
(2010) 10 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 284 of 2009

Punjab Land Development and Reclamation Corporation
Limited

APPELLANT

Vs

Presiding Officer, Industrial Tribunal, Punjab and another

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (2011) 130 FLR 946 : (2011) 163 PLR 259

Hon'ble Judges : Ranjan Gogoi, J;Rajan Gupta, J

Bench : Division Bench

Judgement

Ranjan Gogoi, J.—By notification dated 31.5.1989 issued u/s 10 of the Industrial Disputes Act, 1947, the following question was referred for adjudication to the Industrial Disputes Tribunal, Punjab at Chandigarh:-

"Whether Shri Gurmej Singh is entitled to promotion for the post of Assistant Manager Stores, or Accounts? If so, from which date and with what other details?"

On receipt of reference, Reference Case No.39 of 1989 was registered and notices were issued to both sides. On receipt of notices, the respondent-Workman as well as appellant-Management filed their respective written statements. On the pleadings of the parties, the following two questions were framed for adjudication by the learned Tribunal:-

"1. Whether the reference is unmaintainable on the grounds mention in the preliminary objections of the written statement? (sic)

2. Whether" Gurmej Singh workman is entitled to promotion for the post of Assistant Manager Stores or Accounts? If so, with what details?

3. Relief."

By an Award dated 29.9.1993, the learned Tribunal recorded the finding that

issue No.1 with regard to maintainability of the reference was not pressed by the Management. The learned Tribunal, therefore, proceeded to consider the second issue framed in the reference and on consideration of the evidence before it, found that Workman-Gurmej Singh was wrongly denied promotion to the post of Assistant Manager (Accounts). Accordingly, vide Award dated 29.9.1993 directions were issued for promotion of the respondent-Workman to the said post with effect from the date of promotion of one Shri S.P. Gupta, who was junior to the respondent-Workman. The learned Tribunal also directed for grant of all consequential benefits to the workman.

2. Aggrieved by the Award dated 29.9.1993, the appellant-Management instituted Civil Writ Petition No.4737 of 1994 before this court which was dismissed by a learned single Judge by order dated 1.4.2008. Challenging the said order dated 1.4.2008 passed by the learned single Judge, this LPA has been filed.

3. Learned counsel for the appellant-Management Shri Sanjeev Sharma, has argued that the issue with regard to maintainability was not abandoned as recorded in the impugned award. According to learned counsel, it was contended on behalf of the Management that the subject matter of the reference did not raise any industrial dispute within the meaning of Section 2(k) of the Act. Learned counsel has also pointed out that the Management had raised the question of delay in the reference made. On merits, it is argued by learned counsel for the appellant-Management that the respondent-Workman and Shri S.P. Gupta though recruited as clerks were in different streams and promotion was given to Shri Gupta in the concerned stream. Lastly, according to learned counsel, in any event, the direction for grant of consequential benefits is not tenable as the Workman had not worked in the higher post at any earlier point of time. Learned counsel, therefore, has argued that in the last resort the relief of consequential benefits is liable to be suitably modified.

4. There is none to contest the proceedings on behalf of the respondent-Workman.

5. It is settled law that the findings recorded in a judicial order are to be considered as a correct reflection of the proceedings before the judicial authority and the record of the proceedings to be a correct version of the stand of the parties. In view of the settled position in law, it would be difficult for us to accept the argument advanced on behalf of the learned counsel for the appellant-Management that the issue with regard to maintainability had not been abandoned by the Management as has been recorded by the learned Industrial Tribunal. In any event, our perusal of the pleadings contained in the writ petition also does not indicate that any such specific stand was taken by the appellant-Management before the court of first instance i.e. before the learned single Judge.

6. Coming to the merits of the case, we have taken note of the respective

pleadings of the parties before the learned Industrial Tribunal and the evidence adduced by the workman as well as by one Shri K.L. Sabharwal, who was examined as MW1 before the Tribunal. The learned Tribunal on due consideration of the pleadings and evidence on record, came to the finding that the Workman was appointed as a Clerk on a higher scale of pay earlier to Shri S.P. Gupta and that the seniority list of the clerks was jointly maintained. The learned Tribunal, therefore, came to the conclusion that the stand taken by the Management that the two incumbents were in separate cadres of clerks is not correct. Consequently, it was held that the workman was not considered at all at the time of promotion of Shri S.P. Gupta. The question referred was, therefore, answered in the affirmative i.e. in favour of the Workman and against the Management.

7. The manner in which the learned Tribunal has proceeded would leave no room for interference by the writ court. Appreciation of evidence to disturb the findings recorded by a quasi-judicial authority is an exercise that the writ court normally does not undertake unless there are errors apparent on the face of the judgment. The present is not a case of the aforesaid nature. We do not find any significant error in the manner in which the proceedings were conducted by the learned Tribunal; the appreciation of evidence and the conclusions reached so as to warrant interference.

8. We would now deal with the second issue i.e. relief of consequential benefits. While declaring the respondent-Workman to be entitled to promotion with effect from the date of promotion of Shri S.P. Gupta, the learned Tribunal has directed grant of all consequential benefits which would necessarily mean back-wages in the higher post. Such back-wages are to be paid from the date of promotion of Shri S.P. Gupta i.e. with effect from 4.2.1981. Clearly and evidently the respondent-Workman had not worked in the higher post to which he has been ordered to be promoted. This is a relevant fact that has to be kept in mind while deciding the question of consequential reliefs. At the same time, it has also to be considered that it is on account of the wrongful action of the appellant-Management that the respondent-Workman could not work in the higher post. Both the aforesaid relevant facts have to be balanced to come to the right conclusion with regard to the entitlement of the respondent-Workman to consequential reliefs. On such consideration, we are of the view that the relief of full back-wages, as awarded, should be modified to require the appellant-Management to pay to the concerned worker 50% of the back-wages in the higher post with effect from the date from which he is to be promoted.

9. It is stated by the learned counsel for the appellant that pursuant to the order of this court, the back-wages computed in accordance with the Award of the Industrial Tribunal have been deposited in the Court and under orders passed by the court the same have been released to the respondent-Workman. In view of our order passed today, it will be now open to the Management to recover the proportionate amount of back-wages to which the respondent-Workman has been found to be entitled.

10. With the aforesaid modification, this LP A is disposed of by affirming the Award dated 29.9.1993 passed by the Industrial Tribunal, Punjab, Chandigarh and order dated 1.4.2008 passed by learned single Judge.