
(1996) 12 AHC CK 0032
In the Allahabad High Court
Case No : C.M.W.P. No. 8567 of 1994

Executive Engineer, Electricity Store Division and Another	APPELLANT
Vs	
P.O., Labour Court and Others	RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 3 LLJ 46 : (1997) 1 UPLBEC 322

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant writ petition has been tiled against the award of the Labour Court in adjudication case No. 122 of 1991 dated September 3, 1993 contained in Annexure 27 to the writ petition, by which the claim of the respondent No. 3, here in this petition (hereinafter called as the workman) has been allowed by the Labour Court directing the petitioners to designate the workman as Typist and award him the wage scale of the Typist.

2. The factual gamut of the instant case reveals that the petitioners had appointed the workman as Class-IV employee on November 23, 1977 but just after his employment he was deputed to work as Typist in the division, though he was appointed as Store Helper. There was a purpose of deputing the workman on type work as he was M.A. in Hindi and had the typing diploma as revealed by the affidavit dated August 18, 1988 filed by the General Secretary of the Union before the Labour Court, Annexure 16 to the writ petition. The workman continued to do the typing work for a long time and when he demanded the wage scale of the typist, he was sent back to the post of Store Helper vide order dated September 3, 1987, Annexure 10 to the writ petition.

3. The matter was agitated by the labour union and a reference was made on

March 28, 1988 u/s 4-K of the U.P. Industrial Disputes Act, 1947, (hereinafter called the Act) to the Labour Court as under :

"Is the action of the employer not promoting the employee Shri Girish Chandra Saxena, son of Shri Sambhu Prasad, Store Helper, from whom work of typing is being taken, to the post of Typist, valid and justified? To what relief, if any, he is entitled to and with what date and other details."

4. The petitioners as well as the workman filed their statements before the Labour Court and rejoinder statements were also filed. The only ground taken by the petitioners before the Labour Court was that under the U.P. State Electricity Board Ministerial Establishment (Officers of the Chief Engineer and Other Subordinate Officers) Regulations, 1970, the workman was not entitled to promotion to the post of Typist (R.G.C./Time Keeper). According to the said Regulations the said post of R.G.C. is to be filled up by direct recruitment on the result of competitive test. The petitioners further averred that as the question of promotion does not arise under the said Regulations, it was not within the competence/ jurisdiction of the Labour Court to pass any order regarding the promotion of workman as the reference had been made only whether withholding the promotion of respondent No. 3--workman to the post of Typist was justified or not. In support of his case the petitioners also examined one Shri S.P. Singh, Executive Engineer as E.W. 1 before the Labour Court. However, he did not deny that respondent No. 3 - workman had not worked as a Typist from July 23, 1978 to September 3, 1987 and he was sent back as a Store Helper when the demand was made to give him the wage scale of Routine Grade Clerk, (hereinafter called as R.G.C.). Further the said E.W. admitted that present petitioners had earlier promoted several Class-IV employees to Class-III as R.G.C., particularly the employees namely, S/Shri Misri Lal, Lal Bahadur Singh and Rajendra Singh.

5. After hearing learned counsel for both the sides the Labour Court vide impugned award dated September 3, 1993 held as under :

(1) That the respondent No. 3-workman was appointed as a Store Helper in 1978 but he was deputed the work of typist from the date of appointment, i.e. July 23, 1978.

(2) That respondent No. 3-workman worked as typist from July 23, 1978 to September 3, 1987.

(3) That respondent No. 3-workman was sent back as Store Helper only when the demand was made to pay him wage scale of Typist.

(4) That the employer had promoted several persons from Class-IV to Class-III posts, even prior to adjudication of the instant case.

(5) That the reference was not whether withholding the promotion of the said workman to the post of Typist was valid and justified rather it was whether the workman who was doing the typing work for the last several years was entitled to designation and wage scale of Typist.

(6) Thus, the workman was entitled to designation and wage scale of the R.G.C./ Typist/ Time Keeper.

6. Being aggrieved and dissatisfied the employer/petitioners filed the instant writ petition and the ground taken in the writ petition is that even as a Store Helper, respondent No. 3-workman stood at serial No. 31 in the seniority list and thus the award could not have been made in favour of respondent No. 3 as 30 other employees who had been over and above respondent No. 3 in the seniority list may also claim the same benefit and the issue decided by the Labour Court vide impugned award was not in fact the reference and as the Labour Court had gone out of reference, the award is without jurisdiction and hence nullity.

7. Heard learned counsel for the parties and perused the record of the case.

8. Admittedly, present petitioners had not raised the issue of seniority list at all before the Labour Court and thus, the issue remains as under what circumstances the petitioners can be allowed to raise this issue for the first time before this Court in writ jurisdiction.

9. In *Ratan Lal Sharma v. Managing Committee, Dr. Hari Ram Secondary School and Ors.* 1993 (67) FLR 364 , the Apex Court has observed as under :

"Generally, a point not raised before the Tribunal or administrative authority may not be allowed to be raised for the first time in writ jurisdiction, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course a must....."

Thus, a plea not specifically raised before the competent authority which goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the writ Court can be justified in entertaining it but if the plea requires investigation of fact, this Court may not permit a petitioner to raise such a plea for the first time in writ jurisdiction as observed by the Constitution Bench of the Supreme Court In *A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd.,* .

10. The same view had been taken by the Apex Court in *A.M. Allison Vs. B.L. Sen,* , - *The Cantonment Board, Ambala Vs. Pyarelal,* ; *State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc.,* ; *Bhanwar Lal Vs. T.K.A. Abdul Karim through N.K. Mohd. Mustafa, and Rajeshwari Amma v. Joseph* AIR 1995 SC 749.

11. The writ jurisdiction is not meant for a party who is not diligent at the first available opportunity to protect his interest. If a party remains careless, it cannot be permitted to use the writ jurisdiction to remedy its own faults and laches.

12. In view of the law laid down in the aforesaid cases, I am of the considered opinion that the petitioners ought to have raised this issue before the Labour Court. As they failed to take the appropriate steps before the Labour Court, it is not permissible for the petitioners to raise this issue for the first time in writ jurisdiction. Moreover, the submission of the learned counsel is preposterous and

without any force as it is not the case of the present petitioners that other 30 persons were also doing the same work of R.G.C./Typist and either one or all of them were possessing the qualification as that of respondent No. 3-workman and even if similar circumstances were there, as none of them had approached the appropriate Court or authority, they are not entitled to be considered for the same relief. I find no force in the first submission raised by the learned counsel for the petitioners and the same is hereby rejected.

13. So far as the second issue is concerned, Shri Saxena, learned counsel for the petitioners has urged that the Labour Court has travelled beyond the terms of reference. The foundation of reference was something different from the issue decided by the Labour Court. It is urged that as the Labour Court draws its jurisdiction from reference, deciding an issue outside the reference would be without jurisdiction and hence nullity. In support of his contention reliance has been placed on the judgments in *Sabitri Motor Service Private Ltd. v. State of West Bengal* and Ors. 1976 (38) F.L.R. 14; *The Calcutta Electric Supply Corporation Ltd. v. The Calcutta Electric Supply Corporation Worker's Union* and Ors. AIR 1959 SC 1191 ; *U.P. Electric Supply Co., Ltd. Vs. The Workmen of S.N. Choudhary, Contractors and Another*, .

14. It is further urged that in *Badarpur Thermal Power Station and Another Vs. Central Government Industrial Tribunal II and Others* , the Patna High Court has held that the Industrial Tribunal is not vested with any inherent power or jurisdiction and thus has no jurisdiction to mould the prayer. Thus, it is not for the Tribunal to enlarge or alter the scope of reference except incidentally in certain cases.

15. Similarly, in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, , the Hon"ble Supreme Court observed that "the Tribunal must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably."

16. Finding of fact recorded by the Labour Court is to the effect that the respondent No. 3-workman had worked continuously as R.G.C./ Typist from July 23,1978 to September 3, 1987, i.e. for more than 9 years and he was sent back to the post of Store Helper only when the demand was made for the wage scale of Typist and there are a large number of documents on record to prove that the petitioners themselves have asked the workman to work as a Typist, now they cannot be permitted to raise the issue at such a belated stage that the workman was not entitled to the wage scale of Typist. As the petitioners are the instrumentalities of the State and State being the model employer is not expected to adopt the method of unfair labour practice and thus, the petitioners cannot be permitted to blow hot and cold in the same breath as the Supreme Court in *R.N. Gosain Vs. Yashpal Dhir*, , has relied upon the judgment in *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd.* 1921 2 K.B. 608. wherein the following observation has been made :

"A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid then turn around and say it is void for the purpose of securing some other advantage."

17. Similar view has been taken by the Apex Court in the cases reported in Ramachandra Jai Ram Randive v. Chandanmal Rupchand, 1987 Supp SCC 254. and Thacker Hariram Motiram Vs. Balkrishan Chatrabhu Thacker and Others, .

18. The petitioner's stand that the reference was limited to the question of promotion and the Labour Court had gone out of the reference is also devoid of any force.

19. In Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, , the Apex Court observed as under :

"The jurisdiction which is granted to Industrial Tribunal by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a Civil Court or a Registrar acting under the Cooperative Societies Act."

20. Similarly in Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, wherein the Supreme Court relied upon its earlier judgment in Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, wherein the Apex Court had observed that "semantic luxuries are misplaced in the interpretation of bread and butter statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursion." The Apex Court further observed as under :

"The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and Human Right's legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes. (We have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds* 1971 (3) All ER 237.) In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set, the law is not to be interpreted purely on internal linguistic considerations."

21. In fact the instant case is squarely covered by the judgment of this Court in U.P. State Electricity Board and Others Vs. Presiding Officer, Labour Court and

Others, , wherein this Court decided an identical case and observed that the Labour Court had not given a promotion to the workman but only granted what the workman was entitled which was due to him, i.e. the designation and pay of the post on which he had been working for the last several years. While deciding the case the Court has heavily relied upon the earlier judgment of this Court in the case of National Textile Corporation (U.P.) Ltd. Unit : Swadeshi Cotton Mills Vs. Presiding Officer, Labour Court I and Others, , wherein this Court has examined the identical case and made the following observations :

"The Labour Court, after considering the evidence of both the parties and facts and circumstances of the case, has accepted the case of the workman to the effect that he has been acting as Travelling Salesman at the instance of the employer (petitioner) since 1981 and on this basis Labour Court has held that it is not a case of promotion but a case of giving designation and of the post in which the workman has been working for the last several years. The award of the Labour Court appears to be perfectly justified. It is the function of the management to appoint person for a particular post or office and this managerial function of the management was performed at the time when the workman was asked to work and act as a Travelling Salesman. The management has itself permitted the workman, as per the finding recorded by Labour Court, to act as a Travelling Salesman and that was nothing but a promotion/appointment by the management without giving designation and pay. Managerial function being over already what the Labour Court has done nothing except giving designation and pay of the post of which he was discharging duties and performing functions. This cannot be said to be a case of promotion.. ..That apart, even if it is presumed to be correct that cannot affect the position as the management has itself permitted the workman to work and act as Travelling Salesman for several years. It is not a case of promotion but only giving to the workman what is due to him viz, designation and pay of the post, in which he has been working for last several years."

22. In the instant case the Labour Court has definitely not travelled outside the pleadings of the case before it, and the issue of awarding the designation and pay scale of Typist to the workman was very much in question. It is definitely not the case which required completely or partially independent consideration or treatment and has its own independent importance and even by stretch of imagination, it cannot be urged that at least the issue was incidental.

23. In view of the above, the writ petition is devoid of any merit and hence dismissed with costs of Rs. 2000.