

(2000) 10 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14001 of 2000

State of Punjab and another	Vs	APPELLANT
Som Pal and another		RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 10 P&H CK 0029

Hon'ble Judges : S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. Anil Sharma, DAG, for the Appellant;

Judgement

S.S. Sudhalkar, J.—By this writ petition, the employer is challenging the award of the Labour Court dated 30.11.1999 (Copy Armexure P/1). The service of respondent No. 2 was terminated by a previous award of the Labour Court. He was ordered to be reinstated. The Labour Court had also awarded continuity of service.

2. During the period respondent No. 2 remained out of job, certain juniors were promoted. The petitioner claimed promotion from the date, his juniors were promoted. The matter was referred to the Labour Court and the Labour Court ordered promotion of respondent No. 2 with effect from the date juniors were promoted.

3. The first point argued before us by the learned State counsel is that the Labour Court had no jurisdiction to order promotion. Be that as it may, respondent No. 2 would have been eligible for promotion had he not been out of job during the time of consideration for promotion. He has been reinstated with continuity of service and this being so, there should be no bar to his promotion.

4. So far as the question of jurisdiction is concerned, the Rajasthan High Court in the case of Jagan Singh Vs. State Transport Appellate Tribunal, Rajasthan and Another, has held that when allowing writ petition would result in restoring illegal

order, it should not be allowed. It has relied on the decision of Supreme Court in the case of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, . The relevant portion is as under :

"17. The result of the discussion may be stated thus : The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed - the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power u/s 72 of the Act to review an order made u/s 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the government dated April 18, 1963 ? If the High Court had quashed the said order, it would have restored an illegal order - it would have given the Health Centre to a village contrary to the valid resolution passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

Counsel for the petitioners argued that no order has been passed by the petitioners which would be revived by allowing this writ petition. However, by allowing the writ petition an illegal treatment given to the petitioner by virtue of non-promotion, which has been held by the Labour Court, would revive and the principle of above mentioned cases would be, therefore, applicable.

5. Learned counsel for the petitioners has relied on Supreme Court judgement in the case of Management of Brooke Bond India (P) Ltd. Vs. Workmen, . It has been held by the Supreme Court that generally speaking promotion is a management function but it may be recognised that there may be occasions when a tribunal may have to interfere with promotions made by the management where it is felt that persons superseded have been so superseded on account of mala fides or victimisation. However, it has been held that even so after finding of mala fides or victimisation, it is not the function of a tribunal to consider the merits of various employees itself and then decide whom to promote or whom not to promote. Learned counsel for the petitioners argued that the other persons who are already promoted are not party before the Labour Court, therefore, they will be affected. However, this is a case in which respondent No. 2 is not claiming that his right was marred because of promotion of others but is claiming his own right and, therefore, this argument cannot be accepted.

6. Learned counsel for the petitioners further argued that the Labour Court has ordered promotion instead of ordering consideration for promotion. We should have otherwise interfered, however, it is not shown that after consideration, the petitioner could not have been promoted.

7. We, therefore, do not find any merit to interfere with the award of the Labour Court.

In view of the above reasons, this writ petition is dismissed.

8. Petition dismissed.