
(1979) 02 CAL CK 0038
In the Calcutta High Court

Naba Krishna Chakrabarty

APPELLANT

Vs

Calcutta State Transport Corporation and Others

RESPONDENT

Date of Decision : 13-02-1979

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : 83 CWN 897

Hon'ble Judges : Sabyasachi Mukherjee, J

Bench : Single Bench

Judgement

Sabyasachi Mukherjee, J.—In this application 22 employees of the Calcutta State Transport Corporation claim that they are being wrongfully reversed from the posts of cashiers to the posts of conductors. There is no dispute that a conciliation proceeding is pending between the parties on the question of permanent absorption of the petitioners in the post of cashiers and on their claim for arrears of salary for working as cashiers. The petitioners, it is indisputable, were substantively appointed conductors. The petitioners have not been able to show any notification or order or communication appointing the petitioners as cashiers. It is true that industrial adjudication is pending in the form of conciliation proceeding and Section 33(1)(a) of the Industrial Disputes Act, 1947 enjoins that during the pendency of any conciliation proceedings before a conciliation officer, no employee shall in regard to any matter connected with the dispute alter to the prejudice to the workman concerned in such disputes, the "conditions of service" applicable to them immediately before the commencement of such proceeding. The case of the petitioners is that the petitioners have been asked to perform the duties of conductors to which they hold substantive appointment while some others have been appointed as cashiers. The question is, therefore, whether the petitioners "conditions of service" immediately preceding the commencement of the proceedings have been affected. The whole purpose, as counsel for the petitioners submitted, was to maintain status quo during the pendency of the conciliation proceeding. Status quo, as he argues, from Mozley & Whiteley's Law Dictionary, is the stage in which anything already is. Of course speaking literally,

nothing ever remains in the state in which it already is as you cannot cross the same river twice. The important question in a matter of this nature is too definite what the status quo was as to the "conditions of service." The petitioners complain that they are being reverted. The question of reversion arises only when there has been an appointment to a higher post. Where there is no appointment to a higher post, mere performance of some duties allocated to the persons holding higher post does not entail any question of reversion to a lower post. In order to be reverted, there must be either a permanent or a temporary appointment to a higher post. The petitioners have failed to establish that they were appointed either temporarily or permanently to the higher posts or in the posts of cashiers. There cannot be any question of the petitioners being appointed permanently in the higher posts because the appointment to the post of cashier entails deposit of certain security money and it is the common case that none of the petitioners has deposited any security money. So far as the temporary appointment is concerned, mere asking some employees to perform some duties which are normally performed by persons holding higher posts does not have the effect of temporary appointments in the higher posts. The conditions of service, undoubtedly, during the pendency of the conciliation proceeding which is pending in this case, cannot be affected and the conditions of service must be the salary, gratuity, right to pension, leave, etc., appertaining to the post of the petitioners. These cannot, in any way, to the detriment to the petitioners, be affected pending the conciliation proceedings. But the actual work or duties to be performed by the petitioners cannot form part of the conditions of service, as contemplated u/s 33(1)(a) of the Industrial Disputes Act.

2. Counsel for the petitioners drew my attention to certain observations of the Supreme Court in the case of *New India Motor (Private) Ltd. v. Morris* 1960 I L.L.J. 551 (K.T.) . There, a dispute, was pending, regarding the termination of services of some apprentices, raised by workmen through the union. A person working as field service organiser in the establishment who along with other workmen raised such a dispute whether the workmen concerned in the dispute would come within the meaning of Section 33(1)(a) of the Act. In this connection, the Supreme Court observed that it must be borne in mind, by Section 33 the Legislature wanted to ensure a fair and satisfactory enquiry of the industrial disputes undisturbed by any action on the part of the employer or the employee which would create fresh cause of action or disharmony between them. During the pendency of industrial disputes, status quo should be maintained and no further element of discord should be introduced. That according to the Supreme Court was the purpose of Section 33(1)(a) and it should not receive a narrow construction. But this does not mean that it construing the expression the "conditions of service" allocation of work done to certain workmen, though for a long period of time, would be raised to the level of conditions of service of employment by workmen. Similarly, in the case of *The Lord Krishna Textile Mills Vs. Its Workmen*, , upon which counsel relied, was entirely in different context. There, what happened was that the appellant moved against the order of

dismissal passed against the workmen and there in that context the Supreme Court observed that the object of Section 33 was merely to allow continuance of the industrial proceedings pending before the authority prescribed by the Act in quiet, and peaceful atmosphere undisturbed by any other industrial dispute and it enjoined that status quo should be maintained banning any action of the employees pending adjudication but that did not mean that the Supreme Court was extending the meaning of the conditions of service, In this connection, reliance was also placed on the definition of the expression officiating in Sub-rule (26) of Rule 5 of the West Bengal Services Rules, Part I which states that Government servant officiates in a post when he performs the duties of a post on which another person holds a lien or when he is appointed by the authority competent to make the substantive appointment to that post to officiate in a vacant post on which no other person holds lien. There is, however, a proviso which is not relevant for the purpose. Therefore, in order to even hold an officiating post, the Government servant must officiate in a post when he performs the duties of a post on which another person has got a lien. Now, if the petitioners are performing the duties of the cashiers, it has not been shown that some other persons are holding lien on the posts in which the petitioners were performing their duties as cashiers. So, the petitioners do not come within the first limb of the expression officiating in that sub-rule. It is indisputable that the petitioners do not come under the second limb of the definition because there was no appointment as such, as I have indicated hereinbefore. In that view of the matter, if the petitioner have been asked to perform certain duties to which they were appointed and to which they substantively belong, in my opinion, their conditions of service have not been breached in any manner.

3. The petitioners next grievance is that some other 22 persons have been appointed as cashiers. It is, of course, admitted by the petitioners in their affidavit-in-reply that the new appointees have duly passed the examinations for the appointment of cashiers which the petitioners have not yet. Therefore, in my opinion, the appropriate order would be to direct that the conciliation proceedings should be completed within a period of four months from this date and during the pendency of the conciliation proceedings, the salary, gratuity, right to pension, leave, etc. of the petitioners should not in any way be affected. This order, however, will not prevent the petitioners from making any representation in accordance with law for their appointments, if they are otherwise qualified for cashiers and in case there is vacancy, and the respondent authority form considering such representation in accordance with law. This order will not in any way prejudice the rights of the conciliation officer or the Industrial Tribunal to adjudicate the matter in accordance with law. With these observations the Rule is disposed of. Save as above all interim orders are vacated. There will, however, be no order as to costs.