

(2006) 03 CAL CK 0022

In the Calcutta High Court

Case No : Writ Petition No's. 5843 (W) of 1999 and 14993 (W) of 2001

Indian Iron and Steel Company Limited and Another

APPELLANT

Vs

Bimalendu Chowdhury and Others

RESPONDENT

Date of Decision : 15-03-2006

Acts Referred:

Citation : (2006) 3 CHN 604

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Jayati Dhar Quarder, Sundarananda Pal, Lakshmi Kumar Pal, Biswajit Pal and Bandhubrata Bhula, for the Appellant; Kamalesh Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—Writ petitioner No. 1 was a Government company (hereinafter referred to as the "petitioner company") Respondent Nos. 1 and 2 in the first matter were workmen under the petitioner company. In September, 1994 they were asked to appear at a selection test for the purpose of considering their candidature for promotion. They did not choose to appear at the said test and as such they were not considered by the departmental promotional committee for promotion. Both of them approached the Assistant Labour Commissioner, Asansol by raising industrial dispute and ultimately approached 9th Industrial Tribunal, West Bengal, Durgapur where reference case was initiated being Reference Case No. 23 of 1990. Before the Tribunal the petitioner company raised the preliminary question as to the maintainability of the said reference. The Tribunal ultimately published an award answering the reference in favour of the respondent Nos. 1 and 2 and held that non-consideration of the respondent Nos. 1 and 2 for promotion to the post of Senior Armature Winder and charge head ("winding") respectively was not justified and gave them the consequential benefit. The award was challenged by the petitioner company in the first writ petition. This Court passed an interim order staying operation of the

said award for a period of three months. Such interim order was time to time extended. However, the interim order was not extended after a certain period which prompted the respondent No. 1 to approach the Tribunal again for implementation of the award which compelled the petitioner to file the second writ application wherein this Court again passed an order of stay of operation of the impugned award and directed affidavits to be filed. Both the applications were heard by me upon completion of affidavits.

2. Short question germane herein is whether denial of promotion could be made a subject-matter of an industrial dispute. It was contended on behalf of the petitioner company that since promotion was within the prerogative of the employer the same could not be agitated before the Industrial Tribunal. It was contended that the denial of promotion could not be termed as industrial dispute as it did not fall under the Third Schedule of the Act of 1947.

3. Reliance was placed on the following three Apex Court decisions:

- (i) The Hindustan Lever Ltd. Vs. The Workmen, .
- (ii) Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited,
- (iii) 1993 LIC (SC) 1996 (State of Madhya Pradesh v. Srikant Chaphekar).

4. In the case of The Hindustan Lever Ltd. Vs. The Workmen, , the Apex Court held that ordinarily promotion from a lower grade to higher grade was a managerial function and in absence of a finding that such refusal was on account of his trade union activity or any unfair labour practice the Labour Court was not entitled to interfere.

5. In the case of Workmen Employed by Hindustan Lever Limited v. Hindustan Lever Limited reported in All India Reporter 1984, SC 1683, the Apex Court observed that the expression "industrial dispute" had been so widely defined as not to leave anything out of its comprehension and purview involving the area of conflict that might develop between the employer and the workman. The Apex Court further observed that when the demand was for classification of the workmen officiating in the higher grade either as permanent or temporary and they should not be continued indefinitely as temporary by making them permanent on rendering of continuous service in higher grade for a period of three months, such a demand involved both the classification of employees and classification by grade. When the Industrial Tribunal misinterpreted such a demand and reached a conclusion that it was for promotion which appeared to the Tribunal to be a managerial function and beyond the reach of adjudication, such a conclusion was wholly untenable.

6. In the case of State of Madhya Pradesh Vs. Srikant Chaphekar, the Tribunal came to the conclusion that a person was not considered for promotion wrongly after examining his service record and observed that the adverse remarks were vague and were not sufficient to deny him promotion and further directed the authorities to promote him. The Apex Court observed that the Tribunal

overstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny him promotion. The Apex Court further observed that it was not the function of the Tribunal to assess the service record of a Government servant and order his promotion on that basis as it was for the authorities to evaluate the same and make recommendation based on such evaluation.

7. On behalf of the respondent workman the following cases were cited:

(i) L.H. Sugar Factories and Oil Mills (Private) Ltd. Vs. State of Uttar Pradesh and Others,

(ii) Workmen Vs. Williamson Magor and Co. Ltd. and Another,

8. In the case of L. H. Sugar Factories and Oil Mills Pvt. Ltd. reported in All India Reporter, 1962, Allahabad, Page 70, the learned Single Judge observed that when the Labour Court found that the promotions were not given on merit but to pamper one association at the cost of the other only proper award was to compensate the disputing workmen who had been victimized without interfering with the right of the persons who were strangers to the dispute.

9. In the case of Workmen of Williamson Magore and Company Limited reported in All India Reporter 1982 SC 78, the Apex Court held that even if promotion may not be a condition of service in a private company and promotion may be the function of the management, it may be recognized that there may be occasions where Tribunal may have to cancel the promotions made by the management where it is felt that the persons superseded have been so superseded on account of legal mala fide or victimization.

10. On a composite reading of the aforesaid decisions of the Apex Court and the High Court I am of the view that the promotion was a subject-matter wholly within the prerogative of the employer. Court of Law being the Tribunal or otherwise was only entitled to intervene when there was violation of principles of natural justice or when there was improper dealing or where the decision making process was wrong or there was allegation of mala fide, arbitrary and discrimination. In the instant case the respondent Nos. 1 and 2 in the first matter were asked to appear at the selection test. They chose not to appear. The authority could not consider them for promotion. The issue, could not, in my view, come within the purview of an industrial dispute unless the issue framed for reference was coupled with the allegation of mala fide or violation of principles of natural justice. The very reference, in my view, was liable to be quashed and/or set aside. The petitioner company could have approached this Court at the very initial stage. However, the entire concept by the Tribunal was thoroughly without jurisdiction as the reference, in my view, could not have been made to the Tribunal. The question framed for reference, in my view, did not come within the scope of industrial dispute without being clubbed with the allegation of mala fide or discrimination or violation of principles of natural justice.

11. The writ petitions thus succeed. The award impugned herein is quashed and set aside. The authority would, however, consider the respondent Nos. 1 and 2 for promotion strictly in accordance with the service rules through their departmental promotional committee as and when opportunity would arise.
12. Writ petitions are disposed of accordingly without any order as to costs.
13. Urgent xerox certified copy would be given to the parties, if applied for.