

(1992) 04 CAL CK 0004
In the Calcutta High Court
Case No : F. M.A.T. No. 2177 of 1991

National Textile Corporation (Wbabo) Ltd.	APPELLANT
Vs	
Plaban Kuman Das and Others	RESPONDENT

Date of Decision : 07-04-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 41

Citation : 96 CWN 1034

Hon'ble Judges : Prabir Kumar Majundar, J; Baboo Lal Jain, J

Bench : Division Bench

Advocate : Tapas Kumar Banerjee and Dipak Kumar Ghosh, for the Appellant; Bidyut Kumar Mukherjee, Sekhar Mustaphi, Ashoke Kumar Chakraborty and Jayanta Dutta, for the Respondent

Judgement

Baboo Lal Jain, J.—This is an appeal from the judgment and order of the learned Single Judge made in the exercise of the constitutional writ jurisdiction of this Court. The appellant National Textile Corporation (WBABO) Ltd., (hereinafter also referred to as N.T. C.) appointed the respondents nos. 1 to 4 between 13th July, 1983 to 7th January, 1984, as trainees for different posts. Plaban Kumar Das was selected as trainee Supervisor (SQC), Mritunjoy Samaddar was selected as a trainee for the post of supervisor (Electrical), Ranjit Kumar Ghosh was selected as a trainee supervisor (Legal) and Partha Chakraborty was selected as a trainee (Internal Audit). The initial selection as trainee in all these causes was for a period of one year from the respective dates of their selection. The terms and conditions inter alia provided that they will get during the said period of one year a stipend of Rs. 500/ -. They were also directed that they will be posted to different factories of the appellant during the training period. The important term which is incorporated in all the aforesaid letters of selection and on which reliance has been placed on behalf of the appellant N.T.C. is as follows :

It may please be noted that it is not obligatory on the part of the Corporation to absorb you on regular basis after completion of the training period.

The said respondent trainees were directed to join at different factories from the dates given in the respective letters by which the selection was made. According to the respondents they were being threatened by local people and employees and they did not report for duty at their respective places as directed in the letter of appointment. It appears that the respondents writ petitioners have educational background for being taken as trainees for the respective supervisory posts. The writ petitioners have stated in their petition that although the writ petitioners were directed to join in the Mills in the appointment letter, the petitioners were not allowed to join in the Mills and actually were directed by the concerned officers of the Mills to join at the Personal Management Division. According to the writ petitioners they joined the Personnel Management Division, being obstructed by the respective Mill heads. The fact remains that the writ petitioners pursuant to their selection, as trainees were retained by the National Textile Corporation for a period extending to about 7 years and during this period they were being paid the stipends as trainees for the respective posts for which they were selected to join as supervisors. During all these periods they were retained and paid stipends by the National Textile Corporation, as trainees for the respective supervisory posts as mentioned in the respective letters for selection as trainees. It appears also from the records produced on behalf of the National Textile Corporation that Provident Fund was also deducted and that they were paid extra money also for the period from January 1, 1990 subject to adjustment. On or about 11th May, 1990 the appellant National Textile Corporation issued letters of appointment to the respondents. By the said letters it was inter alia, intimated to each of the respondents that the management had been pleased to absorb each of them in the post of sales-man on various terms and conditions as specified in the said letters.

2. The instant writ petition was moved by the respondents to this appeal inter alia, praying for issuance of a writ in the nature of mandamus commanding the respondents, that is, the appellant herein to absorb and regularize the petitioners in the post of supervisors and/ or posts mentioned in the appointment letter from the date of completion of training period and to grant seniority from the date and fix the scale of pay to the writ petitioners at the rate of Rs. 425/- to Rs. 700/- and pay all arrears accordingly. The writ petitioners also prayed that they be treated as supervisors and they should be placed in the office on and from January 1, 1990 and various other reliefs.

3. The case of the appellant in the affidavit-in-opposition filed to the writ petition was inter alia to the effect that because of the inability to join the respective mills on the contended grounds of local objection, the writ petitioners were advised to report for duty at Calcutta Office. According to the National Textile Corporation petitioners were given opportunity to report for duty in the retail marketing division of National Textile Corporation at Calcutta as per condition stipulated in the letter of appointment, and were paid stipulated and other benefits. The further case as made out on behalf of the National Textile Corporation is that the petitioners were never trained as supervisor in a Textile

mill, acquiring experience of cotton textile mills nor they had the job training of supervising job of workmen. According to the National Textile Corporation, the petitioners had no training at all. It has been alleged that the post in which the writ petitioners were appointed remained in paper in as much as the petitioners were never trained as supervisor in Textile Mills acquiring the job experience. It has also been alleged that they had never worked in the mills and they were simply paid without any service to render not to speak of any productive service with acquirement of knowledge and experience.

4. It is not disputed that the petitioners were being paid stipends pursuant to the letters of selection and/or appointment for a pretty long period extending to about 7 years. According to the National Textile Corporation the petitioners worked in retail marketing division of the National Textile Corporation.

5. Dr. Tapas Banerjee, the learned counsel appearing on behalf of the National Textile Corporation submitted that the letter of selection clearly stated that it was not obligatory on the part of the Corporation to absorb the writ petitioners on regular basis after completion of the training period. The training period was specified to be only 12 months whereas the writ petitioners were retained as trainees for the different supervisory posts for a period extending to about 7 years. Thereafter they were absorbed to the post of salesman and not to the post for which they were selected as trainees, that is, the respective supervisory posts. The learned Single Judge, after considering the various contentions on behalf of the parties allowed the writ petition and directed the respondent, that is the appellant in this appeal to absorb the petitioners in the different posts of supervisors and to give them seniority from the respective dates of such absorption and regularize the scale of pay with effect from May 1990. In our opinion, the submissions and contentions made on behalf of the appellant that it was not obligatory on the part of the corporation to absorb the writ petitioners on regular basis is of no assistance in the facts and circumstances of this case. The fact remains that even after the completion of the period of 12 months, the writ petitioners were allowed to continue for a period of about 7 years as trainees for the respective posts. Furthermore, they were in fact absorbed and the letter absorbing them was in fact issued on or about 11th May 1990. The only question that arises is whether absorption is regular or in accordance with the terms of their selection. If you select a person for training for a particular post or for a particular supervisory post and thereafter retain him for about 7 years as such trainee, can you put him to a different and inferior post and not a post for which he was selected. It was submitted on behalf of the respondent writ petitioners and we think rightly so, that they could legitimately expect that if and when they were absorbed they will be absorbed to the post for which they were selected as trainees and retained as trainees.

6. The next contention on behalf of the appellant, National Textile Corporation was that the writ petitioners did not in fact have any training. If you retain a man as trainee for a period of 7 years, is the blame to be cast upon the trainee that

he did not go through the training. It was for the National Textile Corporation to arrange for their suitable training for the post for which they were selected. It is not the case of the National Textile Corporation that the writ petitioners or any of them did not abide by their orders during the period they were retained.

7. It was also submitted on behalf of the National Textile Corporation that since the writ petitioners did not have factual training they cannot be appointed to the respective posts, because if they were appointed they may not be able to discharge the duties as they may be expected to do. According to the National Textile Corporation a period of training is necessary before they can be actually appointed to the supervisory post. The blame for not imparting the training if any, is in the facts and circumstances of this case, upon the National Textile Corporation, because it was the duty of the National Textile Corporation to arrange for their training during the period they were retained by the National Textile Corporation as trainees.

8. The learned Counsel for the National Textile Corporation relied on the judgment of the Supreme Court reported in *State Bank of India and others Vs. Mohd. Mynuddin*, In the said case the Supreme Court held that whenever promotion to a higher post is to be made on the basis of merit no Officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted." The instant case is not of promotion from a junior post to the higher post nor is the same a selection post either, as was the case before the Supreme Court. When promotional post is a selection post then of course the junior employees cannot claim it as of right on the basis of seniority. The said case has no application to the facts and circumstances of the case. The respondent writ petitioners relied on the case reported in *Tapti Oil Industries and Another etc. Vs. State of Maharashtra and Others*, In the said case the Bench of Bombay High Court held as follows :

The determination of the question as to whether on the facts of a given case a person who applies under scheme for an eligibility certificate has satisfied the requirements specified in the scheme or not, is not a matter which involves the exercises of any legislative power. Such a function is clearly an executive function when the scheme lays down certain conditions and the only question is whether those conditions have been satisfied or not, concept of invoking any legislative power cannot really be brought in".

If the petitioners acting on the representations made in the scheme incur expenditure, set up a manufacturing unit in the hope that the State Government will abide by its word and act according to its representations, there is no reason they why even while acting in its executive powers, the State Government cannot be compelled to abide by the representations made by it. The jurisdiction of the High Court under Article 226 of the Constitution is not-restricted only to review of the actions of the State Government under statutory enactments. With the ever widening field of judicial review of administrative actions and executive

decisions, of the the state and in the light of the extended applicability of the doctrine of promisor estoppel, of which the shole object is to see that the Government stricks to its promise and abides by it, is now too late in the day to contend that such a scheme does not vest any right in a person who acted upon those representations and changed his position. The mere fact that the scheme is of an executive nature is by itself not conclusive of the determination as to whether a right is created in favour of a person who acts upon the representation made by the State. It will be too broad a principle to lay down that no executive action of the state Government confers any right oh an individual.

Undoubtedly through Art. 14 is worded as to read in the form of a prohibition against the State, there can hardly be any controversy today that it is a repository of very valuable right equally created by the Constitution in favour of a citizen. Merely because it is worded so as to indicate that there is a prohibition against the State, it cannot be read as indicating that it does not vest any right in a citizen or a person. Any voilation thereof can be challenged under Art. 226 of the Constitution of India. The guarantee of equal protection clearly extends to purely executive or administrative order unsupported by any statute.

9. The respondents also relied on the case reported in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, In the said case the Supreme Court held as follows :

The appointments made under Rule 9(a)(i) were intended to be invoked to serve emergent situations which could not brook delay.

Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long terms ones. The rule was not intended to fill a large number of posts in the service but only those which could not be dept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long the services had to be regularized if the incumbent possessed the requisite qualifications as was done by sub-rule (e). Employees who have been working on the establishment since long, and who posses the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their bobs and their services should be regularized. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic tuination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered" age barred" for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him attune his family to live within his earnings and then suddenly throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the Constitutional philosophy, particularly the concept of right to work in art. 41 of the Constitution. Therefore, Rule 9(a) (i) in interpreted consistently with the

spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, if follows that employees who are serving on the establishment for long spells and have the requisite qualification for the job should not be thrown out but their-services should be regularized as far as possible.

10. In the instant case the writ petitioners worked with the appellant National Textile Corporation for good 7 years as trainees and they were in fact absorbed by letters issued on or about 11th May, 1990.

11. The respondents also relied on an unreported judgment dated 12-1-1990 passed by Hon'ble Mr. Justice Ajit Kumar Sen Gupta in Civil Order No. 3301 (W) of 1987 (Dipak Majumdar & Ors. vs. Union of India & Ors.).The said case related to 8 persons who were taken in by the National textile Corporation as trainees for the post of salesman they were retained as trainees for quite a number of years and since they were not appointed as salesman even after long period of traineeship they moved a writ petition before this Court. Justice Ajit Kumar Sen Gupta considering the fact that they had completed more than 240 days of continuous service, directed National Textile Corporation to regularize the appointment of the said 28 persons and to give them appointment. The judgment and order passed by Mr. Justice Ajit Kumar sen Gupta, was accepted by the National Textile Corporation by their office order dated 23-2-1990 wherein it was stated that the National Textile Corporation had taken decision to regularize the services of trainees under the High Court's order and other case of identical nature with effect from 1-1-1990.

12. In the facts of this case, in our opinion, the decision of the National Textile Corporation to absorb the 4 writ petitioners in the instant case in the post of salesmen, instead of respective posts for which they were taken as trainees, was arbitrary and not in consonance with the rules of natural justice. Since it has been alleged on behalf of the National Textile Corporation that the respondents writ petitioners have not undergone the training as required and since it is also alleged that post of supervisors are not lying vacant at the moment, in our opinion, the ends of justice will be met if the writ petitioners are treated to have been appointed to respective posts for which they were selected as trainees, on and from the date of absorption as per the letter of 11 the May, 1990, in the post to which they were entitled in terms of the respective letters for selection, and the emoluments and all benefits are paid to them for the post of supervisor on and from the date of their respective absorption as per the letters of absorption. However, National Textile Corporation will be at liberty to give them any further or other training which they may think necessary or proper within a period of one year from the date of this order. Emoluments and benefits will be payable to them on the basis as if they have been absorbed to the respective posts for which they were selected as trainees. The National Textile Corporation, however, will be at liberty to post them to the respective posts for which they were selected as trainees, on and from the dates such vacancies are available after

completion of the training period as provided as the judgment and order. The writ petitioners should get first opportunity to such posting, since after the expiry of the period of 12 month from the date of this order. However the seniority will be governed from the date they were absorbed, in terms of the letters of 11th May, 1990. All arrears in terms of this judgment and order should be paid within two months from the date of service of this judgment and order upon the appellant, the National textile Corporation.

13. We do not find any merits in this appeal and the appeal is disposed of as indicated above. The judgment and order of the trial Court stands modified to the extent as directed above.

14. The prayer for stay of operation of this judgment and order as prayed for, is refused. Let xerox copy of the judgment and order be given to the respective parties on payment of usual Court fees.

Prabir Kumar Majumdar, J.

I agree.