

(1991) 08 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 4139 of 1991

National Textile Corpn.

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 28-08-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (1992) 2 LLJ 774

Hon'ble Judges : Padmanabhan, J

Bench : Single Bench

Advocate : U.K. Ramakrishanan, for the Appellant; M. Rajasekharan Nair and Anil Babu, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Padmanabhan, J.—The short question for consideration in this O.P. is whether the impugned provision in Exts, P1 and P2 is liable to be struck down as violative of the provisions of Articles 14 and 16 of the Constitution of India.

2. Vijayamohini Mills was a private sector undertaking. On December 20, 1973 the management entered into Ext. P1 settlement with the unions representing the employees. Age of retirement was fixed at 56. Any employee who put in 10 years of service but did not complete 56 years was given the option for voluntary retirement or resignation. Such of the employees who put in 10 years of service was also given the option on voluntary retirement, resignation or retirement on superannuation, to nominate one of his relatives to be appointed in his place.

3. The undertaking became a sick unit and was taken over by the Central Government. On April 1, 1976 it was handed over to the National Textile Corporation, a company fully owned by the Government of India. Thus it became a public sector undertaking and came within the definition of "State" under Article 12 of the Constitution. Thereafter Ext. P1 was modified by Ext. P2 providing the qualifying service as 16 years instead of 10 years under Ext. P1. So

also production of a certificate of relationship was made obligatory for the appointment.

4. On August 5, 1983 the Ministry of Finance issued Ext. P3 direction to all public sector undertakings to the effect that recruitment to posts carrying scale of pay not less than Rs. 800/- per month should be made only through employment exchanges. They were directed to review their recruitment policies accordingly. Petitioner-company therefore stopped the procedure of nomination under Exts. P1 and P2. Employees objected. Conciliation conference was held. By Ext. P4 settlement, Government was requested to refer the dispute for adjudication. Government of Kerala by order dated April 10, 1984 referred the issue concerning future absorption of nominees of workmen and the question of validity of the agreement of adjudication by the Labour Court, Kollam, first respondent. First respondent adjudicated the issue and passed Ext. P7 award upholding the agreement as valid and binding.

5. This original petition under Articles 226 and 227 of the Constitution was filed by the undertaking praying to issue an appropriate writ quashing Ext. P7 award and declaring that Exts, P1 and P2 settlements are unconstitutional as violative of Articles 14 and 16. Both sides were heard,

6. Exts. P1 and P2 were entered into u/s 18(1) of the Industrial Dispute Act and as such binding on the parties thereto. Ext. P2 settlement was arrived at by the present management. That is the sole reason on which the first respondent held in Ext. P7 that the settlement is binding on the petitioner. The unconstitutionality was not therefore considered. It was argued on behalf of the respondents basing on the decision in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, that the settlement must continue to be in force till a new settlement is arrived at even if the term is taken to have expired u/s 19. But the question of continuance need be considered only if the provisions of the settlement are constitutionally valid.

7. Respondents relied on the decision in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, to support their argument that the purpose of providing appointment was on compassionate grounds to mitigate the hardship caused to the members of the family. But that decision cannot help them. Such a contingency was considered by the Supreme Court in the decision in Yogender Pal Singh and others Vs. Union of India others, also. When a breadwinner of the family dies while in service or is incapacitated while rendering service it may be permissible to appoint a dependent on compassionate grounds, That is an unforeseen situation. But a provision which confers preferential right to appointment on the children or wards or other relatives merely because they happen to be so would be violative of Article 16 because opportunity to get into public service should be extended to all citizens equally and should not be confined to any extent to the descendants or relatives of a person in service or who retired from service.

8. Article 14 enshrines the fundamental right of equality before law or equal protection of the laws within the territory of India, it is available to all irrespective of whether a person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds. That is available to citizens only, but not restricted to any employment or office. Article 16(1) guarantees equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State. Article 16(2) prohibits discrimination on certain grounds in respect of any such employment or appointment. Article 15 does not mention "descent" as one of the prohibited grounds of discrimination, whereas Article 16(2) does. Reservations made and concessions given to the children or dependents on those grounds alone would certainly be hit by Article 16(2) because it is solely on the ground of "descent" which is hit by Article 16(2). The percentage of reservation is of no consequence in as much as persons other than the dependents of the employees are disentitled to apply for or be appointed or considered for appointment to the seats reserved for the dependents.

9. Such a discrimination could have been valid if the undertaking continued to be in the private sector and did not become a "State" within the meaning of Article 12. There cannot be any question of estoppel against a statute or constitutional guarantee on account of an agreement or settlement. Even a legislation offending fundamental right is invalid. There cannot be a better position for a settlement. When once the petitioner became a public sector undertaking the position changed because Article 14 and 16 become applicable. The mere fact that the management of the public sector undertaking agreed to the settlement will not make the position better. That settlement cannot operate as estoppel. First respondent fundamentally erred in this respect. If Ext. P1 and P2 are allowed to stand, the result will be that in the place of a qualified employee who exercised the option one of his dependents alone could be appointed. Equality of opportunity to the citizens will be thereby lost. The result will be creating a hierarchy opposed to Article 16.

10. Original petition is allowed and Ext. P7 award is quashed. Exts. P1 and P2 are declared unconstitutional as violative of Article 14 and 16 of Constitution of India.

No costs.