schedule for adjudication. If the dispute is related to any matter specified in the second schedule and is not likely to affect more than hundred workmen the State Government may make a reference to the Labour Court if it thinks fit.

12. It is contended by learned counsel for the petitioner that the State Government has no authority to go into the merits of the dispute and decide whether the dispute exists or not. It has to refer the matter for adjudication and it cannot: decline to make a reference.

13. Reliance is placed on Sudarshan Misra v. State of U.P. and Anr. 1987 UPLBEC 516. It is held in this judgment that the State Government has no jurisdiction to exercise quasi-judicial powers and to adjudicate on merits of an industrial dispute. Another authority relied on by the petitioner is reported in Bijli Mazdoor Sang v. State of U.P. (1992 UPLBEC. 538). It is held that the State Government cannot decide the dispute on merit. It has to make a reference if the dispute is raised in proper forum.

14. The State Government seems to have declined to refer the dispute for adjudication on May 17, 1984. Thereafter, the petitioner has been filing

representations/review and applications for reconsideration of the order dated May 17, 1984. Different authorities have been approached by the petitioner for making reference of the dispute raised by him. The respondents submit that those representations were made after inordinate delay so they could not be considered. Be that as it may, the fact remains that the petitioner was aggrieved against the promotion of certain employee over his head and the petitioner claims that he was senior and had the qualification for being promoted but his claim was ignored. The promotion is a matter which is a condition of service. If the petitioner is not considered for promotion and he has an impression that his exclusion from promotion is without any reason, he can raise industrial dispute and the State Government cannot adjudicate this dispute and it has to make a reference for its adjudication.

15. The State Government has given no reason for the petitioner's exclusion from promotion by respondent No. 3 and if any reason was given by the State Government, that record has not been produced before the Court. Therefore, it appears that the State Government has adjudicated upon the merits of the controversy and has declined to refer the dispute for adjudication under the Industrial Disputes Act. The State Government cannot exercise quasi-judicial powers and it has to refer the matter for adjudication. The appropriate forum has to consider correctness or otherwise of the dispute raised by the petitioner. That can be done only if the reference is made by the State Government.

16. The order of the State Government dated May 17, 1984, declining to refer the matter for adjudication is not valid. Subsequent orders of the State Government, passed on the representations of the petitioner are also not valid. The State Government cannot decide about the merits of the dispute raised by the petitioner. Therefore the State Government was obliged to refer the matter for adjudication.

17. Accordingly, the impugned order dated April 20, 1987 is quashed and by a writ of mandamus the State Government is directed to refer the dispute for adjudication under the U.P. Industrial Disputes Act within a period of one month from the date of supply of a certified copy of this order to respondent No. 1.