

(2013) 10 MP CK 0116

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 6388 of 2010 and 3390 of 2011

R.K. Jha and Others

APPELLANT

Vs

M/s. Coal India Ltd. and Another
 Rajeev Verma and
Others Vs Coal India Ltd. and Others

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2014) 141 FLR 878 : (2014) 2 MPLJ 159 : (2014) 3 SCT 733

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : V.S. Shroti, Assisted by Mr. Vikram Johri, Mr. R.K. Verma, for the Appellant; Greeshm Jain, Learned Counsel in W.P. No. 6388/2010, Shri Greeshm Jain, Learned Counsel in W.P. Nos. 3390 and 8690/2011, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Trivedi, J.—This order will also govern disposal of W.P. No. 3390/2011 and W.P. No. 8690/2011 as common question and common claims are made in the writ petitions. Since all the writ petitions are heard together, the same are being decided by this common order. For the purposes of convenience, the facts are taken from W.P. No. 6388/2010. The petitioners have complained by way of filing this writ petition under Article 226 of the Constitution of India that they are not given the similar treatment as was extended to certain employees in terms of an agreement entered into between the employer-respondents and the Employees' Association and the order passed thereon. It is the contention of petitioners that there was anomaly created in the matter of appointments in Grade-C category posts. Those, who were appointed in the said category, were upgraded as Grade-B under the orders of the respondents and were given further opportunities of promotion but the similar treatment has been denied to the petitioners by way of passing of order impugned dated 16.04.2010, therefore, such an order was called in question.

2. Brief facts are that the petitioners were said to be appointed as Assistant

Foreman (Trainee) Grade-C during the year 1995-1997. They were later on promoted as Foreman Grade-B in the year 2002 and further promoted as Foreman Incharge Grade-A in the year 2009-2010. In fact in the matter of appointment, different norms were prescribed by different companies, affiliated to the Coal India Limited and this has created anomaly in the matter of appointment in different grades. The issues were raised by the Trade Unions of the subsidiary companies of the Coal India Limited, a Government of India undertaking, and an agreement was entered into for removal of the said anomaly. As a result, those, who were appointed in Grade-C services, were upgraded from the initial date of appointment in Grade-B. Consequent upon such upgradation, those who were promoted in Grade-B were treated to be promoted in next higher grade with retrospective effect, as a result the persons like petitioners, who were earlier upgraded, were promoted up to the executive post. Similar was the claim of the petitioners and in terms of the policy once made, petitioners were also entitled to the similar treatment of upgradation of their initial post of appointment and further upgradation in the matter of promotion to the next higher grade. However, since this has been refused by memo dated 16.04.2010, the writ petition was required to be filed. The petitioners have claimed a writ of mandamus commanding the respondents to treat the petitioners at par with similarly situated Diploma Holder Foreman and further a writ for promotion/selection from non executive to executive cadre as per the notification dated 08.03.2010, after quashment of the circular dated 16.04.2010 by issuance of a writ of certiorari.

3. Upon service of the notice of the writ petition, the respondents have filed a return contending therein that in fact the entire claim made by the petitioners is misconceived. It is contended that there were different companies working in the field of coal mining. After the nationalization of the said industry, the Coal India Limited was constituted as apex body and all the companies, working in different parts of country were made subsidiary companies of the Coal India Limited. It was found that in different companies, different modes of recruitment were adopted, as a result in some companies the employees were appointed in the lowest rungs whereas in different companies similarly situated persons were appointed in slightly higher post. As a result, when the nationalization took place, anomaly was cropped in the establishment sanction of such subsidiary companies. To streamline it, it was decided that up to a particular time if appointments were made, the same would be put at par so as to remove anomaly in all the subsidiary companies in the matter of appointments. If upgradation is done because of such reason in a particular time, as a one time settlement, the same will not become an universal rule for appointments, completely abolishing the lowest post on which the petitioners were appointed. In fact there was no abolition of the lower post, initial appointments were to be made in all companies on the lowest post on which further upgradation was permissible in terms of the policies made in respect of recruitment, which were made applicable in all subsidiary companies equally. Since the petitioners were

appointed at a later stage on the lowest post, there was no anomaly in the matter of their appointments and, therefore, the agreement executed by the respondents, for one time settlement, would not become applicable in the case of the petitioners. It is further put forth that after about 15 years of initial recruitments, when fresh recruitments were done from the open market, same was accepted by the persons like petitioners with open eyes, therefore, such a claim was not to be entertained, accepted or granted. It is further contended that these being the disputed facts, are not to be resolved in a writ petition as the same will require adjudication of these issues after recording evidence of the parties. It is further contended that the efficacious alternative remedy was raising an industrial dispute rather than filing of a writ petition and, therefore, the claim made by the petitioners being wholly misconceived, deserves to be dismissed.

4. No rejoinder whatsoever has been filed by the petitioners controverting any of the stand taken by the respondents. Matters are heard, the record perused.

5. For the purposes of examining the claim made by the petitioners, it would be necessary to look into such agreement, which was directed to be placed before this Court by the respondents. It will not be out of place to mention here that in fact the benefit was claimed by the petitioners on the strength of such an agreement and, therefore, it was necessary on their part to produce a copy of the agreement. However, they have not placed any such statutory agreement before the Court but have relied on certain instructions issued only on the strength of such an agreement. The agreement dated 10.08.1990 is placed on record by the respondents, which indicates that the same has been entered into between the Management of Western Coal Field Limited, Headquarter at Nagpur and their workmen represented by Rashtriya Koyla Mazdoor Sangh, Nagpur. The said agreement is materially important and, therefore, the same is reproduced below as a whole:

No. C.I.L./1/33/90

1 Date-10.08.90

Memorandum of settlement U/s. 12(3) of the I.D. Act 1947 arrived at between the management of W.C.L. Hq. Nagpur and their workmen represented by Rashtriya Koyla Khadan Majdur Sangh, Nagpur, over the issue of appointment of trainee (diploma holders) in E & M and Excavation Cadre:

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Representing Employer

Shri Ajit Shivram Desai Dy. Personnel Manager (IR) W.C.L. Nagpur

Representing Union/ Workmens

Shri P.K. Talukdar Secretary, RKKMS Nagpur.

Short Recital of the case

The office secretary Rashtriya Koyla Khadan Majdur Sangh, (INTUC) Nagpur, raised an industrial dispute vide his letter dated 25.7.90 over the issue of non-uniformity in appointment of trainees (Diploma Holders) in E & M and Excavation Cadre and demanded that uniform procedure should be followed in appointment of trainees (Diploma Holders) in E & M and excavation cadre. The dispute was seized in conciliation after protracted discussion on 10.8.90 during the course of conciliation proceedings the dispute was settled amicably by a memorandum of settlement on the following terms.

Terms and Conditions

1. That, all Foremen Trainees who were appointed prior to 31.12.1998 shall be placed in T & S grade (B) subject to fulfilment of eligibility condition relating though qualification etc. as laid down in JBCCI Cadre scheme issued vide I.I. No. 30 dated 26.6.84 and successful completion of two years training as stipulated in their appointment letters. In these cases, the requirement of, possession of Electrical Supervisory, certificate of Competency valid for mines shall not be insisted upon.
2. That where such Diploma Holders who have been placed in T & S grade "C" they would be placed in T & S grade "B" with immediate effect and they will also be given notional seniority in T & S Gr. "B" from the date they have been offered T & S Gr. "B" from the date they have been offered T & S Gr. "C" without the benefit of any back wages, but they would be eligible for notional fixation. However actual financial benefit shall accrue from the date of settlement.
3. That where such Diploma Holders or electrical E & M and excavation have wrongly been placed in T & S Gr. "B" in violation of cadre scheme i.e. without obtaining electrical supervisory certificate of competency valid for mines and have been released increment beyond Rs. 945/- in N.C.W.A.-II scale of pay and or Rs. 948/- in N.C.W.A.-III scale of pay shall now be restricted upto Rs. 2204/- under N.C.W.A.-IV scale of pay and no further increment will be granted till they obtain the electrical supervisory certificate of competency valid for mines.
4. That the foremen trainees (Electrical) who have inadvertently been placed in T & S Gr. "A" prior to 10.8.1990 contrary to the above cadre scheme (without obtaining electrical supervisory certificate of competency valid for mines) shall be reverted in T & S Gr. "B" but their present basic drawn shall be protected upto Rs. 2204/- under N.C.W.A.-IV as in clause No. 3 above and no further increment will be released unless they obtain the above statutory certificate.
5. Appointment of Trainees (Diploma Holders) after 31.12.1988 in E & M and Excavation discipline shall be governed strictly under provisions of cadre scheme formulated by JBCCI in N.C.W.A.
6. That where such Diploma Holders who have been offered T & S Gr. "C" after their successful completion of 2 years training but under protest did not accept to

draw pay under T & S Grade "C" and preferred to continue stipend amount, shall be fixed in T & S Grade "C" with retrospective financial benefit w.e.f. the date of successful completion of their 2 years training and their fixation in T & S Gr. "B" shall be notional fixation.

7. Both parties agreed to submit their implementation report by 31 August 1990, otherwise it will be presumed that the settlement has been implemented fully.

Sd/- (AJIT SHIVRAM DESAI) Dy. Personnel Manager(IR) W.C.L. Nagpur

Sd/- (P.K. TALUKDARO) (Secretary R.K.K.M.S.) Nagpur

Witnesses: (V. PRABHAKAR RAO) (A.S. WAGHMARE)

Sd/- (RAM SINGH) Assistant Labour Commissioner (Central) I Nagpur, Tel. No. 533515

6. A perusal of this agreement will indicate that the dispute was with respect to the persons, who were appointed prior to 31.12.1988 as Foreman (Trainees) in different grades. The specific condition was mentioned in paragraph 5 of the agreement with respect to the appointment of trainee Diploma Holders after 31.12.1988. It leaves no doubt to accept that the agreement was only with a purpose to remove the anomaly, which was created in the matter of appointment in respect of persons, who were appointed prior to 31.12.1988 and it has no relation whatsoever with the appointments made after this cutoff date. It is not in dispute at all that the persons like petitioners in all these petitions were appointed after this cutoff date. There is no mention in the agreement that the lowest rungs of the cadre was to be abolished and no appointment on such post was to be done in future. This further makes it clear that there was no change in the setup even after reorganization of the entire system after nationalization and constitution of apex body like Coal India Limited. Therefore, the first and foremost question, which is to be answered, is whether such an agreement was one time settlement or the same was made for all time to come and even was made applicable in future appointments. From the plain and simple reading of the agreement it is clear that it was with respect to the appointments made prior to the particular cutoff date. The dispute itself was with respect to the appointments made prior to the cutoff date. Discussion was also held in respect of anomaly, which was created in respect of appointments made prior to 31.12.1988 and, therefore, it has to be held that in fact the agreement itself was only one time settlement to remove the anomaly and no right was created in respect of any person appointed after the cutoff date mentioned in the agreement. Thus, the foundation on which the claim is made by the petitioners is extinguished and, therefore, no relief in the writ petition can be granted.

7. Now if it is seen whether such an agreement itself was after a broad discussion of the entire setup or it was only for a particular object, the minutes of the meeting held on 22.05.1993, placed on record by the respondents demonstrate that in fact Item No. 6 was with respect to the grievances of

persons like petitioners, who were appointed prior to 31.12.1988 and it was resolved that the Diploma Holders recruited prior to 31.12.1988 in ECL, BCCL, CCL would be given notional seniority along with those recruited in WCL in T&S Grade-B. Even it was only a tentative decision as the companies were given the opportunity to examine the said view of the Board of Directors and to give their opinion so as to implementation of the above decision could be done. In the very same agenda, it was agreed and decided by the Board of Directors that a common policy for recruitment of Diploma Holders in all engineering disciplines was to be made as per the existing practice and after obtaining schemes of different companies with respect to such recruitment, matter was to be decided. Again there was no finality in respect of such decision and, therefore, whatever was prescribed by the companies at the relevant time, was virtually approved and made applicable in the matter of initial recruitments. It is not at all in dispute that the recruitment process was followed and only after making selection, persons like petitioners were recruited. No fault is pointed out in the matter of such recruitment at initial stage by the petitioners nor it is their case that different companies made recruitment on different grades again creating anomaly, which was in existence at the time when the recruitments were made prior to 31.12.1988. From such proceeding, it is also clear that it was not only the electrical and mechanical Diploma Holders in respect of whom such a decision was taken but the similar decision was made applicable with respect to the Civil Diploma Holders and, therefore, it is clear that in fact there was no anomaly created later on when the persons like petitioners were recruited. If there was no anomaly created in the matter of appointment, there was no question of removal of any such anomaly in terms of the agreement said to be executed. As has been pointed out, the agreement itself has not created any right in the petitioners.

8. Learned senior Counsel for the petitioners has vehemently contended that the circulars were issued by the Coal India Limited on a different date and the benefit was extended time to time in respect of certain other persons appointed in different companies in different manner. It is contended that when the initial circular was issued on 09.08.1993, it was categorically said that those Foreman (Trainees) appointed prior to 31.12.1988 after completion of 2 years of training if not placed in Grade-B, shall be placed in Grade-B. It is contended that the meaning of this circular is that if persons are appointed in such a manner, they are to be given the benefit of their placement in next higher post from the initial date of appointment, notional seniority is to be granted and further benefits of service are to be extended to them. It is further contended that by a circular dated 11.03.1996 this benefit was extended to some more persons as a direction was given to fix notional seniority as also the pay of such persons but only the actual payment of salary was not made. On 15.03.1996 similar was the instructions issued. Repeated instructions were issued on 15.01.1998 and 13.08.1998. Even for the appointees of the year 1991 benefit was extended on 03.09.1998. Why this benefit was not available to the petitioner is not explained

and, therefore, it is contended that such is the discriminatory policy of the respondents. It is contended that the law is well settled in this respect. Relying in the case of Telecommunication Research center Scientific Officers" (Class I) Association and Others Vs. Union of India (UOI) and Others, , it is contended that such a discrimination is not permissible. Further placing reliance in the case of R.D. Gupta and Others Vs. Lt. Governor, Delhi Admn. and Others, , it is contended by learned senior Counsel that such an act of the respondents would be an arbitrary and discriminatory act, hit by the provisions of Article 14 and 39(d) of the Constitution of India. Lastly, placing reliance in the case of Halli Gowda and Others Vs. Managing Director, K.S.R.T.C. and Another, , it is contended that such an act would amount to nothing but an arbitrary exercise of powers by the respondents.

9. Per contra it is contended by learned Counsel for the respondents that if anomaly is removed because of an agreement entered into the Employees" Association and the employer and if a cutoff date is made applicable, the eligibility has to be tested on that day and not otherwise. The discrimination would not be made out in case of recruitment made subsequently. Specifically for the eligibility and the cutoff date, the provisions have to be looked into with respect to the agreement. Relying in the case of Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others, , it is put forth by learned Counsel for the respondents that if such a policy decision is taken prescribing a cutoff date for deciding the eligibility for grant of any benefit in service, unless there is specific pleadings made in this respect and it is shown that such an act of the respondents is arbitrary or discriminatory, the relief as claimed cannot be granted. It is contended that this Court would not require to exercise its powers of judicial review in such a case. Further relying in the case of State of H.P. and Another Vs. Anjana Devi and Others, , it is put forth by learned Counsel for the respondents that in case a classification to remove the anomaly is done, a cutoff date is prescribed before which the appointment made are required to be corrected so as to remove the anomaly, such a process cannot be said to be discriminatory as the purpose of classification is required to be seen. Unless it is demonstrated that the petitioners were put in the similar circumstances, in the very same category the discrimination is made, the benefit of any such policy cannot be claimed. It is contended that similar view is reiterated by the Apex Court in the case of Sudhir Kumar Consul Vs. Allahabad Bank, . Relying in the case of Hardev Singh Vs. Union of India (UOI) and Another, , it is vehemently contended by learned Counsel for the respondents that the only right available to the petitioners was the right to be considered for promotion and the promotion itself was not to be claimed as of right. It is contended that in view of the pronouncement of law by the Apex Court in the case of Transport and Dock Workers Union and Others Vs. Mumbai Port Trust and Another, , where the word workmen is defined, the power of judicial review of this Court is limited and such power is not to be exercised in the present controversy. It is contended that the Apex Court in the case of Brij Mohan Lal Vs.

Union of India (UOI) and Others, , has categorically held that regularization cannot be claimed as of right as it is not a statutory or legal right enforceable by persons appointed under different rules to different posts. It is contended that such a relief cannot be claimed by the petitioners.

10. On due appreciation of the law laid-down by the Apex Court, it is seen that in the cases of Telecommunication Research Centre Scientific Officers (Class I) Association (supra), R.D. Gupta (supra) and Halli Gowda (supra), heavily relied by learned senior Counsel for the petitioners, the factual aspects were totally different. The Apex Court was dealing with such a situation where there was no agreement but certain policies made for the purposes of regularization or grant of seniority. The Apex Court has held that if there is no justified reason to show as to how a particular section of the employees was not to be granted the benefits under the policy, it would amount to an arbitrary act and has to be treated as discriminatory attitude of the employer. It is not the case in hand. Here the persons were appointed differently prior to 31.12.1988 and in respect of those grade employees, anomaly has crept in. After a prolong discussion it was decided to remove the anomaly with respect to the recruitment in between those employees who were appointed prior to cutoff date and, therefore, in pursuance to the agreement, instructions were issued. Though it is contended that orders were issued on different dates extending this benefit but it has to be seen that those instructions were only with respect to such persons, who were again recruited in a discriminatory manner and who were put in a condition where they became junior to many others. It was found that those who were appointed up to 31.12.1990, were also going to be affected in similar manner, therefore, cutoff date was shifted from 31.12.1988 to 31.12.1990. None of the orders placed on record by the petitioners indicate that this one time agreement was made applicable for those, who were appointed after the year 1990. Even the circular dated 13.08.1998 issued by the Coal India Limited placed on record as Annexure P-16 indicates that the terms of the first circular dated 09.08.1993 were not to be altered in any manner. The order which is placed on record as Annexure P-17 dated 3/4.09.1998 said to be issued by the General Manager (P&C) of the Northern Coal Fields Limited, Singrauli, indicates that pursuance to order dated 13.08.1998, certain persons were placed in B category from the date of initial appointment mentioned in the order. How this order could be issued when the initial date of appointment of such persons was after 1990, is not explained but the said order runs contrary to the instructions of the Coal India Limited. In fact such an order could have been challenged and could have been quashed but if a wrong is committed by the respondents or any of the companies of the respondent Coal India Limited, dehors the instructions of the apex Company or its Board of Directors, a claim of parity cannot be granted to the petitioners.

11. Though some of the reliance placed by learned Counsel for the respondents, on the decisions of the Apex Court referred to herein above, are misplaced as the factual aspects are different but one thing is clear that there was one time

settlement with respect to the removal of the anomaly in the matter of recruitment of persons in different companies and for removal of that anomaly, agreement was executed which was applicable only with respect to those, who were appointed in similar circumstances and not to the persons like petitioners, who were appointed on regular basis after following the process of law in terms of the provisions of the regulations or the procedure prescribed in such regulations, on the cadre post, which were duly sanctioned. Therefore, there is no question of extending the benefit of one time settlement to the petitioners. In view of the discussion made herein above, no case is made out to grant any relief to the petitioners. The writ petitions fail and are hereby dismissed. There shall be no order as to costs.