

(2015) 10 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : CM No. 13157 of 2015 in/and CWP No. 5831 of 2015

Punjab Water Resources Management and Development
Corporation Ltd.

APPELLANT

Vs

Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T.
Chandigarh and Others

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2(k)

Citation : (2016) 1 LLJ 118 : (2016) 181 PLR 236

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Amit Singh Sethi, for the Appellant

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.

CM No. 13157 of 2015

For the reasons mentioned in the application, the same is allowed to the extent of bringing forward the date of hearing of the case. However the prayer for advancing the date of hearing to grant stay of the execution of the award prayed for in urgent hearing on the application in a case in which notice of motion has yet to be issued I would rather hear the main matter on merits as I found myself disinclined to grant stay. But since Mr. Amit Sethi has insisted on arguing stay matter then by his consent the main case is taken up today itself for final disposal. The accompanying are the reasons recorded why I would instead of hearing stay matter in isolation dismiss the petition.

MAIN CASE

1. This petition is directed against the impugned award passed by Presiding Officer, Industrial Tribunal-cum- Labour Court, UT, Chandigarh allowing the

reference of a dispute espoused by the union under section 2(k) of the Industrial Disputes Act, 1947 of the cause of the workman who was one of its aggrieved members and who was deprived of promotion wrongfully by the management.

2. To cut the whole story short, the sole management witness who appeared in the witness box to depose on behalf of the Corporation spilled the beans when he testified on the strength of bye-laws, a copy of which was exhibited as Ex. M-7 that the qualification and experience mentioned for the post of Ferro Printer [the disputed post claimed and referred to tribunal to determine right, if any] which would oust the workman from consideration is laid down in the bye-laws for direct recruitment but not promotion in the quota prescribed for the two sources. It follows sequitur that it is not a qualification laid down for promotion. This unimpeachable testimony has turned the tables in favour of the workman and proved that he was wronged by denial of right to promotion based on seniority, the respondent workman being senior to the one promoted.

3. In view of this, the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh by the impugned order dated August 14, 2014 has committed no error in upholding the claim of the workman and awarding promotion to the respondent-workman to the post of Ferro Printer w.e.f. March 27, 1981 the date when his junior was promoted.

4. However, since the petitioner had attained the age of superannuation during the currency of the litigation in the Labour Court, the relief had to be moulded and the tribunal directed that relief was due and he may be treated as promoted to the higher post of Ferro Printer with effect from the aforesaid date and the management was directed to calculate the benefits accordingly and grant/pay to the workman the difference of amounts accrued thereupon.

5. Even assuming that there were no bye-laws like Ex. M-7 even then the Labour court was well within its jurisdiction to have passed the award on just principles of fairness-in-action and such award is within its jurisdiction to replace contracts and substitute conditions of service by fairer means and more beneficial ones as indicated by the Full Court decision of the Supreme Court in *The Bharat Bank Ltd., Delhi Vs. The Employees of the Bharat Bank Ltd., Delhi and the Bharat Bank Employees' Union, Delhi*, (1950) SCR 317 Supp in which Hon^{ble} Bijan Kumar Mukherjea, J. in his erudite opinion observed, holding as follows:--

"We would now examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial

peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organization on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function."

6. Moreover, experience gained over a considerable length of time is itself a qualification especially in the manual category of post occupied by the workman and the one claimed next above by promotion i.e. Ferro Printer. For the proposition of experience as qualification see observations of the Supreme Court in State of U.P. and Others Vs. J.P. Chaurasia and Others, (1989) 58 FLR 381 : (1988) 4 JT 53 : (1989) LabIC 1146 : (1989) 1 LLJ 309(1) : (1988) 2 SCALE 827 : (1989) 1 SCC 121 : (1988) 3 SCR 288 Supp .

7. Mr. Sethi then submits that the dispute was raised belatedly and for the first time on September 12, 2002 and, therefore, the monetary benefits should not accrue to the workman prior to the date of demand notice.

8. At first flush there appears substance in this contention but on closer look and due reflection it not a hard and fast rule. This is a rule evolved by Courts in cases of wrongful denial of promotion. The principle applicable is as was expounded by the Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., AIR 1991 SC 2010 : (1991) 63 FLR 767 : (1991) 3 JT 527 : (1991) 2 LLJ 570 : (1991) 2 SCALE 423 : (1991) 4 SCC 109 : (1991) 3 SCR 790 that monetary benefits would relate back to the date when promotion was wrongfully denied to the employee when person junior to him was promoted/appointed, in the present case as Ferro Printer on his turn but was ignored for promotion for the wrong reasons and the admitted junior promoted who happened to possess the direct recruitment qualification but that was fortuitous circumstance which could not affect the rights of the respondent. The bye-law could not be worked by chance on a non-selection promotional post from feeder category where both the rivals were equally placed.

9. Therefore, I would not accept this contention of Mr. Sethi as applicable to this case. Moreso, the issue arises out of labour court proceedings applying just and equitable labour law principles and not strict rules of service jurisprudence then I would heartily endorse the work of the tribunal as just and fair and not open to interference in supervisory jurisdiction of this Court either under Article 226 or 227 of the Constitution. Besides, the present case falls quite happily within the four corners of the bye-laws of the Corporation governing the conditions of service of employees which were honestly deposed to by the management witness in cross examination as involving, on the subject matter, no element of promotion. These bye-laws were misinterpreted by the Corporation to deny relief reading the case as one of appointment to the promotional post of Ferro Fitter

where higher standards were designed.

10. I have no reason to disassociate myself from the view taken by the learned Labour Court based on common sense and prudence and the ordinary service law principle that when person junior to the workman was promoted on March 27, 1981 and the admitted senior was ignored, the relief flows naturally by the very nature of things. There is nothing found in the impugned award which suffers from a fundamental flaw in reasoning or lack of appreciation of the evidence on record or an error apparent on the face of the record in the work of the tribunal. The award does not present manifest injustice to the petitioner.

11. For the foregoing reasons, I find no substance in this petition and order it to stand dismissed.