

(2015) 03 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition 20135(W) of 2005

Texmaco Ltd. and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3, Order 6 Rule 15, Order 7 Rule 15
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 101, 102, 106

Citation : (2015) 145 FLR 879 : (2015) LabIC 2324 : (2015) 2 LLJ 243

Hon'ble Judges : Ashis Kumar Chakraborty, J.

Bench : Single Bench

Advocate : Arunava Ghosh, Partha Bhanja Chowdhury, Anant Kumar Shaw, Samrat Dey Paul, Pranati Das and Sangmitra Bhattacharya, for the Appellant

Final Decision : Disposed off

Judgement

Ashis Kumar Chakraborty, J.—In this writ petition, the petitioners challenged an award dated August 29, 2005 passed by the learned Judge, 4th Industrial Tribunal, Kolkata (hereinafter referred to as "the Tribunal") directing the petitioner No. 1 company to absorb, its trainee Prasanta Ghosh (hereinafter referred to as "the trainee".) in regular post as per the training given to him and to give him the grade/scale, accordingly, like other employees.

2. The dispute that fell for adjudication before the Tribunal was, whether a trainee can claim to be absorbed in regular employment when he was lawfully engaged and he has rendered continuous service to the employer for 27 years at a monthly salary of Rs. 400/- without any complaint of unsatisfactory service. As stated above, the Tribunal decided the dispute in favour of the trainee.

3. The relevant facts giving rise to the reference of the dispute to the Tribunal by the State Government may be briefly stated. On the basis of a service agreement dated May 20, 1978 (wherein the petitioner No. 1 and the trainee was described as "the employer" and "the employee" respectively) the petitioner No. 1 engaged

the trainee in its service as a trainee supervisor. The salient terms of the said service agreement referred to by the parties are set out below:

(i) The employee shall undergo a training for a period of two years. At the discretion of the employer, the said training period would be reduced or extended and the employee shall be deemed to be under training unless otherwise advised in writing by the employer.

(ii) On completion of the said training, the employee will, at the discretion of the employer, be absorbed in the employment of the company.

(iii) During the training period the employee shall be paid a monthly stipend of Rs. 350/- and Rs. 400/- consolidated per month during the first and second year respectively subject to statutory deduction.

(iv) In case the employee is absorbed on a regular job, he shall be given a starting salary of Rs. 501/- in the grade of Rs. 501-520-20-700/- both consolidated subject to statutory deduction.

(v) The employee shall be entitled to Provident Fund Facility as per the existing Rules of the employer.

(vi) In the event of breach on the part of the employee to ensure honest and disciplined conduct on his part to discharge his duties, he may face, termination from service and a claim for damages.

(vii) The employee shall deposit a sum of Rs. 2000/- to the employer in cash or alternatively he may deposit Rs. 500/- in cash and furnish of bank guarantee for the balance of Rs. 1500/- as a by way of security for due payment of liquidated damage of Rs. 2000/- to the employer, in case is any breach of any term of the said agreement.

4. The period of two years from February, 1978, was completed in the year 1980 and thereafter there was no formal extension of the said training period of the trainee. The trainee continued to render his services to the petitioner No. 1 without receiving any letter of absorption. By a letter dated July 16, 1999 the trainee informed the President of the petitioner No. 1 that in spite of completion of the training period of two years, for more than two decades, he has been made to work as a trainee supervisor on a meager stipend of Rs. 400/- per month and requested the president of the petitioner No. 1 to absorb him on a regular job in an appropriate grade. Since, the said letter dated July 16, 1999 evoked no response from the President of the petitioner No. 1, the trainee issued another letter dated August 13, 1999 through his advocate, calling upon the petitioner No. 1 to absorb him on a regular job in an appropriate grade with effect from May 20, 1980 with benefit of proforma promotion to higher grade. On December 14, 1999, the petitioner No. 1 replied to the said letter dated August 13, 1999 and for the first time alleged that the trainee was not absorbed in service as his performance was not satisfactory and he is deemed to be under training. It was further alleged the petitioner No. 1 had decided not to continue

with his service but they were dissuaded from doing so by the majority workers" Union. Thereafter, the trainee, by a letter, informed the Deputy Labour Commissioner, of all the aforesaid facts and requested him to issue necessary directives to the petitioner No. 1 to redress his grievance. The respondent No. 3, being Texmaco Ltd. Mazdoor Union, (hereinafter referred to as "the Union") in its letter dated June 06, 2000 informed the Deputy Labour Commissioner that they are wholly supporting the said representation dated May 20, 2000 submitted by the trainee. By issuing various notices issued to the Union and the petitioner No. 1 the Assistant Labour Commissioner held various sittings to amicably settle the dispute raised by the trainee supported by the Union. By a communication dated September 10, 2000 addressed to the Assistant Labour Commissioner, the petitioner No. 1 reiterated the allegations made in their letter dated December 14, 1999 and claimed that the trainee cannot be absorbed. On December 14, 2000, the Union requested the Deputy Labour Commissioner to refer the matter to the appropriate authority and/ or Tribunal for adjudication of the dispute at an early date.

5. By an order dated June 08, 2001, the Deputy Secretary to the Government of West Bengal held that an industrial dispute existed between the petitioner No. 1 and their workman represented by the Union and referred the following issues to the said Tribunal for submitting an award to the State Government.

Issue (s)

"1. Whether the Management's action of non-absorption of Shri Prasanta Ghosh in a regular post and not giving him any grade/scale is justified?

2. What should be proper grade and scale of Shri Prasanta Ghosh?

3. What relief, if any, is the entitled to?"

6. Before the Tribunal, the Union, the respondent No. 3 herein, and the employer being the petitioner No. 1 herein were arrayed as the petitioner and opposite party respectively. The Union filed its statement before the Tribunal and prayed for an order directing the employer, (the writ petitioner No. 1) to absorb the trainee on a regular job in an appropriate grade(s)/scale(s) with effect from May 20, 1980 and to fix pay of the said trainee vis-?-vis his contemporaries. The petitioner No. 1 filed their written statement before the Tribunal making various allegations. In paragraphs 3 and 4 of the written statement the petitioner No. 1 alleged that the dispute referred by appropriate Government to the Tribunal was not an industrial dispute as the Union named in the order of reference came into existence only in or about 1996, it does not represent sufficient number of workmen and as such there is no community of interest amongst the workmen in respect of the dispute.

7. The trainee himself adduced evidence before the Tribunal and proved that the Union is a registered Trade Union and he is a member of the Union. He produced the documentary evidence that he deposited a sum of Rs. 2000/- with the

petitioner No. 1 as security, which was neither appropriated nor refunded. On behalf of the petitioner No. 1 its, General Manager adduced evidence and he admitted that the concerned workman was still working in the company as trainee supervisor. No documentary evidence was adduced to prove any unsatisfactory performance by the trainee or any complaint from the petitioner No. 1 about any breach of contract or unsatisfactory performance by the trainee. In his examination-in-chief, the said witness of the petitioner No. 1 stated that the said Union has got no substantial member. On August 29, 2005 the Tribunal made the impugned award and submitted the same to the State Government. The said award was accepted and published by the State Government on September 20, 2005.

8. When this writ petition was moved by the petitioner No. 1, by an order dated December 22, 2005, a learned Single Judge stayed the operation of the impugned award till February 15, 2006 and the said order of stay was subsequently extended until further orders.

9. Mr. Partha Bhanja Chowdhury, Advocate led by Mr. Arunava Ghosh, Advocate argued the matter on behalf of the petitioner No. 1 to challenge the impugned award. He first argued that the dispute raised by the trainee was an industrial disputes within the meaning of section 2(k) and such dispute had to be supported either by a substantial number of workmen or by a majority Union, but in the instant case the dispute of the trainee was not supported either by the substantial member of workmen or by a majority union. He strenuously urged that in the instant case, the Union did not have the locus standi to espouse the cause of the trainee as it does not represent majority of the workmen and as such the reference made by the State Government to the Tribunal was not a valid reference and consequently the impugned award passed by the learned Tribunal is void.

10. Mr. Bhanja Chowdhury contended that when in paragraphs 3 and 4 of the written statement, the petitioner No. 1 specifically raised the objection that the dispute raised by the said workman was not an industrial dispute within the meaning of Section 2(k) of the said Act of 1947, on the ground of lack of community of interest amongst the workers, it was incumbent upon the Union to adduce evidence before the Tribunal to prove that there was a resolution of its members supporting the cause of the said trainee and authorizing the Union to espouse the trainee's cause but the Union adduced no evidence. According to him, since in the instant case the Union did not adduce any evidence, the Tribunal fell into an error in exercising its jurisdiction, by going into the merit of the dispute referred by the State Government. In support of such contention, reliance was placed on the decision of the Division Bench of this Court in the case of Deepak Industries Limited and Another Vs. State of West Bengal and Others, where it was held that when the authority of the Union is challenged by the employer, it must be proved by production of material evidence before the Tribunal that the Union has been duly authorised either by a resolution of its

members or otherwise that it has the authority to represent the workmen whose cause it is espousing.

11. In support of his second ground, Mr. Bhanja Chowdhury relied on clause 2 of the said service agreement providing that "on completion of the training the employee will, at the discretion of the employer, be absorbed in the employment of the company" and strenuously urged that the trainee has no legal right to absorption and it was absolute discretion of the petitioner No. 1 whether to absorb him or not. He relied on the decision of the Supreme Court in the case Secretary, State of Karnataka and Others Vs. Umadevi and Others, and submitted that the trainee cannot claim to be absorbed to a post. He cited another decision of the Supreme Court in the case of U.P. Power Corporation Ltd. and Another Vs. Bijli Mazdoor Sangh and Others, and submitted that the ratio of the said decision in the case of Umadevi (3) (supra) that a temporary; contractual, casual, daily wage or ad hoc employee cannot claim regularization of their service in public employment is also applicable in a proceeding under the said Act of 1947 by the industrial adjudicators.

12. The third ground urged on behalf of the petitioner No. 1 was that in any event, the dispute raised before the State Government was not with regard to the absorption and grade and scale of pay. According to Mr. Bhanja Chowdhury in the memo issued by the Conciliation Officer, inviting the parties for conciliation, appearing at pages 54 to 62 of the writ petition, the subject matter of dispute was, mentioned as non-payment of arrear of wages and allowance with retrospective effect to the trainee. Thus, according to him, the State Government had no jurisdiction to refer the dispute in the form stated in the said order of reference dated June 08, 2001 and consequently the impugned award of the Tribunal is void.

13. The fourth contention Mr. Bhanja Chowdhury was that in his deposition before the Tribunal, the trainee did not adduce any evidence to show as to what grade and scale of pay he was praying for. According to him, in terms of Sections 101, 102 and 106 of the Evidence Act, the onus was on the trainee to lead evidence in support of the grade and scale of pay he was claiming for, but in the instant case he has failed to discharge such onus.

14. It was further contended, on behalf of the petitioner No. 1 that the impugned award is patently illegal as the Tribunal held that the employer indulged in unfair labour practice for non-absorption of the workman and grade and scale of pay which are not covered by the definition of unfair labour practice under Section 2(ra) of the said Act of 1947. According to Mr. Bhanja Chowdhury by holding that the employer indulged in unfair labour practice in the award, the Tribunal travelled beyond the terms of reference as enumerated in Section 10(4) of the said Act of 1947. In this regard, he relied on the decision of the Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, where it was held that the Tribunal cannot travel beyond the terms of reference.

15. Finally it was submitted by the petitioners that during the pendency of this writ petition the said trainee attained the age of superannuation of 58 years, he is no more serving as a trainee of the petitioner No. 1 and as such there is no scope of his absorption in any post. Even if the award of the Tribunal is upheld the trainee can claim only monetary benefit.

16. Per contra, Mr. Uddalak Bhattacharya, Advocate appearing for the Union submitted that the impugned award passed by the Tribunal suffers from no infirmity and there is no merit in any of the contentions raised by the petitioners. According to him in paragraphs 3 and 4 of the said written statement, the petitioner No. 1 had alleged that the Union did not represent sufficient number of workmen and that the case was not taken up by any of the old recognized Unions of the company, there is no community of interest amongst the workmen on the issue referred concerning the said trainee and as such the reference made to the Tribunal has not taken shape of a valid industrial dispute. Mr. Bhattacharya strenuously urged it is the settled law that for the purpose of a dispute becoming an industrial dispute as defined in Section 2(d) of the said Act of 1947 it is sufficient even if such dispute is espoused by, a Union of minority workmen. He placed reliance on three decisions of the Supreme Court in the cases of *The Associated Cement Companies Ltd. Vs. Their Workmen*, *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, and *J.H. Jadhav Vs. Forbes Gokak Ltd.*, . He also sought to distinguish the decision cited by the petitioners in the case of *Deepak Industries (supra)* on the ground that in that case none of the 174 workmen who were dismissed from service was the member of the Union which espoused their cause before the Tribunal and in this factual background of the said case when the employer challenged the authority of the Union to espouse the cause of the said 174 dismissed employees, the Division Bench rendered the said decision. He submitted that in this case the trainee proved, in his evidence, that the Union is a registered Trade Union and he is a member of the Union.

17. Mr. Bhattacharya also relied on the letter dated June 06, 2000 issued by the General Secretary of the Union to the Deputy Labour Commissioner, Government of West Bengal where it was stated that the said trainee supervisor is a member of the Union and the representation of the trainee for absorption in a regular job and payment of his arrears pay and allowance with retrospective effect is wholly and exclusively supported by the Union. He submitted that this letter was proved and exhibited in the proceeding before the Tribunal. He also placed the notices issued by the Assistant Labour Commissioner, the letter dated December 14, 2000 issued by the Union to the Deputy Labour Commissioner requesting the dispute to be referred to the Tribunal for adjudication. After receipt of the said letter dated December 14, 2000 from the Union on June 08, 2001 the order of reference of the dispute to the Tribunal was passed by the State Government and a copy of the said order was also sent to the Union. Thus, according to Mr. Bhattacharya the submission on behalf of the petitioner No. 1 that the dispute was raised by the trainee supervisor alone and not by the Union has no

substance.

18. So far as the decisions relied by the petitioners in the case of Secretary State of Karnataka vs. Umadevi (3) (supra) and Bijli Mazdoor Sangh (supra), Mr. Bhattacharya submitted that those decisions have no manner of application in the instant case as the said trainee was not a casual or temporary worker or a labourer on daily wage basis, nor that the trainee did not possess requisite qualification. He contended that the High Court while exercising power under writ jurisdiction cannot interfere with the factual findings of a labour court. In support of such contention he relied on the decision of the Supreme Court in the case of Amrit Vanaspati Co. Ltd. Vs. Khem Chand and Another, . Mr. Bhattacharya finally submitted that trainee has rendered service to the petitioner No. 1 employer till attaining the age of superannuation, during pendency of this writ petition, there may not be any scope for his absorption in the service but he is entitled to the monetary benefits of absorption and fixation of scale of pay pursuant to the award passed by the Tribunal.

19. Finally, Mr. Bhattacharya also raised objection to the maintainability of the writ petition on the ground that the affidavit affirming the writ petition does not conform to the requirement under Order 19 Rule 3 of the Code of Civil Procedure, as it is stated that the statements contained in paragraph Nos. 1 to 53 and 53 to 56 of the petition are true to the best of the knowledge of the deponent and belief. He also relied on Rule 15 of the Writ Rules of this Court requiring compliance with the provisions contained in Order 6 Rule 15 of the Code of Civil Procedure. In this regard, he placed reliance on the decision of the Supreme Court in the case of Baldev Singh Vs. Shinder Pal Singh and Another, and the decision of the Full Bench of the Patna High Court in the case of Dipendra Nath Sarkar Vs. State of Bihar and Others, .

20. I have considered all the submissions of the counsel for the petitioner No. 1 and the Union respectively and the records of the writ petition. The first question that falls for determination is whether the Union not being a Union representing the majority of the workmen could espouse the dispute of the trainee claiming absorption. So far as the right of a Union to espouse a cause of the workman though not representing the majority of the workmen is no more res-integra. In the decisions cited by the counsel for the Union in the cases of Associated Cement Companies Ltd. (supra), M/s. Western India Match Company Ltd. (supra) and J.H. Jadhav (supra), the Supreme Court has already held that for the purposes of Section 2(k) of the said Act of 1947 it must be shown that: (1) The dispute is connected with the employment or non-employment of a workman. (2) The dispute between a single workman and his employer was sponsored or espoused by the Union of workmen or by a number of workmen and the phrase "the Union" merely indicates the Union to which the employee belongs even though it may be a Union of a minority of the workmen.

21. In the instant case the existence of the Union, a registered trade Union and the factum of the said trainee being a member of the Union have been proved.

Thus, given the aforesaid decisions of the Supreme Court, I am unable to find any merit in the contention of the petitioners that espousal of the dispute of the said trainee by the Union not being a Union of the majority of the employees could not give rise to a valid industrial dispute.

22. The General Secretary of the Union issued two letters dated June 06, 2000 and December 14, 2000 informing the Deputy Labour Commissioner and the Assistant Labour Commissioner respectively of the support of the Union for the trainee's claim for absorption and fixation of grade and scale of pay and this was within the knowledge of the petitioner No. 1. In their letter dated September 10, 2000 addressed to the Assistant Labour Commissioner, the petitioner No. 1 raised no objection with regard to the trainee's dispute being supported by the Union of the minority of the workmen. Thus, there was nothing wrong in the order dated June 08, 2001 passed by State Government referring the dispute to the Tribunal as an industrial dispute within the meaning of Section 2(k) of the said Act of 1947.

23. Further, in the very first paragraph of order of reference dated June 08, 2001 it is expressly stated that an industrial dispute exists between the petitioner No. 1 and their workmen represented by the Union relating to the issues framed therein. It was the Union through its Secretary who was arrayed as the petitioner in the proceeding before the Tribunal and the Union filed the statement of claim before the Tribunal. The averments made in paragraphs 3 and 4 of the written statement of the petitioner No. 1 raised the objection that the Union was not the majority Union. Mr. Bhanja Chowdhury invited me to go through the evidence of the witness of the petitioner No. 1 before the Tribunal. In his examination-in-chief the witness of the petitioner No. 1 only stated that the Union under reference has got no substantial member and he did not question the authority granted by the members to the Union to espouse the cause of the trainee. In the said case of J.H. Jadhav (supra), the Division Bench of the Karnataka High Court set aside an award passed by an industrial tribunal dealing with an Industrial Dispute under Section 2(k) of the said Act of 1947 on the grounds, inter alia, that there was nothing on record to show that the dispute had been espoused by the Union by passing any resolution in that regard. The Supreme Court set aside the said decision of the Division Bench of the Karnataka High Court by holding that the Union must normally express itself in the form of a resolution which should be proved if it is in issue. However, the Supreme Court further held that proof of support by the Union may also be available aliunde and it would depend upon the facts of each case. The Supreme Court further held that in the said case the Tribunal had addressed its mind to the question, appreciated the evidence both oral and documentary and found that the Union had espoused the appellant's case. As stated above in the instant case, the petitioner No. 1 questioned the authority of the Union to espouse the dispute of the trainee only on the ground that it is the Union of the minority workmen and not on the ground of absence of a resolution of the members of the Union, authorizing the Union to espouse the dispute of the trainee. Thus, the factum of the authority

granted to the Union by its members, to espouse the dispute of the trainee was not in issue. Further, as was found in the said case of J.H. Jadhav (supra), in the instant case also the Tribunal had addressed its mind to the question, appreciated the evidence both oral and documentary and found that the Union had espoused the trainee's cause. In these circumstances, I agree with Mr. Bhattacharya that the decision of the Division Bench of this Court in the case of Deepak Industries (supra) where none of the 174 dismissed workmen was a member of the Union who espoused their cause as an industrial dispute, has no application in this case. Thus, I am unable to convince myself to find any illegality in the impugned decision of the Tribunal holding that the dispute of the trainee was espoused by the Union.

24. So far as the second contention of the petitioner No. 1, relying on the decisions of the Supreme Court in the case of Umadevi (3) (supra) and Bijli Mazdoor Sangh (supra) that a trainee cannot claim to be absorbed in the employment of the petitioner No. 1. I find, in the said decisions the Supreme Court held that a person who has not been appointed in terms of the relevant rules appointment and after a proper competition among qualified persons and if a person is appointed on daily wages or casual basis or on temporary employment, he would not be entitled to be absorbed in regular service or made permanent. In the said case of Bijli Mazdoor Sangh (supra) the Supreme Court found that the employee did not possess the requisite qualification. In the instant case, there is no dispute that the trainee held the requisite educational qualification; he was appointed as a trainee under said service agreement dated May 20, 1978 and by no means his appointment as a trainee by the petitioner No. 1 can be equated with any contractual or temporary or casual or ad hoc appointment. Thus, I agree with the submission of Mr. Bhattacharya that none of the said decisions Umadevi (3) (supra) and Bijli Mazdoor Sangh (supra) has any application in this case.

25. With regard to the third contention raised by the petitioners that the dispute raised before the State Government was not with regard to the absorption and grade/scale of pay, for the trainee but only for his claim on account of non-payment of arrears or wages and allowances, I do not find any merit. Mr. Bhanja Chowdhury relied on the various notices issued by the Assistant Labour Commissioner appearing at pages 54 to 62 of the writ petition. In some of the said notices, the subject is mentioned as "alleged non-payment of arrears or wages and allowances with retrospective effect to Sri Prasanta Ghosh." However, in the notice dated June 22, 2000 being Memo No. 1166/51/2000/DLC (at 55 of the petition), it is expressly mentioned that the subject matter of the dispute is the claim of the said trainee for his absorption in a regular job. Further, the letter dated June 06, 2000 (appearing at 52 of the petition) addressed to the Deputy Labour Commissioner by the Union, the subject of the dispute is expressly stated to be for absorption of the trainee, in a regular job and payment of arrears of pay and allowances. Even in the written statement filed before the Tribunal, the petitioner No. 1 did not raise this objection that the dispute raised by the trainee

and supported by the Union was not for the trainee's absorption in a regular post or that the State Government erroneously referred to dispute to the Tribunal. Thus, the contention of the petitioners that the dispute raised by the trainee and espoused by the Union before the Assistant Labour Commissioner was not for absorption and fixation of pay and scale and was only for alleged non-payment of arrears of wages and allowances lacks bona fide.

26. So far as the fourth contention of the petitioners that the trainee failed to discharge his onus to lead evidence in support of the grade and scale of pay, he was claiming, I find that clause 4 of the said service agreement dated May 20, 1978 expressly stated that in case the employee is absorbed on a regular job, he shall be given a starting salary of Rs. 501 in the grade of pay Rs. 501-520-20-700. The said service agreement was proved and exhibited in the proceeding before the Tribunal and in view of scale of pay mentioned in clause 4 of the said service agreement, it cannot be said that the trainee had any obligation to prove the scale of pay at the time of his absorption in service.

27. In the background of the undisputed fact that till the date of the award the trainee had already served the petitioner No. 1 for about twenty seven years at a meager monthly stipend of Rs. 400, the Tribunal made an observation in the impugned award that the employer has indulged in unfair labour practice. From the tenor of the entirety of the award I do not find that by the said mere observation, the Tribunal committed any error of travelling beyond the order of reference dated June 08, 2001. Thus, the said decision of the Supreme Court in the case of Delhi Cloth General Mills Co. Ltd. (supra) cited by Mr. Bhanja Chowdhury has no application this case.

28. Although on the strength of the said decision of the Supreme Court Baldev Singh (supra) and the Full Bench decision of the Patna High Court in the case of Dipendranath Sarkar. Mr. Bhattacharya strenuously urged for dismissal of the writ petition in limine on ground of defect in the affidavit verifying the writ petition. I could not convince myself to accept such contention on two grounds. First, the decision in the case of Baldev Singh (supra) was in an Election Petition and the Supreme Court reiterated the settled principle that verification of an Election Petition, must be done strictly in terms of Order VII Rule 15 of the Code of Civil Procedure. Secondly, in the said decision of Dipendra Nath Sarkar (supra) before the Full Bench of the Patna High Court the deponent who affirmed the affidavit had no authority to file the same and in any event requirement of Order XIX Rule 3 of the Code of Civil Procedure is procedural requirement, they are directory in nature and non compliance therewith would not automatically render the writ petition non est. In this regard reference may be made to the decision of the Supreme Court in the case of Vidyawati Gupta and Others Vs. Bhakti Hari Nayak and Others, .

29. After appreciating all the evidence adduced on behalf of the trainee and the petitioner No. 1, the Tribunal held that the petitioner No. 1 company has failed to substantiate that it ever informed the trainee of his unsatisfactory performance

or the reason for which he could not be absorbed by the company. The Tribunal further held that from May, 1978 the said trainee was made to render service to the petitioner No. 1 for monthly stipend fee of Rs. 400/- for about 27 years and the company just could not produce anything in writing informing the trainee that his service was not upto their satisfaction nor they dismissed him and the management's action of non-absorption of the said trainee in a regular post and not giving him any grade/scale is not justified. The learned counsel appearing for the petitioners could not demonstrate that any of the above findings of the Tribunal in impugned award is vitiated by any perversity. Thus, as held by the Supreme Court in the said case of Amrit Vanaspati (supra) while exercising jurisdiction under Article 226 of the Constitution of India, this Court cannot interfere with the finding of the Tribunal that the management's action of non-absorption of trainee in a regular post and not giving him any grade/scale is not justified.

30. For the reason aforementioned, I find no merit in the writ petition. However, since during the pendency of this writ petition, the trainee attained the age of superannuation of 58 years there is no further scope for his actual absorption in any regular post of the petitioner No. 1 as directed by the Tribunal. The counsel for the Union was correct in his submission that since the trainee has rendered his service to the petitioner No. 1 till the date of his superannuation, he is entitled to receive all monetary benefits from the petitioner No. 1 as per the grade/scale accordingly like other employees with effect from May 20, 1980. Thus, I dispose of the writ petition by directing that the trainee Prashanta Ghosh shall be deemed to have been absorbed to a regular post of the petitioner No. 1 with effect from May 20, 1980 as per the training given to him, having the grade/scale of pay of Rs. 501-520-20-700/- and he shall be entitled to all increments and other allowances till the date of his attaining the age of 58 years as have been granted to the other employees. He shall also be entitled to receive gratuity and provident fund, as per law, on the basis of the grade/scale of pay to be fixed to be applicable as on the date of his superannuation. The difference of the amount receivable by Shri Prasanta Ghosh in terms of this order and the amount received by him as monthly stipend from May 20, 1980 and superannuation benefits, if any shall be communicated by the petitioner No. 1 to Shri Ghosh within June 30, 2015 and payment of the said amount shall be made to Shri Ghosh within July 31, 2015. In the event of any failure to pay the amount receivable by Shri Prashanta Ghosh within July 31, 2015 the petitioner No. 1 shall be liable to pay interest on the sum at the rate of eight per cent (8%), per annum from August 01, 2015 till the date of actual payment.

31. With the aforesaid directions, the writ petition is disposed of. However, there shall be no order as to costs.