
(2007) 05 AHC CK 0138
In the Allahabad High Court

Ravindra Kumar Dubey

APPELLANT

Vs

U.P. State Sugar Corporation

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Uttar Pradesh Factories Welfare Officers Rules, 1955 — Rule 3

Citation : (2007) 5 ADJ 658 : (2007) 4 AWC 3946 : (2008) 1 LLJ 746 : (2008) 1 UPLBEC 8

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Aggrieved by the order dated 17/19.11.1979 passed by the Managing Director, U.P. State Sugar Corporation Ltd. declaring petitioner's promotion as Labour Welfare Officer Grade-II as illegal, invalid and unenforceable and reverting him to the post of Labour Welfare Officer, Grade-III, the petitioner has come up in this writ petition seeking a writ of certiorari for quashing the same, and, a mandamus commanding the respondents to treat him as Labour Welfare Officer, Grade-II with all benefits.

2. The facts in brief are that the petitioner was appointed as Labour Welfare Officer, Grade-III at M/s Maheshwari Khetan Sugar Mills Limited, Deoria (hereinafter referred to as the "Factory"). The terms and conditions of Labour Welfare Officers are governed by the U.P. Factories Welfare Officers Rules, 1955 (hereinafter referred to as "1955 Rules"). The employment of Welfare Officers in different grades is based on the size and number of employees in the Factory as provided in Rule 3 of 1955 Rules. Initially the number of employees of the Factory was less than 1000 but with the passage of time the production in factory increased resulting in increase of strength of its workers. The factory was taken over by U.P. State Sugar Corporation under the provisions of U.P. Sugar Undertakings (Acquisition) Act, 1971 (hereinafter referred to as "1971 Act"). After said take over, the petitioner stood transferred by U.P. State Sugar

Corporation, to its Unit at Ramkola, District Deoria. Since the number of employees at Ramkola Unit was more than 1000, the petitioner made a representation dated 25.10.1978 to the Official Receiver for placing him in Grade-II whereupon he passed order on 26.2.1999 that the petitioner shall be treated Grade-II Welfare Officer, w.e.f. 1.2.1979. The said order was not given effect. Subsequently the management decided to place him in Grade-II and the General Manager of Ramkola Unit vide order dated 9.10.1979 communicated said decision that he has been placed in Grade-II of Welfare Officer w.e.f. 1.9.1979. After sometime without any show cause notice or opportunity to him the Managing Director, U.P. State Sugar Corporation Ltd. passed the impugned order declaring his placement in Grade-II as invalid and unenforceable.

3. Sri K.P. Agarwal, Senior Advocate contended that the impugned order has been passed on misreading of document inasmuch as the petitioner was not placed in Grade-II by the General Manager but the General Manager communicated the decision of the Management of the Factory of placing the petitioner in Grade-II. Therefore, it is evident that the impugned order was passed on non-est ground based on misreading of the document. He further contended that since the petitioner was already promoted and working in Grade-II, the impugned order which in effect amounts to cancellation of his promotion and then visits civil consequences and therefore could not have been passed without giving opportunity of show cause to petitioner. It is admitted case of the parties that no opportunity has been given to the petitioner before passing of the order impugned and thus it is in violation of principle of natural justice. He further contended that Rule 15 of 1955 Rules provided that no order of punishment shall be passed without previous concurrence of the Labour Commissioner but in the present case since no concurrence of the Labour Commissioner has been obtained, hence it is also in violation of Rule 15 of 1955 Rules.

4. The respondents have filed counter affidavit wherein the facts about the appointment of the petitioner, takeover of Factory under 1971 Act, and the petitioner's transfer to Ramkola Unit have not been disputed. However, it is said that the power to grant any promotion was not conferred upon the General Manager. The post of Welfare Officer being higher than the post of Supervisor B category, General Manager was not competent to make any promotion and therefore the Managing Director has rightly declared the said order invalid and unenforceable. Learned Counsel for the respondent while opposing the writ petition on the basis of the stand taken in the counter affidavit further contended that since the promotion of the petitioner itself was illegal, neither there was any requirement of affording any opportunity to the petitioner nor Rule 15 of 1955 Rules is applicable since the impugned order is not by way of punishment.

5. We have heard learned Counsel for the parties and perused the record.

6. Rule 3 of 1955 Rules provide appointment, grades and emoluments of Welfare Officers and reads and under:

3. Appointment, grades and emoluments of Welfare Officers-(1) The occupier of every factory wherein 500 or more workers are ordinarily employed shall appoint a Welfare Officer of the grade as hereinafter specified:

Grade II-For factories ordinarily employing 2,500 or more workers per day, in the scale of Rs. 750-50-1000-E.B.-50-1250 E.B.-50-1400 p.m. as basic pay.

Grade II-For factories ordinarily employing from 1000 to 2,499 workers per day, in the scale of pay of Rs. 400-30-550-E.B.-30-700-E.B.-50-1000 p.m. as basic pay.

Grade III-For factories ordinarily employing from 500 to 999 workers per day, in the scale of pay of Rs. 350-15-500-E.B.-20-600-E.B.-25-700 p.m. as basic pay.

7. Thus it is clear that the employment of Welfare Officer in Grade-I, II and III depends upon the number of employees/workers employed by the Factory concerned. It is obligatory upon the occupier of the Factory to employ Welfare Officer of the respective grade if the Factory satisfy the condition prescribed under Rule 3 namely, if it employ 2500 or more workers, the occupier of the factory has to employ a Welfare Officer, Grade-I, if it employ more than 1000 but up to 2499, the Welfare Officer, Grade-II has to be appointed and where the number of workers is 500 to 999 Welfare Officer, Grade-III has to be appointed. In real sense, therefore, appointment of Welfare Officer in different grades is not a kind of promotion from one grade to another but based on the number of workers of the employees in the factory, the Welfare Officer has to be appointed in respective grades. The rational behind Rule 3 is evident that if there are more number of workers the duty and responsibility of the Welfare Officer would be harder and onerous and therefore, he would be entitled for higher grade. It is not disputed by the respondents that in Ramkola Unit the number of employers was more than 1000, therefore, it was the duty of the Occupier of the Factory to appoint a Welfare Officer, Grade-II at Ramkola Unit. Further, Annexure-4 to the writ petition shows that decision to place petitioner in Grade-II was taken by the Management and not by General Manager himself. He had only communicated the decision of the management as is evident from the order dated 9.10.1979, which is reproduced as under:

Considering the case of Shri R.K. Dubey, Labour Welfare Officer sympathetically, the management is pleased to place him in grade II (Second) prescribed for the Welfare Officers as per rule w.e.f 1st September, 1979.

8. The respondents have nowhere stated in the counter affidavit that no decision was taken by the Management. In this view of the matter we are of the view that the respondent No. 1 acted illegally by declaring said order to be invalid and unenforceable only on the ground that the General Manager had promoted petitioner though he did not possess any such power. The very reason stated in the impugned order is non-est and therefore the impugned order cannot be sustained. Moreover, it is also not disputed that the impugned order has been passed in violation of the principle of natural justice without giving any notice or

show cause to the petitioner. The petitioner once having been promoted and working on the higher post, was entitled to a show cause notice. The order impugned in the writ petition visits civil consequences and such an order could not have been passed without complying the minimal requirement of principle of natural justice i.e. show cause notice. In view thereof, the writ petition is allowed. The order dated 17/19.11.1979 is quashed. The petitioner shall be entitled for all consequential benefits. No order as to costs.