
(2012) 05 AHC CK 0129

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42938 of 1997

Kharanan

APPELLANT

Vs

Presiding Officer, Labour Court, Varanasi and others

RESPONDENT

Date of Decision : 22-05-2012

Acts Referred:

Citation : (2012) 134 FLR 432 : (2012) LLR 1069

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Shesh Kumar, for the Appellant; Neeraj Tripathi and Samir Sharma, C.S.C., for the Respondent

Judgement

Sudhir Agarwal, J.—Heard learned Counsel for parties and perused the record. Writ petition is directed against the award dated 28.11.1996 in adjudication case No. 51 of 1994 answering the reference against the workman. It appears that workman claimed designation, pay scale and other benefits on the post of Stenographer though he was substantively appointed as Fitter. It is contended that for sufficiently long time respondent-Corporation has taken work from petitioner as Stenographer therefore he was entitled for appointment on the post of Stenographer i.e. designation, pay scale etc. Reliance is placed on a decision of this Court in Lallan Prasad Patel v. District Inspector of Schools, Deoria and others. 1985 UPLBEC 539

2. However/ in my view in fact workman has claimed promotion since admittedly he was never appointed on the post of Stenographer by the competent authority following the procedure prescribed in Statute.

3. The dispute in the present case, in my view, is akin and covered by the law laid down by Apex Court in U.P. State Sugar and Cane Development Corporation Limited Vs. Chini Mill Mazdoor Sangh and Others, wherein the workmen were employed as seasonal workman but they claimed to have worked throughout the year like permanent workmen and hence claimed benefit of a permanent

workmen. The reference was made "whether the workman can be declared permanent". The Labour Court answered the reference in favour of the workmen. The Apex Court referring its earlier Constitution Bench judgment in *Management of Brooke Bond India (P) Ltd. Vs. Workmen, , and Workmen Employed by Hindustan Lever Ltd.* (supra), held in paras 21, 22, 23 and 24 as under:

21. That there are different categories of workers employed in the sugar industries, and, in particular, during the crushing season, is not disputed by any of the parties. It is not denied that apart from the permanent workmen, the other categories of workmen are employed during the crushing season which begins in the month of October in a given year and continues till the month of April of the following year. It is the period during which the sugarcane crop is harvested, and, thereafter, transported to different mills where they are crushed for production of sugar. Admittedly, as will appear from Standing Order No. 2, a muster-roll of all employees, who are not permanent, is maintained by the different sugar mills and at the beginning of the crushing season the seasonal labour who had worked during the previous crushing season are asked to join their duties for the crushing season in their old jobs. It is also not denied that the pay scales of the different categories of workmen are different.

22. It has been submitted on behalf of the appellant that even when the seasonal workmen are employed during the off season they are paid the same wages as are paid to them during the crushing season, which is one of the basic distinctions between them and permanent workmen who are on the rolls of the sugar mills. It is also an admitted position that, in terms of the policy followed by the sugar mills, promotions are given from one category to the next higher category depending on the number of vacancies as are available at a given point of time. Even in the instant case, of the 39 workmen referred to in the terms of reference, 13 had been made permanent by the appellant which supports the case of the appellant that promotion is given from one category to the higher categories as and when vacancies are available and that such function was clearly a managerial function which could not have been discharged by the Labour Court.

23. We are in agreement with the views expressed by the Constitution Bench of this Court in the *Brooke Bond* case (supra) as also those of the three-Judge Bench in the *Hindustan Lever* case (supra). In our view, this is not a case of fitment depending on the nature of the work performed, but a case of promotion as and when vacancies are available. Both the Labour Court as well as the High Court do not appear to have considered this aspect of the matter with the attention it deserved and proceeded on the basis that this was a case where the respondent Nos. 2-15 had been denied their right to be categorised as permanent workmen on account of the nature of the work performed by them throughout the year. The High Court has, in fact, merely relied on the findings of the Labour Court without independently applying its mind to the said aspect of the matter.

24. We, therefore, accept the submissions advanced by Mr. Upadhyay and allow the appeal. The Award of the Labour Court and the Judgment of the High Court impugned in this appeal, are set aside.

4. Following the above authorities, this Court in Civil Misc. Writ Petition No. Case 17313 of 1997 (U.P.S.R.T.C. and another v. Brij Nandan Lal and others) decided on 2.5.2012 set aside the award of Labour Court observing as under:

The mere fact that a person is discharging duties of a particular nature would not entitle him to claim a right to the post or else other benefits of that post unless he is appointed on the post in accordance with the procedure prescribed in law.

5. The reliance placed by learned Counsel for petitioner on Lallan Prasad Patel (supra) is misplaced since the facts of that case show that the same has no application to the case in hand. There the incumbent was actually appointed, though on ad hoc basis as officiating Principal in the upgraded Junior High School. The factum of appointment having not been disputed, the Court held that a person officiating on the post of Principal is entitled to receive salary of Principal. However, when a person is not appointed but simply permitted to discharge duties on a higher post, salary is not payable.

6. In Somewhat similar circumstances, a Division Bench of this Court (in which I was also a Member) in Daljeet Singh v. State of U.P. and others, 2007 (115) FLR 12 (Sum.) = 2007 (4) ESC 2261 (All India) (DB). following the various authorities of Apex Court on the subject as well as a Division Bench judgment of this Court (in which I was also a Member) in Smt. Vijay Rani v. Regional Inspectress of Girls School, 2007 (2) ESC 987 observed as under:

There is another aspect of the matter. We do not find from the record that the management passed any order at any point of time appointing petitioner as officiating or ad hoc Principal of the College. The petitioner has placed on record only a document showing that he took over charge of the office of Principal on 20.11.2002 and the letter dated 2.12.2002 issued by the University approving his working as Principal of the College. Therefore, at the best, the petitioner was allowed to discharge duties on the post of Principal whereafter he took over charge on 20.11.2002. Appointment to a post on ad-hoc or officiating basis is different than mere discharge of duties of a higher post. In other words, the petitioner was only given current duty charge in addition to the substantive post he held. In our view, this arrangement did not result in promotion to the post of which the current duty charge was handed over to the petitioner unless an order of promotion is issued by the management in favour of the petitioner.

In State of Haryana v. S.M. Sharma, 1993 (67) FLR 375 (SC) the Chief Administrator of the Board entrusted Sri S.M. Sharma, with the current duty charge of the post of

Executive Engineer, which was subsequently withdrawn as a result of his transfer to other post. He challenged the said order stating that it amounts to reversion.

The Apex Court held that Sri Sharma was only having current duty charge of the post of Executive Engineer and was never promoted or appointed to the aforesaid post. Therefore, on transfer to some other post, it did not result in reversion from the post of Executive Engineer.

A somewhat similar situation occurred in *Ramakant Shripad Sinai Advalpalkar v. Union of India and others*, 1991 Supple (2) SCC 733 and the Apex Court observed as under:-

The distinction between a situation where a government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion.

It was further held that such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it sometimes. However the person continues to hold substantive lower post and only discharges duties of the higher post essentially as a stop-gap arrangement. A further contention was raised that such an arrangement if continued for a very long period it would give some kind of right to continue on the post but negating such contention, it was held that an in-charge arrangement is neither recognition nor is necessarily based on seniority and therefore, no rights, equities and expectations can be built upon it.

A similar issue was considered by a Division Bench of this Court also in *Smt. Vijay Rani v. Regional Inspectress of Girls Schools Region-I, Meerut and others*, 2007 (2) ESC 987 and this Court held as under-

In this view of the matter, the Petitioner-Appellant has miserably failed to show that the management ever appointed her as officiating Principal of the College and, therefore, we hold that she was only allowed to discharge duties of the office of officiating Principal, but was never appointed/promoted by the management as officiating Principal of the College. The question No. 1 is answered and decided accordingly.

7. In the case in hand, Labour Court has clearly observed that since at no point of time, petitioner was appointed as Stenographer by the competent authority following procedure prescribed in law, he was not entitled for post, pay scale and other benefits on the post of Stenographer. It is not the case of petitioner that he was appointed by competent authority in accordance with law on the post of Stenographer at any point of time. He was substantively appointed as Fitter and was given dues payable on the said post. In the circumstances, I do not find any error apparent on the face of record in the impugned award warranting interference. Dismissed.