
(2002) 01 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 26446 of 1997

Ravindran Pillai K.

APPELLANT

Vs

Kudremukh Iron Ore Company Limited and Others

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Citation : (2002) 4 KarLJ 91

Hon'ble Judges : A.M. Farooq, J

Bench : Single Bench

Advocate : A.J. Srinivasan, for the Appellant; K. Subha Ananthi, for Kasturi Associates, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Farooq, J.—The petitioner was working in National Mineral Development Corporation (N.M.D.C.) from June 14, 1967 which was taken over by the first respondent-company and the petitioner was absorbed into the respondent-company on July 12, 1976 and he was made a Technician Grade II on October 24, 1980 and on March 31, 1984 he was upgraded to Technician Grade I. According to the petitioner he was eligible for promotion on seniority basis and he had therefore made representations to the first respondent company seeking promotion, the respondent-company instead of promoting him has promoted his juniors, respondents 2 and 3 as Foreman overlooking the seniority of the petitioner. The petitioner has therefore, prayed for a direction to the 1st respondent to consider his case for promotion to the post of Foreman (Technical) Grade I in the pay scale of Rs. 950-50-1, 250-55-1, 690/- and for a direction to promote the petitioner from September 1, 1987, when his juniors, respondents 2 and 3 were promoted. It is also stated that earlier the petitioner had filed W.P. No. 13316 of 1988 before this Court and this Court has passed an order directing the respondents to consider the representation made by the petitioner for his promotion to the post of Foreman.

2. The respondents have filed the statement of objections and in the course of

the arguments another additional statement of objections has been filed by the 1st respondent. It is the contention of the petitioner that under the service rules of the respondent-company, the criteria for promotion in the case of non-selection posts is on the basis of seniority subject to elimination of the unfit and it is only in respect of selection grade posts merit has to be considered. According to the petitioner he is senior to respondents 2 and 3 and the 2nd respondent was promoted in May 1988 while the 3rd respondent was later on promoted, even though both the persons were his junior. On behalf of the respondents it was submitted that even though the petitioner and respondents 2 and 3 were working as Grade I Technicians, respondents 2 and 3 had the required qualifications of having passed S.S.L.C. and Diploma in Engineering and because of that, both of them were promoted to the post of Foreman and since the petitioner did not have such qualification he has not been promoted. Further it is not disputed that the same scale of pay has now been given to the petitioner with effect from April 2, 1994 under the stagnation promotion.

3. The entire argument of the petitioner is based upon the criteria for promotion which is found in Clause 5.9 of the service rules of the first respondent. It is as follows:

"5.9 Criteria for promotion:

5.9.1 For selection grade posts viz., posts in the grade of Rs. 800-1400/- and Rs. 1650-2210/- and above, employees will be considered for appointment purely on merit. In respect of employees appointed from the same panel to the selection grade posts, their inter se seniority will be maintained.

5.9.2 For non-selection posts, promotion will be on the basis of seniority subject to elimination of the unfit.

5.9.3 The company may prescribe qualifying test/trade test, as may be necessary and the employee may be required to pass the test before he is considered for promotion.

5.10 The Departmental Promotion Committee will be, by and large, guided by the service records and confidential character rolls. The Committee may hold interviews of candidates; if considered necessary.

5.11 The Managing Director, or an officer authorised on his behalf, may direct the Departmental Promotion Committee to review its recommendation in case he does not fully endorse the recommendations of the Committee. He may also, if he so likes, review the recommendations of the Committee himself. The decision of the Managing Director, or the officer authorised on his behalf, on the recommendations of the Departmental Promotion Committee, shall be final".

Therefore, the contention of the petitioner is that under Clause 5.9.2 the criteria for promotion to the post of foreman in respect of the petitioner is on the basis of seniority subject to the elimination of the unfit. According to the petitioner there was no such elimination of the petitioner .being unfit for promotion and hence he

contends that he is entitled for promotion, because he is senior to the respondents 2 and 3 while working as Grade I technician.

4. On the other hand the learned Counsel for the respondents submitted -that in the year 1978 itself, as could be seen from the additional documents now filed that required qualification was prescribed for the post of a Foreman and the qualification is Diploma in Mechanical or Electrical Engineering from a recognised Institution. It is not disputed that the petitioner does not possess such a certificate and on the other hand it is also not disputed that the respondents 2 and 3 do possess such a certificate. The Hon"ble Supreme Court in State of Jammu & Kashmir Vs. Shiv Ram Sharma and Others, , has held that when there is a change of policy -- introduction of educational qualification has been prescribed rendering some existing employees not eligible for promotion -- there is no indefeasible right for the other employees who do not possess such qualification to seek promotion. It was held that there is no guarantee that existing rules would not be changed. Further the Hon"ble Supreme Court held that the principle of avoiding stagnation in a particular grade is not to be applied with reference to an individual employee but with reference to overall conditions of service laid down in the case of T.R. Kothandaraman and Others Vs. Tamil Nadu Water Supply and Drainage BD and Others, , and that too as long as the avenues of promotion to higher grades remained open though prescription of educational qualification closes chances of some of the individual employees.

5. The facts of the said case are that the respondents in appeal before the Hon"ble Supreme Court filed a writ petition before the Jammu and Kashmir High Court seeking quashing of the rules published vide notification dated November 22, 1992 to the extent it related to the qualification bar in Class A Categories I and II and for further direction to fill up the posts on the basis of seniority irrespective of qualifications. The writ petitioners were initially appointed as Rigman in the months of March 1967 and November 1967 and respondents 3, 4 and 5 were initially appointed as Boring Mistry Grade II in February 1984, July 1984 and January 1984 respectively. That the writ petitioners were promoted in the month of February 1983 from the post of Rigman which was later on redesignated as Boring Mistry Grade I and again redesignated as Drill Operator Grade I in the year 1990. That the respondents 3, 4 and 5 were working in the post of Drill Operator Grade II. That on November 22, 1990 Rules were promulgated u/s 124 of the Constitution of Jammu and Kashmir styled as "Jammu and Kashmir Geology and Mining (Subordinate) Service Recruitment Rules, 1990". The said rules were to come into force from the date of their publication in the Government Gazette, which, it is said, was done on November 22, 1990. Under these rules the requisite qualification for promotion of a Drilling Assistant was prescribed as "matriculation with five years" service as Boring Mistry Grade I or Drill Operator Grade I". For promotion to the post of Boring Mistry Grade I/Drill Operator Grade I, the minimum basic qualification prescribed was "matriculation with seven years" service as Boring Mistry Grade II or Drill Operator Grade II". That the recruitment to the post of Rigman i.e., Drill

Operator Grade II and Assistant (Drilling) (now Drilling Assistant) were made partly by appointment from State subjects whose academic qualification was matriculation and above and partly on contract basis from non-State subjects possessing vast experience in drilling but without necessary academic qualification. That the services of these persons appointed on contract basis was subsequently regularised by a Government Order with all benefits of promotion, pension etc. That it was noticed that in the higher promotional posts the incumbents had to shoulder higher responsibilities, such as, maintaining log books, keeping records of inventories and do other technical and administrative tasks for which qualification of matriculation was considered necessary. None of the writ petitioners possessed the qualification of matriculation and therefore they could not be promoted to higher grades. But the High Court took the view that when respondents 1 and 2 had been promoted in the year 1983 insistence on matriculation qualification for promotion to a higher post was illogical and for such posts, service experience should be the sole criterion and on that basis the learned Single Judge of the High Court allowed the writ petitions and the Division Bench also concurred with the findings of the learned Single Judge.

6. While dealing with the above facts the Hon''ble Supreme Court held that the law is held as follows:

"6. The law is well-settled that it is permissible for the Government to prescribe appropriate qualifications in the matter of appointment or promotion to different posts. The case put forth on behalf of the respondents is that when they joined the service, the requirement of passing matriculation was not needed and while they are in service, such prescription has been made to their detriment. But it is clear that there is no indefeasible right in the respondents to claim for promotion to a higher grade to which qualification could be prescribed and there is no guarantee that those rules framed by the Government in that behalf would always be favourable to them. In *Roshan Lal Tandon Vs. Union of India (UOI)*, , it was held by this Court that once appointed, an employee has no vested right in regard to the terms of service but acquires a status and, therefore, the rights and obligations thereto are no longer determined by the consent of the parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The High Court has also noticed that there was an avenue provided for promotion but the prescription of the qualification was not favourable to the respondents. The principle of avoiding stagnation in a particular post will not be with reference to a particular individual employee but with reference to the conditions of service as such. As long as the rules provide for conditions of service making an avenue for promotion to higher grades, the observations made in *T.R. Kothandaraman's case*, *supra*, stand fulfilled. In that view of the matter, we do not think the High Court was justified in allowing the writ petitions filed by the respondents".

The Hon''ble Supreme Court set aside the order passed by the High Court - both, the learned Single Judge's order and the order of the Division Bench and

dismissed the writ petitions filed by the respondents 1 and 2 and upheld the contention raised on behalf of the appellants before the Supreme Court, that even for promotion, qualification could be prescribed at a later stage. It was pointed out by the learned Counsel for the petitioner that in respect of M.S. Bhat, Engineer II, he did not have the required qualification even to become a Foreman, but he has been promoted as Engineer II which is above the post of Foreman. He brought to my notice Annexure-R5 in that respect which is a reply given by the respondent to the effect that, the said Sri M.S. Bhat joined the 1st respondent in 1976 from N.M.D.C. and while joining he was already a Foreman and therefore the required qualification for a Foreman is not necessary. It may be noted here that there may be certain other qualification for further promotion from the post of Foreman to the next post Engineer II. That the said person is not a party to the writ petition and therefore, it is not necessary to consider the said fact.

7. The learned Counsel for the petitioner Sri Srinivasan contended the same arguments which was contended before the Jammu and Kashmir High Court to the effect that when the petitioner was appointed as Grade I Technician in the year 1984, the 1st respondent did not look into his qualification and respondents 2 and 3 who were later on promoted to the same grade had worked with the petitioner in the same grade much later than the petitioner and therefore, the 1st respondent could not have insisted for the qualification which they have prescribed for the post of Foreman.

8. In view of the law laid down by the Hon''ble Supreme Court which is on a similar footing as the present case, I do not think that the petitioner could contend the arguments before this Court. Considering the facts and circumstances of the case and the fact that the petitioner has been subsequently given the stagnation promotion, I do not think that any further direction is necessary in this writ petition. Writ petition is accordingly dismissed.

9. Parties to bear their own costs.