(1994) 08 SC CK 0049

In the Supreme Court Of India

Case No : Civil Appeal No. 315 of 1991

Ram Pukar Singh and Others APPELLANT

Vs

Heavy Engineering Corporation and Others RESPONDENT

Date of Decision : 31-08-1994

Acts Referred:
Industrial Disputes Act, 1947 — Section 12(3), 18

Citation : AIR 1995 SC 251 : (1994) 6 JT 26 : (1995) 1 LLJ 214 : (1995) 1 PLJR 7 : (1994) 3 SCALE 916 : (1994) 6 SCC 145 : (1994) 2 UJ 517

Hon'ble Judges : S.C. Agrawal, J;P. B. Sawant, J

Bench : Division Bench

Final Decision : dismissed

Judgement

1. The issue in the present appeal is narrowed down to whether the appellants are entitled to be promoted as Assistant Personnel Officers w.e.f. 1.1.1986 and whether on that account they are entitled to the arrears of salary in the promotional post from the said date.

2. At the relevant time, in the Personnel and Administration Division of the respondent-Corporation there existed the following relevant hierarchy of posts:

I. Asstt. Grade I/Senior Steno

II. Office Superintendent/ Personal Assistant [Supervisory]

III. Asstt. Personnel Officer/Private Secretary [Supervisory]

IV. Jr. Executive [Officer]/Senior Supervisory [P]

3. It appears that on 9th August, 1984 there was a strike of the employees and on 29th August, 1984, a settlement was entered into between the Union of employees and the management whereby the disputes were referred to one Dr. Binod Kumar for arbitration. Dr. Binod Kumar gave his report in July 1985 in which one of the recommendations was that the two posts of the Supervisory cadre should be replaced by one such post. Another recommendation was that

time-bound promotion should be given after every 7 years to the holders of the abovesaid posts, among others, whether there were promotional posts or not. The time-bound promotees would carry the designation as well as salary of the promotional posts although they would continue to do the work of the post in which they were working, if there were no vacancies in the promotional posts. These recommendations were accepted by the management by their Circular/ letter of 14th October, 1985. Pursuant to the acceptance of the said recommendation, the management converted the post of Office Superintendent [Supervisory] into the post of Office Superintendent [Non-supervisory] and thus retained only one Supervisory post, viz., that of Assistant Personnel Officer. However, this affected the concerned employees in two ways. In the first instance, the Supervisory post of Office Superintendents became non-supervisory and secondly, compared to the posts on the same level in other divisions such as Finance and Accounts, the employees in Personnel and Administration Division had to wait for 7 years more to be appointed to the post of Junior Executive [Officer] since the post of Office Superintendent [Non-supervisory] was an additional intermediate post to which they were first to be promoted before they were promoted to Supervisory post of Assistant Personnel Officer from which post alone they could be promoted to the post of Junior Executive [Officer]. As far as the other divisions were concerned, there was promotion from the post equivalent to the post of the Assistant Grade-I straight to the Supervisory post. The employees of divisions other than Personnel and Administration Division had not, therefore, to traverse the hurdle of one more non-supervisory post such as that of Office Superintendent [Non-supervisory] in the Personnel and Administration Division. Hence aggrieved by the conversion of the post of Office Superintendent Supervisory into that of Office Superintendent [Non-supervisory] the appellants approached the High Court. The High Court dismissed their petition and hence an appeal was preferred to this Court. This Court in Nani Gopal Sarkar and others Vs. Heavy Engineering Corporation Ltd., and others, set aside the decision of the High Court and directed the management to promote the appellants therein to the post of Junior Executive [Officer] w.e.f. 30th December, 1985 or w.e.f. the date when they or any of them completed 7 years of service in the post of Office Superintendent/Personal Assistant. The Court also directed the management to pay them arrears of pay.

4. After the aforesaid decision which was given on 21st March 1990, a settlement was arrived at between the management and the Union u/s 12[3] read with Section 18 and other provisions of the Industrial Disputes Act, 1947 on 13th September, 1990. The settlement, among other things, stated as follows:

The question of implementation of one tier supervisory system in the Corporation under relevant provision of Dr. Binod Kumar Committee report has been under discussion with the Hatia Project Workers Union [Recognised]. After detailed deliberations on the subject taking into account the pros and cons of the issue and overall interest of the Corporation, the Management and the Hatia Project Workers' Union [Recognised] agreed to implement one tier supervisory system in the Corporation as indicated below:

1. Posts in the scales of pay of.... Office Superintendent [Non-Supervisory] and...next below the posts in the scale of pay of Asstt. Personnel Officer....

2. Incumbents of non-supervisory scales of.... OS [NS]...will be placed as APO...with effect from 13th September, 1990. The pay in the scale of pay of....APO...will be provisionally fixed on the basis Of their pay in the persevered scale of pay in... B7...as on 31.12.1985 notionally brought forward to the date of placement in... APO ... The fixation of pay will be at the same stage, if available, otherwise at the next higher stage,... However, they will not be eligible for any arrear whatsoever on this account.

X X X X X X X X X X X X 8. The next promotion of incumbents so placed in the scale of pay of... APO... to the post of Jr. Executive will be on completion of seven years of service rendered ... as OS [NS] ... and ... APO...taken together.

5. Pursuant to the said settlement, the appellants were appointed

as Assistant Personnel Officers on 13th October, 1990. It appears further that in between, on 14th May, 1987, a settlement was entered into between the management and the Union for revision of the pay-scales and under that settlement each of the appellants received arrears of salary of Rs. 1,600/- plus revised pay-scales in the post of Office Superintendent [Non-supervisory] which they were holding.

6. The case of the appellants is that they were not members of the Union with which the settlements dated 14th May, 1987 and 13th September, 1990 were entered into and, therefore, the said settlement were not binding on them. They contended that in terms of Dr. Binod Kumar's report they were entitled to the post of Assistant Personnel Officer w.e.f. 1.1.1986 and hence to the arrears of salary in the said post from that date till they were appointed to the said post on 13th October, 1990 in terms of the settlement of 13th September, 1990.

7. We are not impressed by this contention. It is true that Dr. Binod Kumar had recommended the abolition of one of the two Supervisory posts and retention of only one Supervisory post in between that of the Assistant Grade I and Assistant Personnel Officer. However, he had also recommended that one of the Supervisory posts should be phased out over a period of 10 years. The management had devised its own way of removing one of the Supervisory posts by converting it into the non-supervisory post. That could be one of the ways of implementing the said recommendations. However, when this step was taken by the management, it resulted in discontentment among the employees. Some of the employees had approached the High Court and thereafter this Court and this Court directed, as pointed out above, the appointment of the appellants in that case, to the post of Assistant Personnel Officer from 30th December, 1985. A settlement was, however, arrived at between the management and the Union thereafter, Where under it was, among other things, agreed that the employees

who were holding the post of Office Superintendent [Non-supervisory] would be deemed to have been appointed to the post of Assistant Personnel Officer from the date they were appointed as Office Superintendent [Non-supervisory] and that the services rendered by them both in the post of Office Superintendent [Non- supervisory] as well as in the post of Assistant Personnel Officer would together be taken into consideration as a qualifying period for promotion to the post of the Junior Executive Officer. It was further agreed that the concerned employees would not, however, claim any arrears of pay. This was done because the respondent-Corporation was in a bad financial shape. The contention that the settlement of 13th September, 1990 is not binding on the appellants because they were in a Supervisory category and were not workmen and hence the Union had no right to represent them, has no substance in it. for two reasons. Firstly, in the settlement of 14th May, 1987 arrived at with the Union they had not only received the benefit of the arrears of salary of Rs. 1,600/- but also of the revised pay-scales since then. They could not have had this benefit if they were not workmen and, therefore, considered themselves as belonging to the non-supervisory category. They had continued to be workmen, i.e., in non-supervisory category till the next settlement of 13th September, 1990. Admittedly, there was only one Union representing all workers during all-the relevant period. The settlement dated 13th September, 1990 was admittedly u/s 12[3] read with Section 18 and other provisions of the Industrial Disputes Act. The settlement was, therefore, binding an all the workmen whether they were, members of the Union or not: In the circumstances, we are of the view that the said settlement of 13th September, 1990 is binding, on the appellants. Under the said settlement it is solemnly agreed that they will not claim any arrears of salary, till 13th October, 1990 on which day they were appointed to the post of Assistant Personnel Officer. According to us, the High Court has taken the correct view of the matter.

8. In the result, the appeal is dismissed with no order as to costs.