
(1986) 05 AHC CK 0021
In the Allahabad High Court
Case No : Writ Petition No. 995 of 1986

Ram Babu Sharma

APPELLANT

Vs

U.P.Electricity Board and Others

RESPONDENT

Date of Decision : 14-05-1986

Acts Referred:

Factories Act, 1948 — Section 2(n)

Citation : (1986) 05 AHC CK 0021

Hon'ble Judges : S.C.Mathur, J and B.L.Loomba, J

Final Decision : Dismissed

Judgement

B. L. Loomba, J.—By order dated October 9, 1985 of the Deputy Secretary of the U. P. State Electricity Board, the petitioner was transferred from Harduaganj Thermal Power Station, Harduaganj, District Aligarh to Obra Power Station. Through this writ petition under Article 226 of the Constitution of India, he prays for a writ of certiorari to have this order dated October (sic), 1985 quashed insofar as it relates to his transfer. A writ of mandamus is also prayed for directing the U. P. State Electricity Board and General Manager, Harduaganj Power Projects to implement letter dated October 26, 1985 contained in Annexure1, in such a manner as to treat the petitioner as Welfare Officer Grade 1 with effect from May 7, 1980.

2. Upon perusal of the affidavits exchanged between the parties and the annexures forming part of the affidavits, the factual position appears like this. The petitioner was initially appointed by order dated february 15, 1963, as Workers Welfare Officer at Station "A" Harduaganj on "workcharge establishment1 on a monthly fixed salary of Rs. 250/. This appointment was made by the Deputy Chief Engineer, Harduaganj Project. Through order dated October 4, 1972, the State Electricity Boardopposite party no. 1 approved the officiating appointment and posting of the petitioner as also of some other officers. The petitioner was appointed and posted in Grade III in the scale of Rs. 200400 at Harduaganj "A" power Station. The appointment was subject to the

condition of the candidates being medically found satisfactory on verification. The petitioner was promoted from Grade III to Grade II and was placed in the scale of Rs. 250850 and was posted at the same power station as per order of the State Electricity Board dated May 28, 1973. He was transferred from Harduaganj Power Station "A" to Harduaganj Power Station "B" by order dated May 6, 1980, by the General Manager and A. C. E.

3. It appears that the petitioner applied to the U. P. Government for upgradation of his post from Grade II to Grade I and the State Government issued letter dated October 26, 1985 to the Chairman, State Electricity Board mentioning that the strength of the workers in Harduaganj Power Station "B" had increased beyond 2500 necessitating the appointment of Grade I Welfare Officer and the post of Welfare Officer in this factory may be upgraded to Grade I as required under Rule 6 of the U. P. Factories Welfare Officers' Rules, 1955. The General Manager, Thermal Power Station, Harduaganj moved the State Electricity Board with the request that the post of the petitioner may be upgraded with effect from May 7, 1980 from Grade II to Grade I in order to avoid the violation of the Factories Rules. It was mentioned that the petitioner had joined Grade I unit factory Harduaganj "B" on May 7, 1980.

4. The main submission to assail the validity of the impugned order of transfer of the petitioner is that the appointment of the petitioner on the post of Welfare Officer is governed by the U. P. Factories Welfare Officers' Rules, 1955 and these rules do not contemplate transfers. We have been taken through various rules in support of the contention in this behalf. Rule 3 requires the occupier of every factory wherein 500 or more workers are ordinarily employed to appoint a Welfare Officer of the grade specified therein depending on the strength of the workers. The scale has to be fixed according to Rule 3A and the appointment of the Welfare Officer has to be intimated to the Labour Commissioner under Rule 5. It has been provided in Rule 7 that the Welfare Officer shall be subordinate to the General Manager of the factory and work under his direct control. According to Rule 18 no Welfare Officer shall be allowed to perform any other duties except those mentioned in Rule 17 or to hold any other office or post without the previous written sanction of the Labour Commissioner or the State Government. The argument raised on behalf of the petitioner is that the General Manager of the Factory is the occupier of the factory and the petitioner is not "with the service of the Board" and he in fact "services under the Board". This distinction is sought to be drawn with the idea that while the petitioner may be serving under the Board inasmuch as the factory is owned by the State Electricity Board, he is, nevertheless, a person appointed by the General Manager of the factory who alone is competent to deal with the service matters of the petitioner including the matter of his transfer from one factory to the other within the control of the General Manager of the power stations at Harduaganj. The term "occupier" has not been defined in the said Rules. As would appear, these Rules have been framed in exercise of the powers conferred by Sections 49, 50 and 112 of the Factories Act. In the absence of the definition of the term "occupier"

in the said Rules the definition contained in the Factories Act, 1948, shall be applicable. Section 2 (n) of the Factories Act contains the definition of term "occupier", relevant part whereof is reproduced below:

"2(n) "occupier"" of a factory means the person who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory,"

5. Their lordship of the Supreme Court considered the meaning and scope of the term "occupier" as defined in Section 2 (n) of the Factories Act in *John Donald Meckenzie v. Chief Inspector of Factories* (AIR. 1962 SC 1351). The Manager of the factory was claiming to be the occupier of the Bata Shoe Co. at Dugha in Bihar. It was observed by their lordships that:

"Undoubtedly, the expression "occupier" is not to be equated with "owner". But it must be borne in mind that the ultimate control over a factory must necessarily be with an owner unless the owner has completely transferred that control to another person. Whether that was done in the present case would be a question of fact. It was for the petitioners who contended that petitioner No. 1 was the manager of the factory and had the ultimate control thereof, to lay before the Chief Inspector of Factories the necessary material for showing that the company had in some manner transferred the entire control over the factory to the petitioner No. 1. They did nothing of the kind. We have been taken through the correspondence which passed between the petitioners and the Chief Inspector of Factories but it does not appear there from that any document was executed by the company or any resolution was passed by it vesting the ultimate control in the petitioner No. 1. Two specific queries were put by the Chief Inspector in his letter dated November 20, 1956. One was whether any managing agents had been appointed for the factory and the other was whether Mackenzie was one of the directors. No reply was given to either of these queries by Chatterji in his letter dated November 22, 1956, which purported to be a reply to the Chief Inspector's letter of November 20, 1956. In the circumstances, therefore, the Chief Inspector of Factories was perfectly right in refusing to act on the application signed by Meckenzie and in requiring the factory to file a proper application for renewal of the licence.

(4) Even when the matter went up before the High Court no attempt was made to show that the ultimate control of the factory was transferred to Mackenzie either by execution of document or by passing a resolution. In the circumstances the High Court was right in dismissing the petition. The appeal is, therefore, dismissed with costs."

6. In the present case the petitioner has not placed any material before the Court to show that the U. P. State Electricity Board, who is admittedly the owner of the factory in question, had completely transferred the control to the General Manager of the factory. The material on record, in the form of affidavits exchanged between the parties and the annexures forming part thereof, belies

the contention raised on behalf of the petitioner. It is true that the initial appointment of the petitioner was made by the Deputy Chief Engineer, Harduaganj Projects but this appointment was made only on "workcharge basis". Regular appointment of the petitioner on the post of Welfare Officer was made by the State Electricity Board, vide order dated October 4, 1972 annexure A2 to the counteraffidavit of Sri Bhup Prakash Gupta, Senior Personnel Officer of the Board, dated February 28, 1986. Petitioner's promotion from Grade III to Grade II was also made by the State Electricity Board vide order dated May 28, 1973 annexure A4 to the said counteraffidavit dated February 28, 1986. Order for petitioner's transfer from Harduaganj to Allahabad Electric Supply Undertaking was passed on April 10, 1973 vide annexure A8 to the said confer affidavit by

the State Electricity Board, though subsequently this order was stayed by annexure A7 dated April 25, 1973. It is nowhere pleaded that this order was stayed at the instance of the petitioner on the ground that the Board had no power to issue the transfer order. It may be noticed that the petitioner, after the receipt of the impugned order of transfer, made representation to the General Manager, Harduaganj Power Projects on October 21, 1985 requesting that his transfer may be recommended to the Board to be stayed for six months on the ground of his illness and his inability for that reason to undertake the journey and difficulties connected with the transfer from Harduaganj to Obra. It is also to be noticed that the State Government had written to the Chairman of the State Electricity Board requesting for upgradation of the pos of the petitioner from Grade II to Grade I by letter dated October 26, 1985, annexure 1 to the writ petition. As early as on 15th November, 1972 the petitioner himself had represented to the Board vide letter annexure A3 to the said counter affidavit dated February 28, 1986, that his post be upgraded. Accordingly there is sufficient material on record to show that the matters relating to the appointment, promotion and transfer of the Welfare Officers of the power stations belonging to the Electricity Board were dealt with by the Board and not by the Manager of the unit concerned. In the absence of any material pointing out to the contrary, we are satisfied that the State Electricity Board has the ultimate control over the affairs of the various power stations including the power stations at Harduaganj and is, as such, the "occupier" of the same.

7. In any case the State Electricity Board being the appointing authority of the post of Welfare Officer it has the power to make the transfer order in respect of the Welfare Officers of the power stations owned and controlled by it. The post of Welfare Officer may not be transferable in case of one factory being owned by a particular owner but where more than one factories are owned and controlled by a particular owner it will obviously be open to such owner to create a cadre of Welfare Officers and make the post transferable depending on the strength of the workers and the seniority of the officers. Such a situation would obviously be in the interest of the Welfare Officers because that will provide them promotional avenues being shifted from Grade III to Grade II and Grade II to Grade I factories in the course of their career. This is precisely what has happened in the

case of the petitioner himself. He was admittedly appointed to Harduaganj "A" Power Station initially, but was eventually transferred to Harduaganj "B" Power Station, as would appear from annexure 4 to the writ petition. The strength of the workers of Harduaganj "A" Power Station as on November 11, 1982 was 829 while the strength of the workers of Harduaganj "B" Power Station on that date was 2689. If the contention of the petitioner is accepted that his post was not transferable and General Manager of the factory concerned was the occupier of Harduaganj "A" Power Station, in that event there was no question of the petitioner's having been given the benefit of his posting to Grade "A" factory ("B" Power station which is "A" grade factory). If the petitioner could be subjected to transfer from one factory to another at Harduaganj, obviously the power of such transfer extends also to other factories owned and controlled by the State Electricity Board. The plea that the General Manager of the factory and not the State Electricity Board is the occupier and further that the post of petitioner is not transferable appears to be untenable and not supported by the material on record.

8. An important factor worth taking note of is that the said 1955 Rules were framed in exercise of the powers under Sections 49, 50 and 112 of the Factories Act, 1948. The broad object of this Act was to regulate labour in factories and to contain provisions for the welfare of the workmen and to provide machinery to carry out this object. It dealt with the appointment of a Welfare Officer in each factory and left it to the State Government concerned to make rules prescribing duties, qualifications and conditions of service of such officers. The 1955 Rules do make provisions but it is difficult to accept the contention that even in matters not covered by the rules, it is not open to the employer to make suitable provisions, of course such provisions cannot be inconsistent with the 1955 Rules. Matter relating to leave, T. A., D. A., transfer, retirement, pensioning benefit are not appearing covered by the said Rules and it would be open to the employer to make suitable provision in that behalf. It may be seen that rules 15 and 16 mention about punishments being given by the management of the factory. In the absence of any provision about transfer of Welfare Officers of various factories belonging to one owner, which in this case is the State Electricity Board, it was, to our mind, legally open to the Board to make rules on the subject. The Board has framed the U. P. State Electricity Board Employees (Transfer) Regulations, 1980 (copy annex ure A12 to the counter affidavit of Sri Bhoop Prakash Gupta dated 7th March, 1986). These Regulations are statutory provisions and would legally operate in so far as the powers of the Board to transfer labour officers to the various factories of the Board within U. P. subject to the condition about grades etc. as provided in the 1955 Rules.

9. Accordingly we are of the view that the petitioner is an employee of the U. P. State Electricity Board and shall be subject to the discipline and control of the Board. His terms and conditions of service shall primarily be governed by the 1955 Rule and in matters not covered by the said Rules he shall be bound by the Regulations, rules and orders of the Board. In that view of the matter the

impugned order of transfer of the petitioner from Harduaganj to Obra cannot in any way be said to be illegal and beyond the powers of the Board.

10. This brings to the last submission that the petitioner be treated as Welfare Officer, Grade I with effect from 7th May, 1980 and the Government's letter dated October 26, 1985 be carried out. The petitioner was transferred from Power Station "A" to Power Station "B" Harduaganj with effect from May 7, 1980 (Annexure4 to the writ petition). It further appears from the same document that the strength of the employees in Power Station "B" as on November 11, 1982, the date of the letter Annexure4, was over 2500. Scale prescribed for Grade "I" factory has to be given to the Welfare Officer of a factory with over 2500 workers. It is not clear as to what was the strength of the "B" Power Station between May 7, 1980 and May 11, 1982. The State Government has already written to the Board vide letters dated 27121982 and 26101982 (Annexure3 and 1 to the writ petition) for upgradation of the post in this factory. It is, obviously, necessary for the Board to consider this matter and pass appropriate orders. In this factual position it does not appear possible for us to say anything more in this regard at this stage.

11. In the above circumstances, the writ petition merits dismissal in so far as the matter of transfer of the petitioner is concerned as provided in orders dated October 9, 1985 and dated January 3, 1985 AnnexuresII and VI to the writ petition. As regards the relief in regard to the implementation of the letter dated 26th October, 1985 the matter requires to be considered and decided by the Board.

12. Writ Petition is dismissed as regards the relief to have the transfer order dated 9101985 and 311986 AnnexureII and VI to the writ Petition quashed. As regards the petitioner's claim to be treated as Welfare Officer, Grade I with effect from 7th May, 1980, the matter shall be considered and appropriate orders passed expeditiously by the appropriate authority, Interim order, if any, shall stand discharged.

13. Parties shall bear their own costs,

(ordered accordingly).