
(1994) 02 AHC CK 0104
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 8013 and 8014 of 1989

Daya Shanker Mishra

APPELLANT

Vs

National Textile Corporation (U.P.) Ltd. and Another

RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 3 AWC 1369 : (1994) 2 UPLBEC 813

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

Bench : Single Bench

Advocate : S.K. Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

R.B. Mehrotra, J.—In both the above writ petitions, the question which have been raised for consideration can be conveniently decided by a common judgment. The counsel for the parties have also agreed that both the writ petitions may be decided together.

2. The facts necessary for decision of the aforesaid writ petitions are being succinctly noted.

3. Sri Daya Shanker Mishra, the Petitioner in writ Civil Miso. Writ Petition No. 8013 of 1989, was appointed as a Salesman on daily wage basis In National Textile Corporation at its Divisional Office, Moti Nagar, Delhi on 22nd of February, 1977. By letters dated 28th of May, 1982, the Divisional Office, Marketing Division, informed that the Petitioner has successfully completed the period of probation on 24th of November, 1979 and is entitled to draw an annual increment as per terms and conditions of appointment w.e.f. 1st of November, 1979. It was stated in the letter that the Petitioner will be allowed to continue in service till further orders. The Petitioner was initially appointed only as a delivery boy and later on was selected as a Salesman. On 4th of March, 1986, the Divisional Office informed the Petitioner that the Petitioner who had been

officiating as Incharge, National Textile Corporation, Show-room, Katra, Allahabad, is allowed charge allowance at the rate of 20% of his basic salary w.e.f. 26th of January, 1986, subject to basic salary plus charge allowance being limited to the minimum of salary range of the next higher grade i.e. Shop Manager, Grade-II. The Petitioner has also filed a office note with his rejoinder affidavit wherein it has been incorporated:

As per agreement executed between the Management and Unions of Retail Sales Division, no unanimity could be reached on the issue of seniority and it was agreed that the matter be referred to CMD for final decision. Subsequently in the meeting held on 23-9-1984 it was decided that cadre-wise seniority of sales force staff be maintained separately for each division. It was also decided that the Salesmen officiating on the post of Shop Manager, Grade-II be regularised on seniority-cum-merit basis.

In the context of above, it is further decided that common seniority of Shop Managers,

Grade-I and II be maintained combined for all the divisions.

4. Petitioner's grievance is that in accordance with the office memo, the Petitioner is entitled to promotion on the basis of seniority on the post of Shop Manager, Grade-II Petitioner's further grievance is that the Petitioner was entitled to the pay scale which the employees mentioned in Grade-I of wage group are getting Since the Respondents did not accede to the request of the Petitioner, he has filed the present writ petition for the aforesaid two reliefs, namely, for a direction to the Respondents to pay salary to the Petitioner on the basis of pay scale available to Grade-I of the wage group in the National Textile Corporation, LTD. (hereinafter referred to as "the NTC) and also for a direction to the Respondents to promote the Petitioner on the post of Shop Manager, Grade-11.

5. Sri Ravindra Nath Tewari, the Petitioner in Civil Misc. Writ Petition No. 8014 of 1989 was appointed initially as a Salesman on ad hoc basis for 90 days on 22nd/25th of January, 1977. The Petitioner, however, continued as a Salesman after his appointment without any break. On 3rd of September, 1979, the Divisional Manager of Marketing Division asked the Petitioner to appear in interview for the post of Shop Incharge The Petitioner was successful in the said interview and on 5th of July, 1980, the Petitioner was given charge of NTC Show-room. Katra, Allahabad. On 30th of September, 1980, the Petitioner was promoted as Assistant Manager-Grade-HI and continued to be posted in NTC. Show-room, Katra, Allahabad. Petitioner's services as Assistant Manager were confirmed on 30th of September, 1981 The Petitioner claimed that by notification dated 1st of April, 1984, the post of Assistant Manager, Grade-III was abolished and it was notified that the post of Shop Manager would be treated as Grade-H post. On 11th of June, 1985, the Petitioner made a representation to the Director, Commercial, N.T.C. that since the Petitioner had been working as Shop

Manager in Urade-11 in Show-room of N.T.C, hence his services may be governed in accordance with the National Textile Corporation (U.P.) Ltd. Employees Conduct, Discipline and Appeal Rules, 1973. The Petitioner claimed that in view of Order-2 of 1984 issued by N.T.C. on 10-1-84 read with Order-9 of 1984 issued by N.T.C. on 22-2-84, he is entitled to bet the scale in the category of Grade-II. On the Petitioner's representation, the Director (Commercial) gave assurance that the matter of revision of pay scale is being considered and a Committee has been constituted and the Committee will submit its report within three months. Petitioner's grievance is that despite the aforesaid assurance, nothing has been done. Compelled by the inaction of the Respondents, the Petitioner filed the present writ petition, praying for a writ directing the Respondents to pay salary to the Petitioner on the basis of pay scale of employees mentioned in Grade-II of the Wage Group and also for a direction to the Respondents to give all benefits and emoluments to the Petitioner mentioned in C.D.A. Rules.

6. Notices were Issued in aforesaid writ petitions and counter affidavits had been filed by the N.T.C,

7. The stand of the N.T.C. in the counter affidavit is that the N.T.C. (U.P.) Ltd. Employees Conduct, Discipline and Appeal Rules, 1975 are not applicable to the Petitioners, therefore, the Petitioners are not entitled to the benefits of those Rules. It has also been contended in the counter affidavit that Order-9 of 1984 Rules issued by the N.T.C. on 22nd February, 1984 in pursuance of the decision taken by the Board of Directors in their 47th meeting held on 1st February, 1984 has been extended to the employees of Retail Sales Division N T.C. except in regard to Sales Force Employees and since the Petitioners are Salesmen, they come within the definition of Sales Force Employees, so those Rules are not applicable to the Petitioners. Likewise, an Office Order No. 2 of 1984, was issued by the N.T.C on the basis of 46th meeting of the Board of Directors held on 7th December, 1983 promulgating Recruitment and promotion Rules to be effective from 1st January, 1984. Those Rules were made applicable to all employees at the Head Office of the Corporation except Top Management posts. The contention of the Respondents is that since the Petitioners are not Head Office employees, therefore, the aforesaid Office Order No. 2 of 1984 is also not applicable to the Petitioners and the pay scales and job designation prescribed in the aforesaid Office Order cannot be given to the Petitioners.

8. Both the aforesaid matter came up before me on 23rd of October, 1991. Since the stand of the Respondent was that Recruitment and promotion Rules promulgated by Order-2 of 1984 and N.T.C. (U.P.) Ltd. Employees Conduct and Discipline Rules, 197 S extended to employees of Retail Sales Division by Order-9 of 1984 were not applicable to the Petitioners, and the N.T.C. has not framed any rules governing the service conditions of the Petitioners, I was of the view that the grievance of the Petitioners should be examined afresh by the N.T.C. Accordingly I gave a detailed direction to the Respondents to decide the

Petitioner's representation afresh. In the aforesaid direction, I permitted the Petitioners to make a representation to the Chairman/Managing Director, N.T.C. (U.P.) Ltd., Kanpur and directed the Respondents to sympathetically consider the Petitioners' representations and pass reasoned order wherein the Respondents were directed to specify whether the Petitioners are entitled for the pay scale which they are seeking for and if they are not entitled, then the Respondents have to specify as to which pay scale the Petitioners are entitled. In pursuance of the aforesaid direction, the Petitioners made representations to the Chairman cum-Managing Director. The Petitioner's representations have been rejected by the Acting Chairman-cum-Managing Director, vide order dated 15th of January, 1992.

9. The Acting Chairman-cum-Managing Director, while rejecting the representation of Sri Daya Shanker Misra, held that Sri Misra was a senior Salesman and was made Incharge of the affairs of the Katra Show Room, but Sri Misra was entitled for the pay scale which a Salesman is getting. Besides pay scale, Sri Misra was given an allowance of 20% on (he basic pay for working as a incharge of the Show-Room. The order further held that Sri Misra belongs to Retail Sales Force Cadre and is governed by the provisions of U.P. Shops and Commercial Establishment Act and is being given the minimum wage for Salesman, as provided under the provisions of Minimum Wages Act. The post of Salesman had nothing to do with the regular cadre of N.T.C. U.P. Ltd., which is altogether a separate cadre and is governed by different conditions of service. The Employees Conduct, Discipline and Appeal Rules of N.T.C. (U.P.) Ltd. 1975 are not applicable to Sri Misra. In any case, the Employees Conduct, Discipline and Appeal Rules of N.T.C. U.P. 1975 are applicable for conducting disciplinary proceed age against the cadre of Show Room Managers/Incharge only, these Rules do not prescribe any pay scale of Manager/Incharge working in Show-Rooms. The wage structure, benefits and emoluments being paid to the staff working in the Retail Showrooms are different, than those working in Head Office of N.T.C. U.P. Kanpur Mills. The nature, responsibility and working conditions between the employees and staff working in Retail Show Rooms and other working la the Head Office in N.T.C. U.P. Kanpur Mills ate quite different. Ultimately it has been held that Sri Misra is not entitled to get parity on the basis of salary and emoluments, which Head Office employees are getting.

10. Likewise, rejecting the representation of Sri Tewari, the Acting Chairman-cum-Managing Director held that the matter claiming parity between the employees of the Retail Show-rooms of N.T.C. and the employees working in the Head Office of N.T.C. is pending consideration of the Hon"ble Supreme Court in writ petitions filed by some Salesmen of Retail Shops of Ghaziabad. However, rejecting the claim of Sri Tewari on merits, the Acting Chairman-cum-Managing Director held that grades of Show-room Managers in the Retail Sales Force Cadre are different than the grades of Show-room Managers working in the Head Office. The Retail Sales Force-Cadre is governed by U.P. Shops and Commercial Establishments Act and there posts had nothing to do with the regular cadre of N

T.C. (U.P.) Ltd., which is altogether a separate cadre. In the order, it was further held that Employees Conduct, Discipline, and Appeal Rules of N.T.C. (U.P.) 1575 had got nothing to do with prescribing of any pay scale of Manager working in the Show-rooms. The pay scale of Show-room Managers and the other staff working in the Retail Shops is different than the pay scale of staff working in the N.T.C. Head Quarter, Kanpur. The order further held that there is a difference in the job requirement, nature of responsibility and working conditions between the employees and staff working in Retail Show-rooms and the other working in N.T.C. U.P. Kanpur Mills or Head Office. The order also held that Sri Tewari is not covered by Order No. 2 of 1984 promulgating Recruitment and Promotion Rules of N.T.C. Ltd.

11. Both the Petitioners by means of an amendment application have challenged the order passed by the Acting Chairman-cum-Managing Director of N.T.C. U.P. The amendment application has been allowed and the counsel for the Respondent has filed supplementary counter affidavit to the amended writ petition.

12. I have heard learned Counsel for the Petitioners Sri S.K. Mehrotra and learned Counsel for the Respondents Sri V.B. Singh.

13. A preliminary objection has been raised on behalf of the Respondent that the Petitioners have an alternative remedy of raising the industrial dispute and the writ petition should not be entertained in view of a Full Bench decision of this Court in Chandrama Prasad v. Managing Director U.P. Cooperative Union Ltd. 1991 (2) UP LB EC 898. The counsel for the Respondents has also submitted that since similar matter is pending before the Hon'ble Supreme Court, the Petitioners should await the decision of the Hon'ble Supreme Court, and this Court should not entertain the matter, as ultimately the rights of the parties are to be decided by the Hon'ble Supreme Court.

14. The present writ petition is pending since the year 1989, almost five years have expired since then. In view of this situation, it is not appropriate in the present matter to dismiss the present writ petitions on the ground of alternative remedy under Article 226 of the Constitution of India. The existence of an alternative remedy is not an absolute bar for entertaining the petitions under Article 226 of the Constitution of India. Ultimately it is the discretion of the Court to refuse to entertain a petition on the ground of existence of an alternative remedy. This discretion should be exercised at the time of the entertaining the petition, so that if the Petitioner is thrown out of the Court, he may pursue his remedy elsewhere, but if the Court has entertained a petition, then at the stage of final hearing, it will be too harsh to the Petitioners to relegate him again to the alternative remedy after a lapse of five years, during which period the petition remained pending in this Court. The Court has an obligation to ensure speedy justice and should not adopt a procedure which results in a situation where due to the Court's action a litigant is driven to a situation where his right to get speedy justice is defeated on the technical ground of pursuing his remedy in

another forum. Therefore, in the circumstances of the present case, I over rule the preliminary objection raised by the Respondents

15. The second objection raised by the Respondents is also not sustainable, merely on the ground that some similar matter is pending consideration before the Hon"ble Supreme Court, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution, as It is the right of a citizen to get his matter decided by the High Court and it is an obligation on the High Court to exercise jurisdiction vested in it under Article 226 of the Constitution of India In accordance with law of the land.

16. Both the Petitioners claim benefits of Order 9 of 1984 dated 22-2-1984, whereby the Board of Directors extended to the employees of Retail Sales Division the provisions of Employees Conduct, Discipline and Appeal Rules, 1975 and the Office Order No. 2 of 1984 date 10-1-1984, whereby the Board of Directors in their 46th meeting promulgated Recruitment and promotion Rules from 1st of January, 1984.

17. The preamble of Order-9 of 1984 reads as under:

In pursuance of the decision taken by Board of Director:, in its 47th meeting held on 1-2-1984 the N.T.C. (U.P.) Ltd. Employees, Conduct, Discipline and Appeal Rules, 1975 (copy enclosed) are extended to the employees of Retail Sales Division, N.T.C. (U.P.) Ltd., except sales force employees excluding Show room Manager/Incharge, who are governed by U.P. Shops and Commercial Establishments Act w.e.f. the date of transfer of Retail Sales Division to the N.T.C. (U.P) Ltd. i.e. 27-12-1982.

18. The stand of the Respondents is that since both the Petitioners are Sales Force employees, they are governed by U.P. Shops and Commercial Establishment Act. This stand is patently incorrect as a bare reading of the preamble shows that Show-room Manager/Incharge have been excluded from the definition of Sales Force Employees which means that Show-room Managers and Incharge are within the preview of Order-9 of 1984. The Employees Conduct, Discipline and Appeal Rules, 1975 have been extended to the employees of Retail Sales Division of N.T.C, wherein Show-room Managers/Incharge are part of the said Retail Sales Division of N.T.C. and they arc not in the exception clause of Sales Force Employees. Admittedly, Sri Daya Shanker Misra is Incharge of Show-room in the retail shop of N.T.C. Likewise, Sri R.N. Tewari is admittedly a Show-room Manager in a Retail Shop of N.T.C. As such, it is clear that Order-9 of 1984 are applicable to both the Petitioners and the N.T.C. U.P. Ltd. Employees Conduct, Discipline and Appeal Rules, 1975 also apply to the Petitioners. The stand to the contrary taken by the Respondents in the counter affidavit is patently wrong.

19. Office Order 2 of 1984 only says that the Recruitment and promotion Rules, as given in Annexure-A, shall come into force w.e.f. 1-1-1984. Annexure-A of the aforesaid Office Order contains Recruitment and promotion Rules for Head Office

employees. Rule-2 of the aforesaid promotion Rules also specifically says that this Rule shall apply to all the employees at the Head Office of the Corporation except on Managers posts. The Petitioners are admittedly not the employees of the Head Office of the Corporation, as such, the Recruitment and promotion Rules for the Head Office employees promulgated by, the Office Order-2 of 1984 are not available to both the Petitioners. The claim of the Petitioners that they are entitled for the benefit of the pay scales and avenue of promotion provided in the aforesaid Rules is misconceived, as those Rules have been made applicable only to the employees of the Head Office.

20. The above analysis shows that the Petitioners are employees of National Textile Corporation and their service conditions are governed by N.T.C. U.P. Ltd Employees Conduct, Discipline and Appeal Rules, 1975, but there are no Rules governing the service conditions of the Petitioners regarding recruitment and promotion of the employees, neither any pay scale has been provided as a condition of service for the Petitioners. The stand of the Respondents, in case of both the Petitioners, that they are governed by the provisions of U.P. Shops and Commercial Establishments Act, is rather unfortunate. The representation of Sri DayaShanker Misra has been rejected on the ground that he is being given the wages under Minimum Wages Act, whereas the representation of Sri R.N. Tewari has been rejected on the ground that the post of Show-room Manager, Grade-I and Show room Manager, Grade-II have been introduced in Retail Sales Force Cadre and he is being given the pay-scale of Show room Manager Grade HI, as fixed to Retail Sales Force Cadre and these posts had nothing to do with the regular Cadre of N.T.C. U.P. which is altogether a separate cadre.

21. An analysis of the stand of the Respondents shows that National Textile Corporation treated only those employees as their regular employees, who work in the Head Office, for them Discipline and Appeal Rules have been provided and for them Recruitment and Promotion Rules have been framed, regular Venue of promotions, wage scales for every grade of workmen, method of recruitment, period of probation, the provision for appeal, are governed by the Rules framed by the National Textile Corporation. On the other hand, the vast force of employees, including Showroom Managers and Incharge, Showrooms are being just treated casually. They are not being treated at par with the regular cadre of National Textile Corporation. No rules have been framed for governing their service conditions. Neither any recruitment procedure, nor any wage structure, nor any avenue of promotion have been provided to a large number of employees, who are working throughout nation in the Retail Showrooms of the National Textile Corporation. This is an unfortunate situation.

22. National Textile Corporation is fully owned and controlled by the Union of India and is a Central Government Undertaking. - Sick Textile Undertakings (Nationalisation) Act, 1974 provided that every sick textile undertaking and the right, title and interest of the owner in relation to every such sick textile undertaking shall stand transferred and shall vest in the Central Government.

The said Act further provided that every sick textile undertaking which stands vested in the Central Government by virtue of this Act. shall immediately after it is so vested shall stand transferred and vested in National Textile Corporation.

23. In view of the aforesaid provisions of Sick Textiles Undertakings Act, hundreds of sick Textile Undertakings all over country stood transferred and vested in National Textile Corporation. The aforesaid Act was promulgated by the Central Government mainly with a view to ameliorate the conditions of workers working in those sick Undertakings. Vesting the aforesaid Undertakings in National Textile Corporation the Government decided to run and manage those sick Undertakings so that the workers employed in those sick Undertakings are provided jobs and they do not suffer problem of un-employment. The Government had also in mind that with expertise and resources, the Union of India commands, the sick Textile Undertakings will be so managed that instead of running in losses, they give profit and add to the national wealth. This was the laudable object with which the National Textile Corporation was entrusted to and it is expected that National Textile Corporation should live up with the expectations and take up the challenge with which it has been confronted as the responsibility of running sick Textile Undertakings is a heavy responsibility brought on the shoulders of National Textile Corporation. However, the results so far have shown it otherwise, and it is common knowledge that the National Textile Corporation has not lived up to the expectations and it continues to run in losses. The reasons seem to be that the administration of the Corporation has not been so streamlined as it should have been. The present writ petitions are not confronted with any such problems of giving guidelines to National Textile Corporation. The aforesaid observations have been made only in the context that the Retail Sales Division of the National Textile Corporation is confining itself to its Head Office and is not looking forward to the unit of its Retail Showrooms existing all over country and the working conditions of the employees serving in those" Retail showrooms. The only stand which has been taken by the Acting Chairman-cum-Managing Director while rejecting the representations of the Petitioners is that the duties and responsibilities of the employees working in the Head Office are different from those employees who are working In the Retail Showrooms of the National: Textile Corporation, as such, the employees working in the Retail Showrooms of the National Textile Corporation are not entitled to get same wages which the employees working in the Showrooms of the Head Office are getting.

24. The order passed by the Acting Chairman-cum-Managing Director of the National Textile Corporation in pursuance of the direction given by this Court, does not meet the requirement of the directions given by this Court. This Court in the direction given for deciding the Petitioner representation, specifically stated that the Respondents should pass a reasoned order giving details as to why the Petitioners are not entitled to get the same pay scale which the employees at the Head Office are getting and the Court further directed the Respondents to mention us to which pay scale the Petitioners are entitled to get.

The Acting Chairman-cum-Managing Director while rejecting the Petitioner's representation only repeated the stand taken in the counter affidavit that the duties and responsibilities of the employees working In the Head Office are different from those working in the Show rooms of the Retail shops of N.T.C. How these duties and responsibilities are different, what are additional duties which the employees in the Retail Showrooms of the National Textile Corporation are not performing? These details were required to be stated, but the Acting Chairman-cum-Managing Director failed to comply with the requirement of the order.

25. Assuming for a moment that the responsibilities of the employees, particularly of the Incharge, Showrooms and Showroom Managers are different in the Head Office than those working in the Retail Shops of the National Textile Corporation to be correct, even then, it is necessary for streamlining the Management of the National Textile Corporation that a regular Recruitment and promotion Rules should be framed governing the service conditions of all the employees of the National Textile Corporation. They should be assured of their service, so that they could be assured that their performance will bring them credit and promotion and these guarantees may refuse more devotion in future in the employees which is necessary for improving out only the service condition of the employees working in National Textile Corporation, but also necessary for the laudable object and onerous responsibility with which the National Textile Corporation has been constituted, that it lives up to the expectations of the nation. The country has moved in the days of free market economy, and open competitions. If the Undertakings, like, National Textile Corporation are to exist in this competitive world, it will have to reframe itself according to the requirement of the days. The employees working in hundreds of the Retail Showrooms of the National Textile Corporation cannot be left uncared for. The National Textile Corporation should make them their integral part. They should be taken care of and proper a venue of promotion and wages should be prescribed for them. This is a condition precedent for maintaining a living Organisations.

26. Since in the present writ petition, the relief claimed for by the Petitioners is that they should be given promotion and should be given pay scales at par with their counterparts working in the Head Office, it is but appropriate to give a general direction to the National Textile Corporation for improving working conditions of the employees working in their Retail Showrooms. The National Textile Corporation is directed to frame rules for governing the service conditions of the employees working in the Retail Showrooms of the National Textiles Corporation and provide for wage scales and avenue of promotions, besides method of recruitment and other service conditions for such employees, as far as possible within a period of six months from the date certified copy of this judgment is served on Chairman-cum-Managing Director of N.T.C. Since the orders passed by the Acting Chairman-cum-Managing Director dated 15-1-92 do not comply with the directions made by this Court on 23-10-1991, the order of

Acting Chairman-cum~ Managing Director is hereby quashed. The Acting Chairman-cum-Managing Director is again directed to reconsider the matter in (he light of observations made in this judgment and pass a detailed reasoned order detailing us to which pay scale and avenues of promotions petitions are entitled to and as to how the nature of duties and responsibilities of the Petitioners are different from those persons who are working as Incharge, Showrooms, and Showrooms Managers in the Head Office. It is being clarified that unless there is some material difference in the responsibilities and working of the Showrooms Manage is in the Retail Shop he the National Textile Corporation and Showrooms Managers working in the Head office and unless there is a material difference in the duties and responsibilities of Incharge, Showrooms working In the Retail Shops of the National Textile Corporation and those working in the Head Office, the Respondents should ensure similar pay scale to the Petitioners which their counterparts in the Head Office are getting. The Respondents will pass a reasoned order within six weeks of the receipt of the certified copy of this order. Both the Petitioners are employees of National Textile Corporation within the meaning of N.T.C, (U.P.) Employees Conduct, Discipline and Appeal Rules. 1975 and are entitled for the benefit of the conditions promulgated by Order-9 of 1984. The Respondents are directed to treat the Petitioners as employees of the National Textile Corporation within the meaning of the aforesaid Rules.

27. Both the writ petitions are accordingly partly allowed.

28. In the circumstances of the case, the parties will bear the is own costs.