(2004) 04 AHC CK 0151

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29358 of 1994

Birendra Kumar Shukla APPELLANT

Vs

National Textile Corporation (U.P.) Limited and Another RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32
Constitution of India, 1950 — Article 14, 226, 32
Constitution of India, 1950 — Article 14, 226, 32

Citation : (2004) 5 AWC 4787 : (2004) 2 UPLBEC 2105

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Somesh Khare and T.N. Tiwari, for the Appellant; V.B. Singh, Vijay Sinha and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri T.N. Tiwari, learned Counsel for the petitioner and Sri V.B. Singh, learned Senior Advocate, along with Sri Vijay Sinha, learned Counsel for National Textile Corporation Limited, Kanpur/respondent Nos. 1 and 2.

2. In this petition prayer has been made seeking writ of mandamus to the respondent to consider the petitioner for up-gradation and placement in the grade of Rs. 500-900/- (new grade of Rs. 1640-2900/-) from his existing grade of Rs. 425-700/- (new grade of Rs. 1400-2300) with effect from 1.9.1988. Further prayer has been made for quashing the order dated 6.4.1994 (Annexure-11 to the writ petition), whereby the representation of the petitioner in the light of the order dated 13.1.1994 passed by this Court in Writ Petition No. Nil of 1993 (Birendra Kumar Shukla v. The Chairman-cum-Managing Director, National Textile Corporation (U.P.) Limited, Kanpur and Anr.) was considered and rejected with an assurance that the Departmental Promotion Committee to be convened in future shall consider the case of the petitioner along with other deserving candidates in accordance with law.

3. According to the petitioner, he is a diploma holder and was deployed as an Electric Supervisor in Laxmi Ratan Cotton Mills, Kanpur and had also worked in different mills under the National Textile Corporation Limited, Kanpur since 18.12.1981 and the petitioner was in the grade of Rs. 1400-2300/- while other diploma holders were allowed to work in the scale of Rs. 1640-2900/- with effect from 1.9.1988 and 1.1.1989 respectively. The petitioner has claimed that he was a confirmed Electric Supervisor earlier in the grade of Rs. 330-500/- (old) w.e.f. 17.12.1982 and as per recruitment and promotion rules he was provided grade of Rs. 425-700/- (Pre-revised Rs. 1400-2300/-) w.e.f. 1.9.1988. The petitioner claims that he is still working in the grade of Rs. 425-700/- although the rules provides for higher grade of Rs. 500-900 after completing three years service in the existing grade and since the petitioner has completed the required period of his eligibility of three years on 31.8.1991 in existing grade of Rs. 425-700/-, therefore, he was entitled to next higher grade of Rs. 500-900/- w.e.f. 1.9.1991. As submitted on behalf of the petitioner, the claim of higher grade was refused on the ground of loss of production activities and poor financial condition of the employer mill, which was not justifiable as at the relevant time large number of promotion and up-gradation were made in respect of many other persons, e.g., Sri Vivek Bhushan was given higher grade of Rs. 1640-2900/- (old grade Rs. 500-900/-) w.e.f. 25.3.1993 (Annexure-13 to the writ petition) as well as Sri C.B. Singh, a junior employee, was given higher grade of Rs. 500-900/- (old) w.e.f. 1.9.1988 (Annexure-3 to the writ petition) ignoring the claim of the petitioner, whereas, Sri C.B. Singh was appointed as apprentice supervisor in the year 1987 much after the deployment of the petitioner and the petitioner was a confirmed supervisor on 17.12.1982. According to the petitioner, non-up-gradation of petitioner keeping in view his seniority and suitability and despite the recommendation by the Superior Officers is illegal; and secondly the petitioner''s claim being matured can not be defeated on the ground of loss of production activities in view of the judgment of this Court passed on 22.4.1994 in Writ Petition No. 10348 of 1991 (Miss Sita Thakur v. Chairman/ Managing Director, NTC, U.P., Ltd. Kanpur and Ors.), where loss of the employer''s unit was not a bar for consideration of the up-gradation of scale of writ petitioner by the Departmental Promotion Committee.

4. According to the respondents the petitioner was initially employee of Swadeshi Group of Mills having separate pay scale and different rules as compared to National Textile Corporation and when Swadeshi Group of Mills were nationalized in the year 1986, they adopted the pay-scale and rules as applicable to the officers and supervisory staff of National Textile Corporation with effect from 1.1.1987. When the options were given to the employees of Swadeshi Group of Mills including petitioner as to whether they were willing to accept the pay scale of National Textile Corporation or were willing to continue with the old pay scale, the petitioner accepted the National Textile Corporation''s pay scale of Rs. 330-560/- w.e.f. 1.1.1987 unconditionally. Later on, on the recommendation of the Departmental Promotion Committee the petitioner was allowed next higher

pay scale of Rs. 425-700/- w.e.f. 1.9.1988. According to the respondents, there is no rule, which provides automatic higher grade after completing three year''s service in the existing grade, moreso, there are large number of employees senior to the petitioner, who have continued in the old grade for the last several years but could not be upgraded because the Departmental Promotion Committee was not convened for the purpose and the mill is sick and production activities from the year 1991 has been stopped and even the work has been reduced and large number of employees have opted Voluntary Retirement Scheme and large number of them have also left the service.

5. It has been contended on behalf of respondents that one Sri C.B. Singh was a Mechanical Engineer unlike the petitioner applied to the post of Assistant Engineer Mechanical in reference to an advertisement and was selected by a Selection Committee and was kept On probation and after probation he was given pay scale of Rs. 500-900/- (old) w.e.f. 1.9.1988, as such, the case of Sri C.B. Singh can not be compared with the case of petitioner, who did not apply for selection to the post of Assistant Engineer and is only diploma holder. In respect of Mrs. Sita Thakur, who was in managing cadre having different pay scale, as such, her different pay scale cannot be compared with the petitioner, who is in a supervisory cadre. According to the respondents, the petitioner was accorded scale of National Textile Corporation, thereafter, he was upgraded on the recommendation of the Departmental Promotion Committee and in the year 1992 the Departmental Promotion Committee considered the case of the petitioner but no recommendation for his promotion was made as he did not fulfill the necessary qualification for promotion and up-gradation. After the year 1992 no Departmental Promotion Committee was convened and no person has been promoted or upgraded, as the financial condition of the employer mill is precarious, which has been declared sick. Similarly, the case of Sri Vivek Bhushan cannot be compared as he was working in the weaving department and was having different qualification. Treating unequals unequally does not violate the provisions of Article 14 of the Constitution in view of M.P. Oil Extraction and Another Vs. State of M.P. and Others,

6. Granting of special pay-scale and upgradation of particular cadre pertain to the economic aspects and policy decision of State and organization and scope of judicial review is limited and circumscribed unless the policy decision is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is violative of any constitutional or statutory mandate, the Court''s interference is not called for as observed by the Supreme Court in M.P. Oil Extraction and Another Vs. State of M.P. and Others, . The relevant extract of Para-41 reads as below :

"..............The Executive Authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e., legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the policy is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

7. The Supreme Court following Tata Cellular v. Union of India (1994) 6 SCC 651 has observed in Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, , in respect of exercise of power under Article 226 by the High Court and under Article 32 by the Supreme Court that the Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made, particularly as the Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The duty of the Court is to confine itself to the question of legality. Its concern should be, (i) whether the decision-making authority exceeded its powers; (ii) committed an error of law; (iii) committed a breach of the rules of natural justice; (iv) reached a decision which no reasonable Tribunal would have reached; or (v) abused its powers.

8. I have heard learned Counsels for the parties. The respondent mill''s production and financial condition has gone down and no Departmental Promotion Committee was convened after 1992 and by the earlier Departmental Promotion Committee initially he was upgraded in the scale of National Textile Corporation. In the Departmental Promotion Committee of 1992 the petitioner was not found suitable for up-gradation and by the impugned order dated 6.4.1994 (Annexure-11 to the writ petition) it was indicated on the part of the respondents that the petitioner shall be considered in future by subsequent Departmental Promotion Committee in accordance with law keeping in view his eligibility and fulfilment of requirements. In these circumstances, I do not find any illegality and impropriety in the impugned order and, as such, no mandamus can be issued to the respondents to convene the Departmental Promotion Committee and to consider the case of the petitioner for up-gradation when large number of employees have are still to be upgraded, and large number of

employees accepted Voluntary Retirement Scheme.

9. In view of the above observations, no relief as prayed for can be granted, therefore, the writ petition is dismissed. However, dismissal of this writ petition shall not debar the petitioner''s genuine claim from being considered in future by the respondents.

