

(2008) 11 SC CK 0162

In the Supreme Court Of India

Case No : Civil Appeal No. 6710 of 2008 (Arising out of SLP (Civil) No. 16653 of 2006)

Laxmi Rattan Cotton Mills Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 11A, 250
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4

Citation : (2009) 6 ALT 31 : (2009) 120 FLR 325 : (2008) 12 JT 678 : (2009) 1 LLJ 527 : (2009) 1 SCC 695 : (2009) 3 SLR 29 : (2008) 1 UJ 238 : (2009) 1 UPLBEC 557

Hon'ble Judges : S. B. Sinha, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : Sanjoy Ghosh and Anitha Shenoy, for the Appellant; Bharat Sangal, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Leave granted.

2. Principles governing grant of back wages is the question involved in this appeal which arises out of a judgment and order dated 17.07.2006 passed by the High Court of Judicature at Allahabad in civil Misc. Writ Petition No. 22003 of 1999.

3. Appellant used to run a cotton mill. It was taken over in 1976 by National Textile Corporation which was established by the Central Government for augmenting the textile sector and to ensure and facilitate the production and distribution of cloth at affordable price.

4. Respondent Nos. 2, 7, 5, 3, 4 and 6 were engaged as trainee investigators on the basis of the applications submitted to the General Manager of the Mills on 29.07.1980, 10.03.1981, 21.11.1980, 02.01.1981, 10.01.1981 and 30.03.1981,

respectively. Appointments were made on monthly stipends. One of the terms and conditions in the letter of engagement as a trainee investigator reads, thus:

4. That the management shall have no obligation whatsoever to provide you any job in these Mills after completion of the said period of training.

5. Although no assurance was given to them that on completion of the training they would be appointed as trainee investigator, they were appointed as clerks. Allegedly, at that point of time, only the posts of clerks were vacant.

Some of the terms of their appointments read as under:

1. That you shall be paid a basic salary of Rs. 120/- per month in the scale of Rs. 120-8-160-10- 200-EB-13-265-16-345-EB-20-445-24-517. In addition you will be paid other allowances as applicable to other temporary clerks of the Mills.

2. That your appointment is for a period of six months on account of temporary exigency of work and after completion of which your service will stand automatically terminated. However, we reserve the right to terminate your service ever earlier at any time without assigning any reason and without any notice or payment in lieu thereof.

3. That you will have to work against absenteeism/ leave etc. amongst clerks in any of the departments/ sections in the General Office as well as in the Mills.

4. That your other terms and conditions of service will be governed by standing order applicable for clerks in this Mill.

5. *** **

If the above offer is acceptable to you, please sign copy of this letter in token of your acceptance and report for joining immediately.

They were offered the scale of pay applicable to a clerk. They accepted the said post without any protest or demur. They were at a later date made permanent clerks also. Yet again, they accepted the said status without any demur whatsoever.

The Company, however, became sick in October, 1991. A reference was made to the Board for Industrial and Financial Reconstruction (BIFR) whereupon a proceeding was initiated. Eventually, the Mill was closed, upon obtaining an approval from the Central Government in terms of Section 25O of the Industrial Disputes Act, 1947. Only after closure of the said Mills sometime in October, 1991, the concerned respondents raised a demand through a Union known as Kapda Mills Karamchari Sangh on 1.02.1992 seeking for the post of investigators and that too from the date of their initial appointment with arrears and difference in pay.

Pursuant to and in furtherance of the said demand, the State of Uttar Pradesh, in exercise of its power conferred upon it u/s 4(k) of the U.P. Industrial Disputes Act, 1947 made a reference for adjudication thereof before the Tribunal by a

notification dated 2.04.1993, which reads as under:

Whether giving the designation of clerk and pay scale to its 6 workmen mentioned in enclosed Schedule, after imparting training of Investigator to them, is appropriate and legal? If not then what kind of relief, the concerned employees are entitled to get? From which date with any other detail?

6. Before the Tribunal, the respondents sought for a direction for appointment in the post of investigators from the date of their initial appointment.

7. Appellant in its written statement inter alia denied or disputed that the Union at any point of time had made any demand or representation in regard to the change of the status of the said employees. It was contended that the Management was not bound to provide any employment to the respondents, upon completion of the terms of their training. The fact that the production of the Mill was lying closed was also brought to the notice of the Tribunal.

Furthermore, it was urged that any fresh financial burden would have adverse effect on the industry as any wage revision had been barred.

8. The Industrial Court, however, by reason of an award dated 3.11.1988 directed:

...It is beyond comprehension as to how the workmen concerned even after completion of a successful training period would prefer to be appointed for a lower post carrying less wages.... For the sake of argument if it is assumed that no posts of investigators were available at the time of completion of their training then in the event of vacancy, the plaintiffs would have been given preference for appointment to the post of investigators....

It was held:

15. therefore, I order that the plaintiffs be treated as senior on the post of investigator to Sh. Sunil Kumar Chaurasiya in the pay scale of Rs. 330-560 from the date of absorption and in the scale of Rs. 1400-2300 w.e.f. 31.12.95 and thereafter in the pay scale of Rs. 4500-7000/-. The plaintiffs are to be fixed in the pay scale of Rs. 330-560 w.e.f. 9.3.82 and subsequent fixation of pay from different dates in the revised scales of pay and they will be paid the difference of pay as arrears but due to delayed raising of the matter/ litigation the plaintiffs will be eligible to draw difference of pay from the date of reference of matter to the Court. They shall also be entitled of Central D.A. for the post of investigator.

9. A writ petition preferred thereagainst has been dismissed by the High Court by reason of the impugned judgment. During pendency of the writ application, however, subsequent events took place, which have been brought to the notice of this Court, by reason of a supplementary affidavit filed on 25.04.2005, that the respondents, in the meanwhile pursuant to a scheme floated for voluntary retirement scheme known as the Modified Voluntary Retirement Scheme, applied therefore and obtained compensation in the following terms:

Sl. Name of the Date of Net amount Date of No. respondents resignation paid (Rs.) receipt

1. Sandip Kumar Bajpai 12-07-2002 2,95,090/- 10-10-2003 (Res. No. 2) 2. Surendera Ballab 12-07-2002 3,26,779/- 29-05-2005 Goswami (Res. No. 3) 3. K.S. Usmani 12-07-2002 2,80,636/- 15-03-2004 (Res. No. 4) 4. Ramendra Prasad 12-07-2002 2,98,670/- 10-10-2003 Sharma (Res. No. 5) 5. Shankar Pathak 12-07-2002 2,90,240/- 31-10-2003 (Res. No. 6) 6. Ram Kewal Kanojia 12-07-2002 2,95,090/- 10-10-2003 (Res. No. 7)

10. By reason of the impugned judgment, however, the writ petition was dismissed opining that the award of the Industrial Tribunal was neither perverse nor suffered from any error apparent on the face of the record.

11. Mr. Sanjay Ghosh, learned Counsel appearing on behalf of the appellant, would submit:

- (i) the respondents have not worked for a single day in the posts of investigator;
- (ii) From October, 1991 and till the employees retired under the voluntary retirement scheme in 2002, the Mill was lying closed and, therefore, there was no requirement of any investigator.
- (iii) The National Textile Corporation is a sick industrial company and its financial capacity or availability of post or requirements for job by it had not been considered by the courts.
- (iv) Engagement of the respondents as trainees did not confer any right on them to be appointed substantively against the post and in any event, the concept of seniority in the posts of trainees is wholly unknown.
- (v) A belated attempt to raise a dispute after ten years seeking reclassification or redesignation of the post and that too from the initial date of appointment was wholly unwarranted.
- (vi) The Industrial Court committed a serious error in directing the appellant to grant a higher post and that too de'hors the rules, vacancies and requirements of the company. In any event, the same could not have been granted with retrospective effect and that too without taking into consideration the contentions raised by the Management.
- (vii) The principles of "No Work No Pay" should have been applied in the instant case.

12. Mr. Bharat Sangal, learned Counsel appearing on behalf of the respondents, on the other hand, would contend that the action on the part of the Management was wholly mala fide, in as much as the respondents had been making representations for a long time pointing out that in similar cases the trainees had been absorbed.

The learned Counsel would contend that the fact that the appellant adopted a

policy to absorb such trainees on the post of investigators having not been denied or disputed, the impugned judgment should not be interfered with.

As regards delay, Mr. Sangal would contend that in its award, the Industrial Court had not granted the entire back wages as it was directed "due to delayed raising of the matter/ litigation the plaintiffs will be eligible to draw difference of pay from the date of reference of matter to the Court".

13. The reference made by the appropriate government for adjudication of the industrial dispute by and between the parties relates to a purported legal right. Whether the respondents, thus, were entitled to be appointed as investigators was the question which should have been posed and answered by the Industrial Court. From the terms of offer of engagement issued in favour of the respondents, it is evident that their job as trainee investigators was temporary in nature. They were not conferred with any status. They were only engaged as trainee investigators. Their appointments had not been made in strict compliance of the constitutional scheme of equality contained in Articles 14 and 16 of the Constitution of India. They were not even appointed as apprentices within the meaning of the provisions of the Apprentices Act, 1961.

14. Respondents were offered the posts of clerk which was accepted by them as the same were vacant. They had no legal right to be appointed as investigators. They accepted the said offer without any demur whatsoever. For a long time, no industrial dispute was raised nor any demand was made by them or the Union on their behalf. The concerned respondents were not illiterate. They were aware of their rights. If they stood by for a long time, the doctrine of acquiescence and waiver would apply in their cases. In its award, as noticed hereinbefore, the Industrial Tribunal commented that "how the workmen concerned even after completion of a successful training period would prefer to be appointed for a lower post carrying less wages", but that is a question which was required to be answered by the workmen as to why such offers were accepted.

15. It is one thing to say that the respondents were forced to accept appointment in lower posts although they were entitled for appointment to higher post, but, it is another thing to say that only because at a later point of time services of one gentleman were regularized in the post of investigator would itself be determinative of the factor that the action on the part of the employer was discriminatory and/ or malafide in nature.

The opinion of the Industrial Court that even if no post of investigator was available, as soon as vacancy occurred the same should have been offered to the respondents cannot be held to be correct. We say so firstly because the respondents had no legal right to the said posts; secondly, if they had accepted to work in the post of clerk for a long time, only because subsequently a vacancy arose, the same in law was not required to be offered to those who had taken training; and thirdly, only because the Management had spent some amount for their training, the same by itself is not a ground that they should have been

absorbed as investigators.

16. The act of discrimination and/ or inappropriate action on the part of the employer, if any, should have been the subject matter of a demand immediately after their appointment as clerks. They not only accepted their appointments to the post of clerk; as noticed hereinbefore, they were made permanent in the said post.

Another principle which was applicable in the instant case was also lost sight of by the Tribunal, viz., that Article 14 of the Constitution of India carries a positive concept and no equality can be claimed in illegality.

In Mahendra L. Jain and Others Vs. Indore Development Authority and Others, this Court held:

19. The question, therefore, which arises for consideration is as to whether they could lay a valid claim for regularisation of their services. The answer thereto must be rendered in the negative. Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalised by taking recourse to regularisation. What can be regularised is an irregularity and not an illegality. The constitutional scheme which the country has adopted does not contemplate any back-door appointment. A State before offering public service to a person must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the State must conform to the constitutional requirements. A daily-wager in the absence of a statutory provision in this behalf would not be entitled to regularisation.

See also M.P. Housing Board and Another Vs. Manoj Shrivastava, ; Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, ; Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., ; Gangadhar Pillai Vs. Siemens Ltd., and C.S. Azad Krishi Evam Prodyogiki Vishwavidyalaya Vs. United Trades Congress and Another, .

17. The Industrial Court, unfortunately, did not deliberate upon any of the aforementioned issues which arose for its consideration. The High Court again failed to address itself the aforementioned principal issues. It merely endorsed the views of the Industrial Court without applying its mind independently.

18. We may also notice the subsequent events. A voluntary retirement scheme was floated. Respondents even while opting therefore stated their designations to be clerks. That may not be decisive but then it is at least a pointer to show that they had all along accepted the said position.

19. The Industrial Court as also the High Court furthermore failed and/ or neglected to consider the fact that the time when the industrial dispute was raised, the Mill had already been closed.

20. There cannot be any doubt whatsoever that the Industrial Court in terms of

Section 11A of the Industrial Disputes Act, 1947 exercises a wide discretion. But, such discretion must be exercised judiciously. All attempts must be made to strike a balance. Even otherwise grant of back wages and that too with retrospective effect may not be appropriate in all situations.

21. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. However, if any sum has been paid to the workmen pursuant to the impugned award of the Tribunal and the judgment of the High Court, the same shall not be recovered. The appeal is allowed with the aforementioned directions. In the facts and circumstances of the case, there shall be no order as to costs.