

(2004) 07 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 6049 of 1996

Maharashtra State Electricity Board

APPELLANT

Vs

Suresh Ramchandra Parchure and The Chairman, Industrial Court

RESPONDENT

Date of Decision : 12-07-2004

Acts Referred:

Citation : (2005) 2 ALLMR 748 : (2005) 1 BomCR 820

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Deepa Chavan, instructed by Little and Co, for the Appellant; K.S. Bapat, for the Respondent

Judgement

Nishita Mhatre, J.—The Petitioners have challenged the order dated 28th November 1994 of the Industrial Court, Kolhapur passed in Complaint (ULP) No. 194 of 1989 directing them to extend the benefit of the General Order No. 74 to the first Respondent workman from 1st April 1980. The Petitioners were further directed to pay consequential arrears of wages by implementing the order from 1st April 1980.

2. The first Respondent workman had joined services with the Petitioners as a Lower Division Clerk on 10th April 1964 and in the year 1971 was appointed to the post of Stores Assistant. On 17th March 1975, pursuant to an enquiry held against the workman for certain acts of misconduct, the Petitioners imposed punishment on the workman by withholding his increments for five years with cumulative effect. The workman appealed against this order. The Chairman of the Petitioners allowed the appeal and reduced the punishment by considering the fact that no actual loss of property had been sustained by the Board. The punishment was reduced to withholding of increments for a period of two years with cumulative effect from the date of the original order of punishment which was passed in 1975. Therefore, by the time the appeal was decided on 27th December 1978, the workman had already undergone the required punishment.

Despite this, the Petitioners did not promote the workman who had been in service for ten years, in accordance with the General Order No. 74 dated 30th April 1970. The object of this General Order was to extend special benefits to such of the Board's employees who had remained on given post for ten years without the advantage of promotion to a higher post or higher grade, for want of clear vacancies or for want of a channel of promotion. Such promotion was to be extended to (i) such persons who were otherwise fit for promotion on the basis of overall performance; (ii) who had passed the necessary examination/test including speed test, etc. required to be passed by the Board and (iii) who had continued in the same category of post or posts due to reasons other than disciplinary action against him. Where disciplinary action was taken against a workman, his case was to be considered after completion of two years from the punishment period being completed.

3. It appears that the benefits available under the General Order No. 74 was modified in 1983 and it was decided that those who have remained on the same post for six years would be extended the benefit of General Order No. 74. Therefore, the other stipulations being the same, the period for extending the benefit was reduced to six years. The first Respondent workman having completed six years as a Stores Assistant, Called upon the Petitioners to extend the benefit of General Order No. 74. He was informed in 1986 that a Competent Selection Committee had decided not to extend the benefit of the General Order with effect from 1st April 1980 but from 1st April 1983 after taking a yearly review of his performance. The workman then filed a Complaint in 1989 under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 claiming benefits of the General Order No. 74 read with the amendment made in 1983. In his Complaint, the workman had contended that he had completed six years in the category of Stores Assistant on 1st April 1980. He had also contended that there was no prescribed examination for the post of Stores Superintendent which was the promotional post and that no adverse remarks had been intimated to him in respect of his confidential reports for the year 1977-78, 1978-79 and 1979-80. The Written Statement of the Petitioners is vague and there is no denial of the contentions of the workman regarding the adverse remarks. The Petitioners have pleaded that it was only when the Competent Selection Committee decided that the first Respondent workman was eligible for consideration for promotion in accordance with General Order No. 74 that they accepted the decision and promoted him from 1983. In fact, they have admitted the contents of paragraph 9 of the Complaint where the workman had stated that there was no examination or test for the selection to the post of Stores Superintendent.

4. The Industrial Court, based on the evidence before it, has concluded that the first Respondent workman is entitled to the benefits of the General Order No. 74 with effect from 1st April 1980. With regard to the contention raised by the Petitioners regarding limitation, the Industrial Court has come to the conclusion that the Petitioners had not implemented the General Order No. 74 since 1980

and therefore they had committed an unfair labour practice which was continuing. According to the Industrial Court, the cause of action for the Complaint was in continuation and, therefore, the Complaint was not barred by limitation. On merits, the Industrial Court came to the conclusion on the basis of the judgment of the Division Bench of this Court in Maharashtra State Electricity Board v. Dinkar Sadashiv Sane (Appeal No. 892 of 1991 in Writ Petition No. 2273 of 1984), that the benefits of the General Order should not be denied to any employee who has completed six years in a particular post unless his confidential record was bad or he was guilty of misconduct. In the present case, the Industrial Court found that the Petitioners had not demonstrated that there was any misconduct alleged against the first Respondent workman as a consequence of which he was undergoing punishment when the Petitioners were expected to consider him for promotion in accordance with General Order No. 74 as amended. The Industrial Court has, therefore, allowed the Complaint.

5. Mrs. Chavan, learned Counsel for the Petitioners, submits that the Complaint itself was not maintainable because there was a delay of four years from the date of the Petitioners refusing to accept the demand of the workman. She submits that the workman was found guilty of misconduct and had been punished by stoppage of increments for five years with cumulative effect. He was also informed that the punishment was reduced because of the appeal filed by him. However, since the Selection Committee had not found him fit for promotion in 1980, it was always open for the Petitioners not to implement the General Order No. 70 of 1980 by extending the benefits from that year. She submits that the Selection Committee having found the first Respondent workman eligible only in 1983, there was no unfair labour practice on the part of the Petitioners in not extending the benefits from 1980 onwards.

6. Mr. Bapat, learned Advocate for the first Respondent workman, on the other hand, submits that the Industrial Court has considered all these facts and has relied on the judgment of the Division Bench of this Court in Dinkar Sane (supra) and has rightly concluded that the workman was entitled to the benefits of the General Order from 1980 onwards. As regards limitation, he submits that there being a continuing offence of unfair labour practice by the Petitioners, the question of limitation did not arise as the Industrial Court has rightly rejected the contention of the Petitioners in that behalf.

7. It is true that the Petitioners had granted the benefit of the General Order No. 74 with effect from 1st April 1983. This was communicated to the workman on 19th December 1983. He was also informed that the Competent Selection Committee had found him unfit to avail of the benefit upto 31st March 1983 after taking a yearly review. After being informed by the Petitioners, the workman through his Advocate called upon the Petitioners to implement the General Order No. 74 as amended. It was only thereafter that he filed a Complaint under Item 9 of Schedule IV of the Act. The question of limitation could arise if the unfair labour practice was complete on a particular date and no complaint has been

filed thereafter. In the present case, the unfair labour practice was continuing inasmuch as for each date that the benefits of the General Order had not been extended, the unfair labour practice would continue. Therefore, the submission regarding limitation cannot be accepted.

8. There is no material on record to show as to why the Petitioners had not been given the benefit of General Order from 1980 itself. The only contention raised in the Written Statement is that the Selection Committee had not found the first Respondent workman fit from 1st April 1983 after which the benefits were extended to him. However, there is no material on record to indicate that the workman was not qualified because either his overall performance was not good or that he was undergoing any punishment or any disciplinary action was taken against him. Moreover, the contention in the Complaint that there was no examination or test for being posted or promoted as Stores Superintendent has not been denied. Therefore, there was no reason for the workman to be denied the benefits of the General Order No. 74. As held by the Division Bench of this Court in *Dinkar Sane (supra)*, an employee is entitled to the higher grade provided he is not found unfit for promotion or he is undergoing a punishment. The Division Bench has held that if it is necessary for an employee to pass an examination or test, he must do so before he could claim the benefits of the General Order. However, in the present case, there is no material to show that such an examination or test was required to be passed for being promoted to the post of Stores Superintendent. The specific averment by the workman in the Complaint that no such examination was required is not denied by the Petitioners. Therefore, in my view, the Industrial Court has correctly appreciated the law and evidence before it and has concluded that the first Respondent workman was entitled to the benefits from 1st April 1980.

9. For the foregoing reasons, Writ Petition rejected. Rule discharged. No order as to costs.

10. Parties to act on an authenticated copy of this judgment.