
(2002) 07 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2515 of 1999

Hindustan Zinc Limited

APPELLANT

Vs

Jagmal Ram and Another

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 18, 33C(2)

Citation : (2002) 95 FLR 516 : (2003) 3 RLW 2061 : (2002) 5 WLC 28 : (2002) 5 WLN 264

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Manish Shishodia, for the Appellant; Sanjeet and Govind Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—The instant writ petition has been filed by the petitioner under Article 226/227 of the Constitution of India with the prayer that the impugned order dated 4.6.99 (Annex.5) passed by the Industrial Tribunal, Udaipur by which the pay of respondent No. 1 was ordered to be fixed at par with Shri Natwar Lal and further Rs. 2400/- were ordered to be paid to the respondent No. 1 for the period from 1.1.1995 to 31.12.96 be quashed.

2. It arises in the following circumstances:

i That the petitioner is a Unit of the company being Hindustan Zinc Limited having its head office at Yashad Bhawan, Udaipur. It is a Government of India undertaking in the sense that though it is registered under the Companies Act as a body corporate but its major share holding is of Government of India, and is entitled to file writ petition in the name of its different unit as well.

ii That as is a common consequence in the matters of promotion and fitments that at times, for wholly fortuitous circumstances, a junior employee may happen

to receive a pay packet a little higher than the pay packet of his senior for few months every years. This situation is commonly known as pay anomaly and in various Pay Scale Rules, provision is made for redressal of such anomalies.

iii That the employees working in different units of the petitioner have the recognised trade Unions and from time to time, such Unions have been raising/submitting charters of demand and settlements are arrived at from time to time, to be effective from a particular date and for a specified period of time. Such settlements are Long Term Settlement and by virtue of provisions of Section 18 of the industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947) is binding on the parties to the agreement.

iv It may be stated here that respondent No. 1 is an employee of the petitioner since before the entering into of Long Term Settlement VI and since he was a member of the Union which was a party to the settlement, the respondent No. 1, by force of Section 18 of the Act of 1947 was also very much bound by the settlement.

v) That the petitioner further submitted that the controversy involved in the present writ petition relates to Clause 6.1.2 of Long Term Settlement VI which has been reproduced by the respondent No. 2 in the impugned award. However, for convenience, the said clause is reproduced hereunder:

"It is further agreed that if any anomaly occurs after 1.7.92 as a result of promotion (except due to regularisation of stagnation promotion cases in regular category) i.e. if a junior gets higher salary than his senior in the same LOP, and does not get rectified after fitment as on 1.7.95, the basic pay of the senior will be stepped up in a manner that may be required to maintain his seniority. However, it is agreed that all the cases of previous year will be settled together in January next year."

vi That one Natwar Lal employee No. 32076 was working on the post of HEMM Operator - II (the post falling in category VII in LOP-8). Natwar Lal was initially appointed on 2.11.1977 in the lower category in LOP - 8 on the post of Driver. Likewise the respondent No. 1 also came to be appointed in the same category on the post of Driver on 28.3.77 i.e. earlier to Natwar Lal. Thus, on the basis of initial appointment, the respondent No. is senior to Shri Natwar Lal.

vii The respondent No. 1 was promoted on the post of HEMM Operator-II in category-VII with effect from 1.1.1994 and his pay fixation was effected accordingly.

viii That on the other hand, for want of vacancy, Shri Natwar Lal could not be given promotion till 31.12.94 despite having completed 10 years" service in category - VI and thereafter with effect from 1.1.1995, he was accorded the stagnation promotion. On stagnation promotion, his designation continued to be one of Category - VI but he was fixed in the pay scale of category-VII.

ix That after Natwar Lal was given stagnation promotion, a vacancy arose on the

post of HEMM Operator - II in category - VII and, therefore, being senior most, he was given promotion. Hence, as per Long Term Settlement-IV, his designation was changed. He also became entitled to be given one additional increment.

x That in this background, Natwar Lal happened to receive the pay packet a step higher than respondent No. 1.

xi Thereafter the respondent No. 1 filed an application u/s 33(c)(2) of the Act of 1947 before the competent Authority, under the Payment of Wages act, 1936 (hereinafter referred to as the Act of 1936) claiming that since his junior person Shri Natwar Lal was getting more pay than him, therefore, this anomaly should be removed.

xii That petitioner filed reply to the said application filed by respondent No. 1. The learned competent authority (respondent No. 2) after hearing both the parties through impugned award dtd. 4.6.99 (Annex.5) allowed the application filed by the respondent No. 1 u/s 33(c)(2) of the Act of 1947 holding that there is anomaly in the pay which is required to be redressed and directed the petitioner to pay basic salary equal to the one being paid to Sh. Natwar Lal. Hence this writ petition with the abovementioned prayer.

3. In this writ petition, the main contention of the learned counsel for the petitioner is that since award dtd. 4.6.99 (Annex.5) passed by the Industrial Tribunal, Udaipur suffers from an error apparent on the face of record and is based on misreading of Long Term Settlement - VI as the case of Natwar Lal stood on different footing from the case of respondent No. I as the promotion which was given to Shri Natwar Lal was stagnation promotion and for stagnation promotion, the relevant clause is Clause 6.1.2 of the Long Term Settlement-VI, but this clause has been ignored by the learned Industrial Tribunal, Udaipur and further more on account of stagnation promotion, if a junior person is getting higher pay, the relevant Long Term Settlement would not be applicable and thus respondent No. 1 should not have been allowed the pay equal to Natwar Lal and, therefore, the impugned awarded dtd. 4.6.99 (Annex.5) passed by the Industrial Tribunal, Udaipur should be set aside.

4. On the other hand, the learned counsel for the respondent No. 1 has supported the impugned awarded dtd. 4.6.99 (Annex.5) passed by the Industrial Tribunal, Udaipur and submitted that the writ petition filed by the petitioner should be dismissed.

5. The learned Industrial Tribunal, Udaipur while passing the impugned award dtd. 4.6.99 (annex.5) has observed as under:

i That there is no dispute on the point that respondent No. 1 was senior to Shri Natwar Lal and it is also correct to say that respondent No. 1 was getting pay less than that of Shri Natwar Lal.

ii That with effect from 1.1.1995, Shri Natwar Lal was given stagnation promotion, but his pay remained Rs. 3950/- and therefore, on account of

stagnation promotion there was no anomaly between the pay of the respondent No. 1 and Shri Natwar Lal.

iii) That thereafter, with effect from 1.1.95, Shri Natwar Lal was given regular promotion and because of regular promotion, his pay was increased to Rs. 4350/- from Rs. 3950/-, whereas the pay of respondent No. 1 remained Rs. 4250/-. Thus, junior person Shri Natwar Lal was getting Rs. 100/- more than that of respondent No. 1 and because of this anomaly, the learned Industrial Tribunal, Udaipur passed the impugned award in favour of respondent No. 1 and against the petitioner.

6. In my considered opinion, the argument raised by the learned counsel for the petitioner that Shri Natwar Lal was getting more pay because of stagnation promotion cannot be accepted in view of the findings recorded by the learned Industrial Tribunal, Udaipur. After stagnation promotion, the pay of Shri Natwar Lal remained Rs. 3950/-, but after that he was given regular promotion and his pay was also increased to Rs. 4350/- from Rs. 3950. When this being the position and in these circumstances, to say that Natwar Lal was getting more pay because of stagnation promotion cannot be accepted. From the findings recorded by the Industrial Tribunal, it is also very much clear that Natwar Lal was getting more pay not because of stagnation promotion, but because of regular promotion. Thus, the findings recorded by the learned Industrial Tribunal in this in this respect are correct one and based on correct appreciation of material available on record.

On the Point of Applicability and Scope of Article 227 of the Constitution of India.

7. The High Court's power of revision under Article 227 of the constitution would be restricted to interference in cases of grave dereliction of duty or flagrant violation of law, and would be exercised most sparingly in cases where grave injustice would be done unless the High Court interferes. It cannot be used as appellate or revisional power.

8. This power would not be exercised to correct an error of fact or of law not being an "error of law apparent on the face of record", or an "irregularity or illegality of procedure", unless such error affect the jurisdiction or involves a breach of the principles of natural justice; or to reappraise the evidence.

9. This power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

10. It follows that where two views are possible on the facts before the trial Court has taken one of the, the High Court cannot, under Article 227, interfere merely because the other view appears to it to be more attractive.

11. It exercise of its powers of superintendence, the High Court cannot re-appreciate the evidence as if it were sitting in appeal. It has the power to go into

questions of facts if justice so requires, but it would not do so unless the findings of the inferior tribunal unless it is perverse; not based on any material whatever; or it is vitiated by a misdirection in law; or it is against the preponderance of evidence and the resulted in manifest injustice.

12. Nor will the High Court in exercise of this power, substitute its own judgment for that of the inferior court, whether on a question of fact or of law or interfere with the intra vires exercises of a discretionary power, unless it is "arbitrary or capricious" or perverse or unless there was no evidence at all on which the inferior court could have come to the conclusion it did or there was error of finding on a "jurisdictional fact".

13. In short as regards findings of fact of the inferior court, the jurisdiction under Article 227 is limited to only examining whether the subordinate Court kept itself within the bounds of its authority in reaching the findings of fact. Consequently, the High Court cannot quash the judgment of the subordinate court merely on the ground that its findings of fact were erroneous, but could do so only if the subordinate court came to its conclusions without any evidence or upon a misreading of the evidence, or if its conclusions were perverse.

14. Under Article 227, the High Court cannot interfere with the exercise of a discretionary power vested in the inferior Court or Tribunal, unless its finding or order is clearly perverse or patently unreasonable.

15. So far as present case is concerned, the findings of the Industrial Tribunal are based on correct appreciation of law and facts. From perusing the award dtd. 4.6.99 (Annex.5) passed by the Industrial Tribunal, Udaipur, it does not appear that any flagrant violation of law has been made or there is patent irregularity or error of law apparent on the face of record or it cannot be said that the findings are perverse. Therefore, all these factors are lacking in this case. In these circumstances this Court should not interfere with the impugned award dtd. 4.6.99 (Annex.5) passed by the learned Industrial Tribunal, Udaipur under Articles 226 and 227 of the Constitution of India as the Industrial Tribunal, Udaipur gave cogent reasons in passing the impugned award dtd. 4.6.99 (Annex.5).

16. For the reasons mentioned above, no interference is called for in the impugned award dtd. 4.6.99 (Annex.5) passed by the Industrial Tribunal, Udaipur and this writ petition is liable to be dismissed.

Accordingly, this writ petition fails and is hereby dismissed.

Cost made easy.