
(2000) 02 MP CK 0062
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1396/94

G.N. Rao and Another

APPELLANT

Vs

M.P. Laghu Udyog Nigam Ltd. and Others

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227
Madhya Pradesh Laghu Udyog Nigam Recruitment and Promotion Rules, 1986 — Rule 13, 14

Citation : (2001) ILR (MP) 1291 : (2000) 1 JLJ 194 : (2000) 2 MPHT 8

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Advocate : A.M. Mathur and A.K. Shrivastava, for the Appellant; S.M. Dagaonkar and S. Bhargava and R. Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Verma, J.—In this petition filed under Article 226/227 of the Constitution of India, petitioners are challenging the orders of promotion of respondents No. 2 and 3 to the post of General Manager (Estate & Construction) of respondent No. 1 M.P. Laghu Udyog Nigam Ltd., alleging that the seniority of the petitioners has been ignored, while promoting these respondents.

2. Factual matrix lies as under:

Petitioner No. 1 had joined, Udyog Nigam of respondent No. 1, as supervisor in the year 1962, whereas petitioner No. 2 had joined the same as surveyor in 1964. On account of their continuous service with respondent No. 1 Udyog Nigam, the petitioners No. 1 and 2 were promoted to the posts of Managers (E/C) on 21-1-76 and 24-1-76 respectively. Even today they continue to hold the same posts. Seniority List (combined) of the Managers was published on 31-8-91. According to the petitioners in the said list, petitioner No. 1 was shown at S. No. 2, petitioner No. 2 was shown at S. No. 3, whereas respondent No. 2 was shown at S. No. 4 and respondent No. 3 was shown at S. No. 5. However,

ignoring the seniority of the petitioners, respondent No. 2 was promoted on the post of General Manager on 16-8-94 and respondent No. 3 was promoted on the said post on 25-1-95 (i.e., during the pendency of the present petition).

It has been contended that both the petitioners are diploma holders, whereas respondents No. 2 and 3 are Degree Holders. It is not in dispute that upto 10-6-92 the basis for promotion to higher post was "seniority-cum-merit" but w.e.f. 11-6-92, the basis for promotion was "merit-cum-seniority". It has also been contended that respondent No. 1 has framed Recruitment Rules which are known as M.P. Laghu Udyog Nigam Recruitment and Promotion Rules, 1986 (for short "the Rules"). These Rules are applicable for recruitment and promotion to all four classes of employees of respondent No. 1 Udyog Nigam. They are in force w.e.f. 11-9-1986.

3. Grievance of the petitioners is that they were shown senior to the respondents No. 2 and 3 in the combined seniority list of Managers dated 31-8-91, their cases could not have been ignored, consequently the promotions given to respondents No. 2 and 3 would be illegal, ineffective and invalid. Thus, they have prayed for quashment of their promotion; instead claimed promotion themselves to the said posts.

4. When the petition had come up for hearing earlier on 3-3-98, it was submitted by the petitioners that against the said promotions made by Udyog Nigam, the petitioners' representations Annexures P-8 and P-9 were still pending. Hence, it was directed by this Court that the same be considered and disposed of, keeping the said petition still pending. Pursuant to the aforesaid Order passed by this Court, respondent No. 1 considered the petitioners' representations and decided the same on 20-4-98. The said representations have been rejected. Copy of the order rejecting petitioners' representations dated 20-4-98, has been filed by respondent No. 1.

5. Respondent No. 1 also submitted additional affidavit of Shri Vivek Jhavar on 24-8-98. Alongwith the said affidavit as many as 10 additional annexures have been submitted. This affidavit and the documents were directed to be taken on record. Even though petitioners took time to file counter affidavits and documents to the petitioners' additional affidavit but despite grant of time, did not file any.

6. On show cause notices being issued against all the respondents, they submitted their separate replies denying the allegations made by the petitioners. They have also denied that petitioners would be entitled for any reliefs.

7. Respondent No. 1 has submitted that under Rule 13 of the Rules, a Departmental Promotion Committee was constituted for selection of eligible candidates for promotion to the post of General Managers. It has further been contended that under Rule 14 read with Entry No. 6, of Schedule 3 of the Rules, for eligibility for promotion from the post of Manager to the post of General Manager, 7 years' minimum experience was required. The other condition laid

down was "merit-cum-seniority". A provisional gradation list of all the Managers as per their seniority was prepared by respondent No. 1. The said gradation list only reflects seniority and length of service and not merit or promotion criteria. It has also been averred that petitioners' names were considered by D.P.C. but they were found unfit for promotion, hence, not recommended by D.P.C. They have also challenged the academic qualifications of the petitioners. According to it, they were not holding diplomas recognised by State of M.P.. Petitioner No. 1 holds a certificate awarded by M.B. Society of Engineers and Builders, Indore, after attending one year course of Elementary Civil Engineering. Petitioner No. 2 holds a certificate to the effect that he has completed an Overseas course in Civil Engineering from Indian Institute of Engineers, Kottarakara, Kerala. It has also referred to various circulars issued by State Government with regard to guidelines for promotion to higher posts. It also made inquiry from the Director, Technical Education, Bhopal, with regard to the certificates held by the petitioners and about its recognition by the State. The Director replied that both the certificates of the petitioners are not recognized by the M.P. Govt. and are not equivalent to Diploma.

8. In view of this development, show cause notices were issued to the petitioners on 25-11-83 by respondent No. 1, asking them as to why they should not be held ineligible for further promotions. Petitioners replied to the said show cause notices. The ground of delay and laches has also been taken by respondent No. 1 as according to it the cause of action had arisen to the petitioners when both of them were asked as to why they should not be held ineligible for further promotion in the year 1983, whereas petitioners have filed this petition in the year 1994. By way of additional affidavit and documents it has further been contended that in view of the Rules, 1975 the petitioners could not have been promoted in the year 1976 to the post of Managers equivalent to Asstt. Engineers. However, this mistake should not be allowed to be repeated further by giving promotion to them to the post of General Managers. It was contended that in the year 1976 only those persons could have been promoted to the post of Asstt. Engineer-Manager, who were holding graduate degrees in their favour. Since petitioners were and are still not holding B.E. Degree or equivalent, they are not entitled for further promotion. In fact they deserved to be demoted but respondent No. 1 has decided not to inflict the order of demotion on them, looking to their long tenure of service with it.

9. Respondents No. 2 and 3 in their separate replies have reiterated what has been averred by the respondent No. 1. They have also given the details of the educational qualifications of both these respondents, which are as under:--

Resp. No. 2 : B.E., Diploma, A.I.M.E. Diploma M.Tech. A.I.M.E.

Resp. No. 3 : B.E.

Apart from the above, they have also contended that in the year 1983, the petitioners were informed vide show cause notices that all avenues of further

promotions to them stand closed yet they have preferred the petition after 11 years. Thus the ground of delay and laches has been taken by them as well.

10. In the light of the rival contentions as advanced by the learned counsel for parties, I have heard them at length and perused the record.

11. The question that arises for consideration is whether the petitioners were entitled to be promoted to the post of General Managers equivalent to Executive Engineers alongwith respondents No. 2 and 3.

As directed by this Court, the record of D.P.C. was produced in Court for perusal. The petitioners' names were also considered by the D.P.C. but they were not found suitable for further promotion as the so called diplomas held by the petitioners were not recognised by the State Govt. and they were already informed in the year 1983, itself that on account of inadequacy of their academic educational qualifications their chances for further promotions have been closed. On similar grounds the petitioners' representations, were also decided, as ordered by this Court, but respondent No. 1 vide order dated 22-4-98.

12. It cannot be disputed that this Court is not sitting as an appellate Court over the decision taken by the D.P.C. or against the decision of respondent No. 1 rejecting their representations. They have assigned cogent and valid reasons for not finding them fit for further promotions. The same cannot be subject matter of challenge, as I do not find any malafides in doing so, by the D.P.C. of respondent No. 1. Apart from the above, as per the circular of the State Government dated 26-6-65, it has been directed that for further promotions, in technical and specialised fields, the academic qualifications should also be taken into consideration. It could be relaxed only in those cases where the nature of job did not require any technical and specialised work. It cannot be disputed that job of General manager (E & C) requires technical and specialised work. Thus D.P.C. of respondent No. 1 was justified in not recommending the petitioners' names for further promotion. No doubt under "merit-cum-seniority" more weightage has to be given to merit but when the petitioners lacked basic academic qualification, how their cases could have been recommended by the D.P.C. I find no malafides in the action of D.P.C. or in its proceedings.

13. Thus, I find no illegality or perversity in the promotions of respondents No. 2 and 3, made pursuant to the recommendations made by the D.P.C.. Since, the petition has been considered on merits, the ground of delay and laches is not being considered independently.

14. Before parting, I may refer to some of the authorities on the question involved in the said petition :

(i) In State of Madhya Pradesh and Another Vs. Dharam Bir, , it has been held as under:

" "Experience" gained by the respondent on account of his working on the post in

question for over a decade cannot be equated with educational qualifications required to be possessed by a candidate as a condition of eligibility for promotion to the higher posts. If the Government, in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or the qualifications which have to be possessed by the candidates before they are appointed on those posts. The qualifications would naturally vary with the nature of posts or the service created by the Government."

(ii) In *Sher Singh and Others Vs. Surinder Kumar and Others*, , "merit-cum-seniority" and "seniority-cum-merit" have been discussed at length.

(iii) In (1995 (1) SLR 48) *D.K. Jain v. State of Haryana*, Hon"ble the Apex Court has held that:--

"While pointing out that classification is fraught with the danger, that it may produce artificial inequalities and because of that the right to classify is hedged with restraints, still it was held that as the Rule provided that only graduate shall be eligible for promotions, to the exclusion of Diploma holders, it did not violate Articles 14 and 16 of the Constitution."

(iv) *M.P. Electricity Board Vs. S.S. Modh and Others*,

In this case, Supreme Court dealt with regard to holding of minimum qualification for promotion to the higher post and held that unless a candidate holds minimum qualifications, his case for promotion should not be recommended.

(v) *Assam State Electricity Board and others Vs. Gajendra Nath Pathak and others*,

"It has been held that classification between the employees on the basis of qualification is a reasonable classification and cannot be challenged in Court."

15. It was strenuously argued by learned counsel for petitioners that the academic qualifications which were seen, scrutinised and accepted 30 years back, at the time of their appointments should not and could not be raked up now. Thus, it has been contended that under the law of estoppel or acquiescence, the respondent No. 1 is estopped from looking into their qualifications to mar their further promotions. I am afraid, such a proposition cannot be accepted. One mistake committed at the time of petitioners' appointments, 30 years back should not be repeated again. It is not too late in the day for the employer to have woken up from its slumber. Candidates, who possess qualifications, which were/are not even recognised by State, should not be permitted to scale new heights of promotion.

16. As has been settled well in law that promotion is not a right of an employee, and the same should be given looking to various factors, such as qualification, seniority, merit, Annual Confidential Report, overall approach to the working of an employee, etc. etc.. If aforesaid conditions are not fulfilled or if some of it are

inherently lacking then the question of awarding him further promotion to higher post, would be against the settled principles of service jurisprudence.

17. Thus, considering the matter from all angles, I find that there is no merit or substance in the petition. The same is hereby dismissed but with no orders as to costs.