
(1977) 03 MAD CK 0048
In the Madras High Court

M.S. Govindarajan

APPELLANT

Vs

The General Manager, Heavy Vehicles Factory and Others

RESPONDENT

Date of Decision : 18-03-1977

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1977) 90 LW 636 : (1977) 2 MLJ 304

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Judgement

A.D. Koshal, J.—The petitioner was appointed as a Chargeman Grade I in the Heavy Vehicles Factory, Avadi (hereinafter referred to as the H.V.F.) on the 9th July, 1963. Respondents 3 and 4 who were then holding posts of Chargemen Grade II in an Ordnance Factory at Jabalpur (hereinafter called the J.O.F.) were recruited as Chargemen Grade I in the H.V.F. on the 5th of June, 1964, and the 14th of April, 1964 respectively. Shortly afterwards the said two respondents were promoted to the rank of Assistant Foreman in the J.O.F. which circumstance, however, did not entitle them to claim the posts of Assistant Foremen in the H.V.F. as the latter were then being filled by direct recruitment only. Nevertheless the General Manager of the H.V.F. passed orders promoting them from the posts of Chargemen Grade I to those of Assistant Foremen with effect from the 13th of December, 1965 and the 23rd February, 1966 subject to the express condition that the promotion of both of them would be "without effect on seniority". The petitioner who was senior to them both in the cadre of Chargemen Grade 1, was not considered for promotion at that time.

2. Recruitment to the posts of Assistant Foremen in the H.V.F. was undertaken in the latter half of the year 1966 and as a result thereof, the petitioner was promoted as an Assistant Foreman on the 18th of October, 1966 whereupon he claimed seniority above that of respondents Nos. 3 and 4. But his claim was turned down on the ground that he came to hold the post of an Assistant Foreman long after respondents Nos. 3 and 4 were promoted as Assistant

Foremen. He therefore feels aggrieved and has invoked the writ jurisdiction of this Court with a prayer that the General Manager of H.V.F. (Respondent No. 1 before me) be directed by a writ of mandamus to place him in the order of seniority above respondents Nos. 3 and 4.

3. It is true that the petitioner joined the rank of Assistant Foreman much later than respondents Nos. 3 and 4 did, but then his case for seniority cannot be determined with reference to that circumstance alone. When respondents Nos. 3 and 4 were promoted as Assistant Foremen, it was specifically ordered by respondent No. 1 that their promotion will be "without effect on seniority" which could mean only one thing and that is that if another Chargemen Grade 1 who was senior to respondents Nos. 3 and 4, came to hold a post of Assistant Foreman, he would rank senior to them. The argument of learned Counsel for the respondents that the words "without effect on seniority" meant without interference with the seniority of persons then holding the posts of Assistant Foremen is wholly untenable. There was no question at the time of the promotion of respondents Nos. 3 and 4 affecting the seniority of those who were holding the posts of Assistant Foremen already; for respondents Nos. 3 and 4 had to take their place in any event below those persons who had been recruited as Assistant Foremen prior to them. When it was stated that the promotion was "without effect on seniority", the direction has to be viewed in the light of the circumstances then existing and to be given a meaningful interpretation. The only circumstance relevant for the purpose is that admittedly persons senior to respondents Nos. 3 and 4 in the rank of Chargemen Grade I had not been considered for promotion when respondents Nos. 3 and 4 in the rank of Chargemen Grade I had not been considered for promotion when respondents Nos. 3 and 4 were being promoted; and in order to avoid heart-burning amongst such persons, it was considered just that the promotion of respondents Nos. 3 and 4 be made subject to the limitation that they would take their place amongst Assistant Foremen in such a way that when their seniors in the cadre of Chargemen Grade I also came to hold the superior posts of Assistant Foremen, they would automatically go above respondents Nos. 3 and 4.

4. However, the matter does not end there. Another important aspect of the case is that recruitment to the posts of Assistant Foremen was not open by way of promotion at all. Nevertheless, if respondent No. 1 thought that exigencies of the situation required recruitment to the cadre of Assistant Foremen through promotion of Chargemen Grade I, then it was incumbent on him, in the absence of rules to the contrary, to consider for promotion Chargemen Grade I in order of their seniority. That is not to say that promotions had to go strictly in that order; but then there is no escape from the principle that consideration for promotion had to be in the order of seniority. In other words, a convenient batch of persons from the top had to be taken up and subjected to scrutiny and if suitable persons were available amongst that batch such persons had to be selected in order of their seniority and a person lower down on the list could be considered only if his seniors were not found to be upto mark. That is a procedure which was

admittedly not adopted. The case of respondents Nos. 3 and 4 had been taken up for promotion without any reference whatsoever to the claims of Chargemen Grade I who were above them in seniority. The procedure adopted clearly contravenes Articles 16 of the Constitution of India in that it denies equality of opportunity to the petitioner and others similarly situated vis-a-vis respondents Nos. 3 and 4. The promotion of the two respondents last mentioned, therefore is itself liable to be struck down. However, the petitioner has not claimed any such relief even though he has attacked the promotion of respondents Nos. 3 and 4 as being ultra vires of the Constitution of India and, for the purpose of this petition, it would suffice if the writ prayed is issued.

5. In the result, the petition succeeds and is accepted and respondent No. 1 is directed by a writ of mandamus to treat the petitioner in the cadre of Assistant Foremen as being senior to respondents Nos. 3 and 4. The parties will, however, bear their own costs.