
(1986) 07 AHC CK 0034
In the Allahabad High Court
Case No : Writ Petition No. 478 of 1987

Gopinath Mehrotra

APPELLANT

Vs

State of U.P. & Others

RESPONDENT

Date of Decision : 16-07-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1986) 07 AHC CK 0034

Hon'ble Judges : Brijesh Kumar, J

Final Decision : Allowed

Judgement

Brijesh Kumar, J.—This writ petition is directed against the order dated November 1, 1977 passed by the Prescribed Officer, Labour Court, U.P. at Lucknow, rejecting the petition of the petitioner preferred by him, under Section 33C(2) of the Industrial Disputes Act, 1947.

2. The claim of the petitioner is that while he was appointed as Conductor in the city bus service in the year 1949, during the period from 11050 to 31354 he was required to work on different higher posts as Junior Clerk or Time Keeper. Only intermittently he worked as Conductor. Salary of the posts of Junior Clerk and Time Keeper is higher but the petitioner has been paid only the salary of Conductor and not the salary of the higher posts on which he had worked during different periods, details of which have been given by the petitioner in Annexure 1 to the petition under Section 33C(2) of the Industrial Disputes Act. The claim of the petitioner was contested by the opposite parties on different grounds. It was, however, admitted in para 4 of the written statement that during the period from 11050 to 31354 the petitioner was required to work as Time Keeper/Junior Clerk except for some brief period when he worked as Conductor. One of the grounds raised in the written statement was that the petitioner had already filed a suit in the civil court claiming seniority, promotion and difference of salary. That suit was dismissed and appeal preferred by the petitioner was also dismissed by the Additional District Judge; that there was no written order requiring the petitioner

to work on the higher posts. It was also contended that with a view to compensate the petitioner for his work on the higher posts, he was adequately compensated by giving him promotion out of turn. On the pleadings of the parties, several issues were framed. However, three issues were tried as preliminary issues which were as follows:

1. Whether Sri Gopi Nath Mehrotra is a workman?
2. Whether this court has no jurisdiction to proceed with the matter in view of the decision of the Additional District Judge, Lucknow in Civil Appeal No. 55 of 1971 decided on 28571 and the principles of law of estoppel are applicable to the workman concerned?
3. Whether the dispute is not an industrial dispute?

Issue No. 3 was not pressed by the employer and findings on issues No. 1 and 2 were recorded in favour of petitioner workman. Against the findings recorded by the Presiding Officer, Labour court vide his order dated August 20, 1976, the opposite parties preferred a writ petition in this Court. Initially it appears that an order of interim relief was granted staying further proceedings but as averred in para 13 of the petition, Writ Petition No. 3414 of 1976 was heard but later on it was dismissed as not pressed on behalf of the opposite parties who were petitioners in that case. The Presiding Officer thereafter decided the petition of the petitioner on merits. In support of his claim, the petitioner had filed before the Labour court a copy of the Circular dated December 22, 1952 issued by the Deputy Transport Commissioner (Roadways), U.P. addressed to all General Managers, Government Roadways, U.P. directing therein that practice of taking work from nongazetted staff on the higher posts should be discontinued and in case the work of Assistant Booking Clerk or Junior Clerks is taken from the employees for a period exceeding fifteen days, they should be paid salary of the higher posts on which they worked. The claim of the petitioner has been disallowed by the Presiding Officer on the ground that the petitioner had admitted during the course of his statement that he had no documentary evidence in the form of written order or other record to show that he was required to work as Time Keeper/Junior Clerk or that he actually worked as such. In this connection, suffice it to say that as a matter of fact this claim of the petitioner was never challenged by the opposite parties. Rather in the written statement the opposite parties admitted the fact that the petitioner was required to work on higher posts as averred in para 2 of the petition of the petitioner before the Labour court. In view of the above, in my view, it was hardly necessary for the petitioner to lead any evidence in that regard. Had the Presiding Officer noted the averments made in para 2 of the claim petition and in para 4 of the written statement, he might not have come to the conclusion, which he has arrived at while disallowing the claim of the petitioner. In respect of Circular dated December 22, 1952 issued by the Deputy Transport Commissioner whereby all the General Managers were required to pay the salary of higher post if an employee was required to work for more than fifteen days on that higher

post, it has been observed that it does not entitle the petitioner to claim higher salary and in case some Officers chose to disregard that Circular, they could only be pulled up. It is not the question whether the Circular has any binding force or not. The fact is that the directions were issued by the higher authority to the subordinate authorities for making payments to those who worked on higher posts exceeding fifteen days. Therefore, if an employee works on higher post, there is no reason as to why he should not be paid wages of that post when the directions are also there by the higher authorities which is not in dispute on any ground. The claim of the petitioner is only strengthened by the Circular dated December 22, 1952. It is not understandable how it has been observed that there is no entitlement in favour of the petitioner to get higher wages. As a matter of fact entitlement of an employee who works on a higher post exceeding 15 days, for higher salary for that period is not disputed or challenged.

3. Another circumstance which has been considered by the Presiding Officer is that the petitioner, in view of his work on the higher posts was compensated by giving him out of turn promotion. This reason given by the Presiding Officer also does not stand to reason. In para 7(a) of the written statement, a true copy of which has been filed as Annexure2 to the writ petition, it has been averred that the petitioner was given promotion without his turn on merit basis. If the promotion was given to the petitioner on his merit, it can hardly be said that he was compensated having worked on the higher post without being paid higher wages. This plea raised on behalf of the opposite parties, in a way, is an admission of the claim of the petitioner that the petitioner worked on the higher posts and he was entitled to be compensated for that. In view of this, it was hardly justified for the Labour court to reject the claim of the petitioner. My attention has also been drawn to Annexure6 to the writ petition which is a copy of the comments of the department on the representation of the petitioner. In para 10 of Annexure6, it has been stated as follows:

?10. The chart enclosed by Sri Mehrotra indicates that he was senior to 9 conductors and some of them were promoted prior to his promotion, which is correct.?

Thereafter individual cases have been enumerated in which the promotions were given to the persons junior to the petitioner prior to promotion of the petitioner. In view of this also, it does not appear to be correct that the petitioner was given out of turn promotion with a view of compensate him for having worked on the higher posts. Several persons junior to the petitioners had been promoted prior to the petitioner. The petitioner would also get a right to be promoted.

4. In view of the discussion made above, I am of the view that the Presiding Officer, Labour Court, U.P. at Lucknow, did not examine the claim of the petitioner in correct perspective and arrived at a wholly incorrect finding which cannot be sustained under the law.

5. In the result, the writ petition is allowed and the order dated November 1,

1977 passed by the Presiding Officer, Labour Court, U.P. at Lucknow in Misc. Case No 4 of 1972 is set aside. The claim petition of the petitioner shall be restored by opposite party No. 4 who shall dispose of the same in the light of the observations made in this judgment. Since the matter has become quite old, the opposite party No. 4 shall dispose of the petition of the petitioner expeditiously, say within six months. There would be no order as to costs.