

(2002) 04 MP CK 0056
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1040/99

M.P.S.R.T. Corporation

APPELLANT

Vs

Jagadish Narayan Sharma and Others

RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Industrial Relations Act, 1960 — Section 2(13)

Citation : (2002) 1 JLJ 401 : (2002) 3 MPHT 83 : (2002) 2 MPLJ 554

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : A.K. Srivastava, for the Appellant; B.P. Singh, for the Respondent
No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

The Madhya Pradesh State Road Transport Corporation, petitioners in this case have challenged the order dated 21-1-1997 (Annexure P-1) passed by the Industrial Court, M.P., Gwalior and the order dated 17-2-1992 (Annexure P-2) passed by the Labour Court No. 3, Gwalior. By the impugned order, the Labour Court had directed petitioners to consider the case of the respondent No. 1 for promotion to the post of Labour and Personnel Officer with effect from 22-7-1980. However, the order stood modified by the Industrial Court and instead of considering the claim for promotion from 22-7-1980, it has been directed that the respondent No. 1's claim for promotion be considered from 21-5-1985.

The respondent No. 1 moved an application before the Labour Court u/s 31 read with Sections 61 and 62 of the Madhya Pradesh Industrial Relations Act, 1960 (hereinafter referred to as the Act of 1960) inter alia contending that he is senior to respondent Nos. 2 and 3 and claimed promotion to the post of Labour and Personnel Officer. Further prayer made was for quashing the adverse entry made

in the confidential report in the year 1984.

It was the case of the respondent-employee that ignoring his claim, respondent No. 2 was promoted to the post of Labour and Personnel Officer with effect from 22-7-1980 and respondent No. 3 was promoted with effect from 21-5-1985.

The Corporation filed its written statement and contended that on the basis of the records of service, respondent Nos. 3 and 4 were promoted. It was stated that the adverse remarks were communicated to the respondent-employee. His representation was also considered and as there was nothing warranting interference, the same was dismissed. It was also contended that the claim is barred by limitation as it was filed in the year 1986.

Labour Court on the basis of the pleadings of the parties, framed various issues and after recording evidence, by the impugned order, Annexure P-2 dated 17-2-1992 directed the respondent No. 1-Corporation to consider the case of the applicant (respondent No. 1 herein) for promotion to the post of Labour and Personnel Officer with effect from 22-7-1980.

On an appeal being preferred u/s 65 of the Act of 1960, the Industrial Court by the impugned order dated 21-1-1997 (Annexure P-1) partially allowed the appeal and the date of consideration was changed from 22-7-1980 to 21-5-1985.

Learned Counsel, Shri A.K. Shrivastava, appearing for the petitioners Corporation submits that the application was submitted by the respondent after retirement. The application was not entertainable as the respondent is not an employee within the meaning of Section 2 (13) of the Act of 1960. It was putforth that he was neither dismissed nor discharged or retrenched as he has retired from the service, the application is not maintainable. It was also putforth that the claim has been properly considered by the petitioners and no case for interference is made out. It was also putforth by him that the promotion is a managerial function and in the absence of malafide, victimisation and violation of statutory provision, the Courts should not interfere in such matters. Accordingly, he was submitted that the orders of the Courts below cannot be sustained and they be quashed. Heavy reliance was placed by the learned Counsel for the petitioner in the case of Management of Brooke Bond India (P) Ltd. Vs. Workmen, . On the basis of the aforesaid, it was putforth that in the absence of there being findings of malafide or victimisation, no interference was called for. He has also placed reliance on the case of High Court of Judicature at Allahabad Through Registrar Vs. Sarnam Singh and Another, , to contend that no opportunity of hearing is required before recording adverse remark in the confidential report. He was also placed reliance on the judgment of the Supreme Court in the case of Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, .

Per Contra, learned Counsel for the employee has submitted that the Courts below have considered the facts and circumstances of the case correctly, and therefore, no case for interference is made out. Placing reliance in the case of Brij Mohan Singh Chopra Vs. State of Punjab, , it has been putforth by the

learned Counsel for the respondent-employee that adverse entries against which representations are pending cannot be taken into consideration for the purpose of denying promotion. He has also relied upon in the case of Shama Prashant Raje Vs. Ganpatrao and Others, , to contend that the findings of inferior Tribunals should not be interfered with by the High Court until and unless there is manifest error warranting interference. It is submitted by him that the findings of the Courts below in the instant case are based on evidence and material on record and as the petitioners-Corporation did not adduce any evidence before the Labour Court, the concurrent findings recorded by the Courts below need not be interfered with in a proceeding under Article 227 of the Constitution of India.

I have heard the learned Counsel for the parties and perused the record.

The Industrial Court in its order considered the material on record and came to the conclusion that a specific averment was made by the respondent-employee to the effect that the adverse entries made for the year 1984 were communicated to him and he had submitted his representation but without considering the same, promotion has been denied to him. The finding of the Industrial Court is that without deciding the representation against the annual confidential report, the Departmental Promotion Committee has rejected the claim of the respondent-employee. The Industrial Court has considered various judgments on this point and has come to the conclusion that if representations against adverse annual confidential reports are pending and if the representation has not been decided then the confidential report can not be taken into consideration for the purpose of denying promotion to an employee. In the instant case, neither evidence has been led nor any document has been produced by the petitioners-employer to demonstrate that the representation was considered and disposed of before the case of the respondent-employee was considered for promotion.

In view of the aforesaid settled principle of law and in view of the fact that the petitioners had not led any evidence to prove the averments made in the written statement, the findings recorded by the Industrial Court in this regard cannot be challenged. I am, therefore, of the considered view that the findings of the Industrial Court with regard to pendency of the representation against the adverse annual confidential report for the year 1984 can not be said to be incorrect.

The second question which requires determination is with regard to the effect that the claim is barred by limitation. The Industrial Court came to the conclusion that the claim with regard to the promotion with effect from 21-5-1985 is within the period of limitation, and therefore, the order of the Labour Court directing promotion from 22-7-1980 has been modified. The Industrial Court has correctly taken into account the provision of Section 62 of the Act of 1960 and has modified the order accordingly. The claim for promotion with effect from 21-5-1985 when the respondent No. 3 was promoted is well within the period of limitation prescribed u/s 62 of the Act of 1960. Accordingly, the order of the

Industrial Court in this regard seems to be just and proper and no interference into the same is called for.

The submission of the learned Counsel for the petitioner with regard to the law laid down in the case of Management of Brooke Bond India (P) Ltd. (supra) is also not applicable in the facts and circumstances of the present case. It is not the case of respondent-employee that he had been victimised or promotion has been denied to him on the basis of malice. His case is that adverse entries made in the annual confidential report are not called for, and therefore, it should be expunged. The Labour Court and the Industrial Court have not directed for expunging the adverse annual confidential report of the respondent-employee. The Courts below have only directed for reconsideration of the matter in view of the settled legal principle with regard to consideration of the cases in which representation against the annual confidential reports are pending. The law laid down by the Supreme Court in the case of Management of Brooke Bond India (P) Ltd. (supra) will not apply in the facts and circumstances of the present case. Similarly, the case of Sarnam Singh and Anr. (supra) is also not applicable as the same pertains to grant of opportunity of hearing before recording the annual confidential report. These cases and the other cases cited by the learned Counsel for the petitioner are not applicable in the facts and circumstances of the present case as the question involved in these cases are entirely different. On the contrary, the law laid down in the case of Shama Prashant Raje (supra) with regard to the scope and interference in a petition of this nature supports the contentions of the learned Counsel for the respondent-employee.

In the aforesaid case, the Supreme Court has laid down that while exercising the powers under Articles 226 and 227 of the Constitution of India, the High Court can not sit in appeal over the findings recorded by a Competent Court. The jurisdiction of this Court is supervisory in nature and not appellate. The Hon'ble Supreme Court has held that a petition under Article 226 of the Constitution can not be converted into a Court of appeal and the correctness of a decision impugned can not be examined as if an appeal is being heard. The only power is to see as to whether a proper view has been taken or made by the Court below and there should not be any manifest error or that the findings of the Tribunal are such that the conclusion arrived at is not possible on the basis of the material on record.

Viewed in the light of the aforesaid judgment, there can not be any doubt that both the Labour Court and the Industrial court in the facts of the present case have come to the conclusion on the basis of the evidence and other material produced before it. The averments made by the petitioner in the instant petition are not proved on the basis of the evidence on record. In fact the petitioners have not adduced any evidence in the Labour Court. In the light of the aforesaid, there can not be any doubt that the findings recorded by the Labour Court are reasonable and proper and no case warranting interference is made out.

Certain objections with regard to the maintainability of the application u/s 2 (13)

of the Act of 1960 have been made by the learned Counsel for the petitioners on the ground that the respondent-employee is not an employee within the meaning of Section 2 (13) of the Act of 1960, and therefore, the application was not maintainable. The interpretation of Section 2 (13) of the Act of 1960 was considered by a Division Bench of this Court in the case of Lakhanlal v. M.P. Electricity Board, in M.P. No. 2969/97, decided on 27-8-1999. After considering the provisions of the Madhya Pradesh. Industrial Relations Act, 1960 and in particular the schedule to the said Act, it has been held in the said case that simply because an employee has retired on attaining the age of superannuation, it would not mean that he ceases to be an employee for the purpose of the grievance which was subsisting during the tenure of his employment with the employer. Considering the arguments made by the learned Counsel for the petitioners, in the light of the aforesaid pronouncement of the law, the submissions can not be accepted. In the circumstances, this Court does not find any merit in the petition filed by the petitioners. The same is therefore, dismissed.

Parties to bear their own costs.