
(1991) 07 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 1171 of 1985

Shiva Rama Salian and Others

APPELLANT

Vs

Voltas Ltd. and Others

RESPONDENT

Date of Decision : 16-07-1991

Acts Referred:

Citation : (1995) 3 LLJ 123

Hon'ble Judges : S.P. Kurdukar, J

Bench : Single Bench

Advocate : Anand Grover, for the Appellant; S.H. Kapadia, S.K. Talsania and R.A. Shah, instructed by . Mansunkhlal Hiralal and Co. for R1, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Kurdukar, J.—In a complaint of Unfair Labour Practice under Items 4(c) and 4(d) of Schedule II and Item 5 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act") filed by the petitioners. The Industrial Court dismissed the complaint by its order dated 12.10.1984 (Exh.W). It is this order which is the subject matter of challenge in this writ petition under Articles 226 and 227 of the Constitution of India.

2. The first petitioner is an employee of the first respondent who is alleged to have committed unfair labour practice under the aforesaid items. Second Petitioner is the Union. First respondent is a Company having its registered office at Bombay. Second respondent is the Member of the Industrial Court who has passed the impugned order.

3. On or about May 31, 1982 the petitioners filed a complaint (ULP) No. 389 of 1982 alleging as under:

It is not disputed that the first petitioner is an employee of the first respondent-Company hereinafter referred to as "the Company", working in the Chemical Division at their head office as "B" Grade Clerk. The first petitioner is a qualified

employee holding to his credit Master Degree in Law from Bombay University and also Diploma in Labour Laws, The Company is a Limited Company and it carries on business of manufacturing and distribution of various engineering, and other items. It is alleged by the petitioners that Company employees over 4000 employees in Maharashtra. According to the petitioner No. 1 he has been in the employment of the Company since 1957. Initially he joined as a Peon but later on he was transferred to the Chemical Division of the Company as a "C" Grade Clerk. In the year 1970 he was promoted as "B" Grade Clerk. According to the petitioner he was working under Shri P.S. Krishnan, a Senior Clerk in "A" Grade and as and when Shri P.S. Krishnan used to be on long leave the first petitioner used to officiate as "A" Grade Clerk in his place. The nature of work performed by each section it is alleged being identical to each other and consequently it is interchangeable from amongst clerical staff. It is then alleged by the petitioners that Mr. J.P. Oak and Mr. V.D. Totade were also working as Junior Clerks along with him. Their qualifications, however, were not equivalent to the first petitioner. Shri P.S. Krishnan resigned some time in the year 1975 and the first petitioner continued to work in his place as "A" Grade Clerk besides his own duty as a "B" Grade Clerk. The first petitioner was serving in the Company to the best of his ability and he was requesting his superiors to promote him in Grade "A" Clerk category. Sometime in the month of March 1982 first petitioner came to know that his other two junior colleagues Shri V.D. Totade and Shri J.P. Oak have been promoted from "B" Grade to Selection Grade. First petitioner therefore approached Shri H.N. Ghosh, Divisional Manager to find out as to why he was not promoted. According to the petitioners since the first petitioner has denied the selection grade category of "A" grade, without any reason whatsoever and as no answer was forthcoming from either Shri Ghosh or the Company, the first petitioner thereafter addressed letters to the Divisional Manager vindicating his grievances and requested that his case for promotion in the Selection Grade "A" category be considered sympathetically. On receipt of the reply Exh. C. the first petitioner found that he was denied promotion on the following ground:

"Promotions only follow competence, consistently above average performance and other attributes as judged by your superiors from time to time". According to the petitioner, the Company is not having any rational promotion policy and the employees are promoted on whims and fancies of the departmental heads. Despite Union's demand to the Company to evolve a mutually acceptable promotion policy the Company has failed and neglected to accede to such demands.

4. It is further alleged by the first petitioner that he is union activist and also Member of the Managing Committee. According to the complaint most of the office bearers of the union were superseded by the juniors mainly because of their involvement in the union activities. The first petitioner being an active member of the union and a member of the Managing Committee and office bearer of the second petitioner for the last many years and on the date of the complaint being Joint Secretary, his case for promotion was overlooked by the

Company. The first petitioner fulfills all the necessary requisites to be promoted to the selection grade post. The Company has refused and deliberately neglected to promote the first petitioner to higher grade mainly due to involvement in the union activities. The Company therefore has committed unfair labour practice in terms of Items 4(c) and 4(d) of Schedule II and Item 5 of Schedule IV of the Act. The petitioner therefore prayed that it be declared that the Company has committed unfair labour practice in terms of the above provisions of the Act and they be directed to cease and desist from committing the unfair labour practices. A further direction was sought to the Company that they be ordered to select the first petitioner in the selection grade with retrospective effect from 1st March 1982.

5. The Company in its written statement (Exh.P) denied the allegations of unfair labour practice. In paragraph 6, the Company has set out the history of the first petitioner in the employment. In paragraph. 8 the Company has averred that it has been following a promotion policy pursuant to which certain norms and/or guidelines are duly followed before any employee is considered for a promotion in the higher rank/grade. There is a special promotion committee constituted for the purpose of processing the promotion proposals forwarded by Divisional Managers. The promotion proposals of Mr. J.P. Oak and Mr. V.D, Totade were received from the Divisional Managers and the Promotion Committee after considering the pros and cons of the proposals accepted the recommendations and promoted both these employees. While making the promotion proposals, the Divisional Manager generally takes into consideration the competence of the person, his performance and other attributes such as commitment to work, timely completion of work, desire to take additional responsibility and providing support to the Sectional Managers, etc. Company did not dispute that the first petitioner was officiating in place of Mr. P.S. Krishnan, "A" grade clerk when he used to be on leave. The Company in paragraph 10 of its written statement set out the details justifying promotion of Mr. V.D. Totade and Mr. J.P. Oak. The Company specifically denied that at no time the first petitioner's involvement in union or federation activities were considered to deny promotion to him. On the basis of overall appraisal of the petitioner's past record he was not recommended by the Divisional Manager to be considered for promotion in the selection grade. The Company also set out in paragraph. 15 the assessment record in the confidential reports of Mr. V.D. Totade, Mr. J.P. Oak and the first petitioner. Since the Company has been following its promotion policy and no promotions were effected contrary to the said policy in denial of promotion post i.e. selection grade post to the petitioner does not amount to unfair labour practice under the Act. The claim of the petitioner is false and the same be rejected.

6. Both the parties led oral and documentary evidence before the Trial Court. The learned Trial Judge after considering the material produced before him held that the first petitioner was not denied promotion in the selection grade on account of his union activities. Consistent with this finding the learned Trial Judge held that

the petitioner has failed to prove that the Company has engaged in unfair labour practice under Items 4(c) and 4(d) of Schedule II or Item 5 of Schedule IV of the Act. Consequently the learned Trial Judge dismissed the complaint.

7. Mr Grover learned Advocate appearing in support of this petition firstly urged that the promotion policy put up by the Company is a mere pretext and untenable inasmuch as no such promotion policy was made known to the employees. He therefore urged that the alleged promotion policy relied upon by the company has no meaning and such a policy has no effect upon the petitioners. This submission, in my opinion, is wholly untenable. There is no challenge in the complaint that the company did not evolve or followed any promotion policy in the matters of promotion. What was alleged in the complaint by the first petitioner was, "..... From this statement it is very clear that the respondents do not have any objective promotion policy and as such the promotions are given on whims and fancies of the Departmental Managers." Certainly this is not a pleading on the part of the petitioners that there was no promotion policy existing in the Company which is adhered in the matters of promotion. Mr. Kapadia learned Advocate for the Company drew my attention to paragraph 10 of the Memorandum of Settlement dated 31st May, 1978 arrived at between Voltas Ltd., Bombay and Voltas & Volkart Employees Union, Bombay, which recites:-

"10.0. Promotion Policy : That the existing policy on promotion of general staff/workman shall be communicated to the Union and their comments, if any, shall be taken into account for reviewing the policy." It is therefore quite clear that prior to the settlement a promotion policy was in existence which came to be amended under the Settlement dated 31.5.1978. This promotion policy was also filed in the Trial Court.

8. I may now deal with some of the relevant paragraphs contained in the said promotion policy: (See page 91 of compilation)

"ii. Promotions are made on the basis of merit-cum-seniority and such considerations as good conduct and potential for advancement may also be taken into account."

Paragraph 3 contains the procedure for promotions:

"a. The recommendation for promotion should be in the format enclosed as Appendix -"A" filled up by the immediate superior of the employee in the Management Group.

b. The recommendation will be sent to the Industrial Relations Department (or Administrative Officer Assistant where there is no IRD), who will screen the recommendations concerned. The Industrial Relations Assistant shall act as ex officio Secretary of the Promotion Committee.

c. The IRD will then put up the recommendations before the Promotion Committee consisting of three to five senior officers nominated by Ms/GM/DMs /

DPMs. It should be ensured that the concerned recommending officer does not participate in the proceedings of the meeting unless required. The Committee once appointed, will function for a period of two years and the record of its proceedings shall be maintained on regular basis. Alternate member shall be nominated in case of absence by member for any reason, Quorum shall consist of all members or their alternatives."

The promotion policy also sets out the guidelines and guideline No. 1 reads as under:

"1. It is the normal tendency to give promotion to a person who has put in a good and efficient performance. While this may be an indication of potential for higher responsibilities, it is not necessarily so. Normal scale increments may be considered adequate compensation for such performance. Besides merit increments are meant to be given to selected individuals in recognition of outstanding performance. Hence, in recommending an employee for promotion, his potential to adequately perform the responsibility of the higher job should definitely be taken into account and not merely his performance in the present job ".

9. The question which is required to be considered in the present petition is as to whether the Company has followed the promotion policy or they have deliberately overlooked the claim of the petitioner No. 1 to the selection grade solely on the ground that he was activist and involved in the union activities. It may be stated that it is not the complaint of the first petitioner in his complaint that the company did not follow the promotion policy. What was alleged in the complaint was that the promotion policy was not objective and it should be amended. Certainly this issue would not be debated in a complaint under the Act. I must therefore proceed on the footing that the Company did follow the promotion policy.

10. The learned Trial Judge found that the confidential record of the petitioner and two other employees was taken into account for assessing their suitability as per promotion policy for promotion to the selection grade. The Divisional Managers found the confidential records of Mr. Totade and Mr. Oak superior to the first petitioner and accordingly the promotion committee on reappraisal of the confidential records accepted the proposals of promotion of Mr. Totade and Mr. Oak. The confidential records of the first petitioner, Mr. Totade and Mr. Oak along with annual appraisal reports were filed in the Trial Court with the first Ex.C-5. The learned Trial Judge in paragraph 12 has discussed the said confidential reports in detail and Mr. Grover was unable to point out factual or otherwise any error in the said finding. In the annual appraisal reports for the years 1978, 1979, 1980 and 1981 of the 1st petitioner on the issue of promotion, the remark made is, "not at present". This being the assessment of the first petitioner of his work for all these four years it cannot be said that company has violated the guidelines of promotion policy. In the appraisal report it is stated that the first petitioner although intelligent, he does not take

necessary interest to perform his office work and may be, he will do better in function relating to legal matters. It is true that in the appraisal report the superior of the first petitioner has stated that the first petitioner is deeply involved in union matters and most of the time is required to attend the Court, meeting with I.R.D. and other Union work and as a result, he was unable to contribute required amount of time to his work thus reducing his output considerably. This assessment made by the immediate superior was approved by the Divisional Manager. As against this the reports of the two other promoted candidates were superior and consequently they were given the promotions although the petitioner was senior to them. As stated earlier mere seniority is not the criteria as laid down in the promotion policy. In the matters of promotion they are made on the basis of merit-cum-seniority and such considerations as good conduct and potential for advancement which may be taken into account. Mr. Grover urged that the work of the selection grade i.e. "A" grade clerk is almost identical; and there is no change whatsoever. As against this Mr. Kapadia urged that since it is a promotion to selection grade post certainly in terms of the promotion policy the immediate superior as well as the Divisional Manager are required to assess the merit-cum-seniority of an employee along with the potential to adequately perform the responsibility of higher job. In the light of this promotion policy, in my opinion, the company was right in promoting Mr. J.P. Oak and Mr.V.D. Totade in preference to the first petitioner.

11. Coming to the grievance of the first petitioner based on alleged unfair labour practice under Item 4(c) and 4(d) of Schedule II and Item 5 of Schedule IV of the Act, I may reproduce the relevant provisions :-

"4. To encourage or discourage membership in any union by discriminating against any employee, that is to say:-

(a) xx

(b) xx

(c) Changing seniority rating of employees because of union activities;

(d) refusing to promotee employees to higher posts on account of their union activities;"

SCHEDULE IV: Item 5:-

"5. To Show favouritism or partiality to one set of workers, regardless of merits."

Mr. Grover vehemently urged that since the first petitioner is an activist and involved in union activities and therefore he was denied the selection grade post. Mr. Grover while attacking the finding of the learned Trial Judge that there was no mala fides on the part of the Company to promote the first, petitioner, urged that there is no question of any pleading of mala fides as far as Clauses (i) and (d) of Item (4) of Schedule II of the Act is concerned. He further urged that the learned Trial Judge was very much impressed and misguided by the fact that

action on the part of the Company were not mala fide and, therefore, there is no question of any unfair labour practice. In order to justify first petitioner's absence in the office Mr. Grover urged that because of the meetings with the Management and other labour matters in the Court he used to go with the permission of the Management. At no stage the Management had complained that the first petitioner was refused the permission and yet remained absent from the work. It is no doubt true that whenever the first petitioner had attended the meetings with the Management or attended the Courts on labour matters he did obtain the permission from the Management. This has undoubtedly resulted into loss of office hours. In the chart at Exh. U-27 produced by the first respondent it is seen that during 16th June 1982 to 30th July 1982 the first petitioner was allowed about 75 hours to attend to the union work. Certainly this has resulted into loss of office hours to the Company. But according to Mr. Grover notwithstanding the fact that the petitioner had availed 75 office hours for union work but there was no complaint that the petitioner was not diligent in discharging his official duties and/or any work remained pending on his table. The learned Trial Judge after going through the material on record found that this absence has affected the output. Mr. Grover also could not deny this fact but at the same time he contended that no office work remained pending and the first petitioner used to sit late in the evening. The evidence of Mr. R.L. Gajwani (Company witness) shows that at times whenever the first petitioner's presence was needed he was not found in the office and this has resulted into delay in disposing of the matters.

12. The question therefore is in the light of the above finding can it be said that the Company had engaged in unfair labour practice in terms of Clauses (c) and (d) of Item (4) in Schedule II of the Act. The material on record does not prove that the Company has discriminated the petitioner against other employees on the ground of membership in any union. In fact there is no other union in the Company. Mr. Grover was unable to point out any material on the record to show that the seniority rating of the petitioner was changed because of union activities. There is no credible evidence on record to show that the Company refused to promote the first petitioner to higher post on account of his union activities. As indicated earlier the Company did not object to the petitioner's request to attend the labour matters and other meetings. Mr. Grover then urged that in order to have smooth relations between the Management and the employees if the first petitioner was required to attend the meetings with the Management may be for a day or two or a week on some occasions, that circumstance could not be used against the first petitioner for denying his rightful claim to the selection grade post. Certainly the Company did not use this circumstance to deny the selection grade post to the first petitioner. Therefore, in my opinion, the petitioner has failed to prove that the Company has committed any unfair labour practice with reference to Clauses (c) and (d) of Item (4) of Schedule II of the Act.

13. As far as alleged unfair labour practice under Item 5 of Schedule IV of the

Act is concerned, I do not see that material on record supports the said allegation. In fact, Mr. Totade was also a member of the Managing Committee of the Union to which the first petitioner belongs. If the Company had really an axe to grind against such office-bearers or the member of the Managing Committee then they would not have granted promotion to Mr. Totade. On the contrary the evidence on record shows that cases of Mr. Totade and Mr. Oak were considered on their merits and they were found as indicated earlier, superior to the first petitioner. Therefore, there is no substance in the allegation of the petitioner that the Company has resorted to unfair labour practice in denying promotion to the first petitioner.

14. Mr. Grover then urged that if the first petitioner's output was found not upto the mark and if it is recorded in the confidential report it amounts to adverse remarks and the same should have been communicated to him. Having not communicated the same the Company could not rely upon such report. Mr. Kapadia rightly contended that there is no adverse remark in the petitioner's confidential record. It is only the assessment of the petitioner's work which has been recorded and since it was not an adverse remark there was no question of communicating the same to the first petitioner.

15. Mr. Grover then drew my attention to the decision of the Supreme Court between Workmen of M/s. Williamson Magor & Co Ltd. & M/s. William Magor & Co. Ltd. & Anr 1982 I LLJ S.C. 33. This decision is under the Industrial Disputes Act, 1947. Of course the Supreme Court was considering the case wherein the dispute relating to the promotion of Junior Clerks of the General Grade in preference to the Senior Clerks of the same grade was referred for adjudication. It was a case of victimisation under the Industrial Disputes Act. The facts of this judgment are clearly distinguishable and have no application to the present case. At the cost of repetition it may be stated that it is not the case of the first petitioner that he has been victimised because of his involvement in the union activities. Mr. Kapadia appearing for the Company urged that promotion is a managerial prerogative and it is open to the Management to consider the potentiality of an employee while considering his promotion in higher grade. He also relied upon the decision of the Supreme Court between Brooke Bond (India) Pvt. Ltd. v. Their Workmen 1962 (1) LLJ 256, wherein it has been held that there could be no doubt that promotions to which industrial employees are entitled normally would be treated as the function of the Management. It must be left to the discretion of the Management to select persons for promotion. On the other hand, labour also wants that the claims of employees who are eligible for promotion should be duly considered."

16. Mr. Kapadia also drew support from another decision of the Supreme Court between The Hindustan Lever Ltd. v. The Workmen 1974 (1) LLJ 94. The Supreme Court reiterating the aforesaid principles held, "... Accordingly we are of the opinion that the Labour Court is manifestly wrong in its view that it was a case of fitment in Grade T4. In our view it is really a case of promotion from

Grade T3 to T4 and promotion is ordinarily a Management function. In the absence of a finding of mala fides or any unfair labour practice, Labour Court could not arrogate to itself the promotional function of the Management and the direction to post P.P. Jude in Grade T4 should be set aside."

17. Mr. Kapadia therefore urged that in the present case Promotion Committee considered the proposals made by the Divisional Managers and after going through the confidential record Mr. Totade and Mr. Oak were promoted.

18. It was also contended by Mr. Grover that the provisions in the Act are penal in nature and the Court must find out if there is any unfair labour practice committed by the Management. In the absence of any proof of such unfair labour practice, Court will be reluctant to grant relief to the complainant.

19. After going through the material on record I am of the opinion that the petitioner has failed to make out any case of unfair labour practice committed by the Company under the Act.

20. In the result the writ petition fails and the rule is discharged. But, however, in the circumstances of the case there will be no order as to costs.