

(2012) 03 AP CK 0112

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 888 of 2003

The General Manager, RG-I, Singareni Collieries Company
Ltd., (PO), Godavarikhani, Karimnagar District, A.P.

APPELLANT

Vs

The Presiding Officer, Industrial Tribunal- Chandravihar. M.J.
Road, Hyderabad and The Vice President, S.C. Workers Union
(AITUC), P.O Godavarikhani, Karimnagar District

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 10(2A)

Citation : (2012) 3 ALD 660 : (2012) 4 ALT 476 : (2012) 134 FLR 277 : (2012) LLR 1007

Hon'ble Judges : Nooty Ramamohana Rao, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : Uma, for the Appellant; A. Satya Prasad for Respondent No. 2 and
Sri. E. Sambasiva Pratap, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed

1. This writ appeal is filed by General Manager of Singareni Collieries Company calling in question the correctness of the Judgment rendered by the learned single Judge in W.P.No. 13277 of 1995, dismissing the writ petition instituted challenging the award passed by the Industrial Tribunal-I, Hyderabad in I.D.No. 77 of 1991 on 16.03.1994. When a dispute has been raised by the Workmen's Union relating to denial of promotion to one Sri Nagula Rajam on par with his junior Sri E. Chandraiah, the said dispute was referred by the Government of India, Ministry of Labour by its order dated 06.12.1991 to the Industrial Tribunal for adjudication in terms of Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947. The reference so made reads as under:

Whether the management of SCL, RG-I, Godavarikhani action for not promoting Sri Nagula Rajam, Tub Repairing Maistry, Cat-IV to Cat-I at par with Sri E.

Chandraiah, Tub Repairing Maistry, Cat-V who is junior to him is justified or not? If not, to what relief the workman is entitled to?

That reference was registered as I.D.No. 77 of 1991 by the Industrial Tribunal.

2. Sri Nagula Rajam was examined as W.W.1 and five documents were also got marked as W-1 to W-5. No oral or documentary evidence has been adduced on behalf of the Management of the Singareni Collieries Company. Sri Nagula Rajam has deposed that, he was promoted as Tub Repairing Maistry on 09.09.1979 in GDK No. 5A Incline, Godavarikhani of the Singareni Collieries Company whereas, one Sri E. Chandraiah was promoted to Category-IV Tub Repairing Maistry with effect from 01.03.1980 i.e. a little more than six months after his promotion as a Tub Repairing Maistry. Sri Nagula Rajam was subsequently upgraded to Category-V with effect from 01.07.1990 upon completion of ten years of service under "service linked upgradation scheme" as per the provisions of the National Coal Wage Agreement-IV. The company was conducting a trade test for the Tub Repairing Mazdoors and based upon seniority-cum-merit and availability of vacancies, the selected candidates are upgraded as Tub Repairing Maistries. As per the promotion scheme of tradesmen, upon completion of three years of service, tradesmen will be promoted from Category-IV to Category-V and Category-V to Category-VI, based upon the assessment of their performance of work and their conduct. Though, this Tradesmen promotion scheme is not applicable to Tub Repairing Maistries, the Additional Chief Mining Engineer, under a mistaken impression, has given promotion to E. Chandraiah to Category-IV. However, as the Management realized the mistake, it has rectified the mistake by reverting Sri E. Chandraiah. Then, Sri Chandraiah raised an Industrial Dispute No. 42 of 84. As per the award rendered in I.D.No. 42 of 84, promotion to Sri E. Chandraiah was restored. Since, Sri Chandraiah was junior to Sri Nagula Rajam, he claimed parity. The award passed by the Industrial Tribunal in I.D.No. 42 of 84 has become final. It is important to notice the Industrial Tribunal in I.D.No. 42 of 84 has returned a finding that, the mechanical fitters, the water supply fitters and the tub repairing fitters, though perform three different natures of job, but all of them perform skilled jobs and hence, all of them are liable to be treated as Tradesmen. In that view of the matter, the stand taken by the Management for reverting Sri E. Chandraiah was not found justifiable.

3. We have heard Ms. Uma, learned counsel for the appellant and Sri A.K. Jayaprakash Rao, learned counsel appearing on behalf of the Trade Union. In the face of the material available on the file of the Industrial Tribunal, there is hardly any doubt that, Sri Nagula Rajam was promoted as a Tub Repairing Maistry on 09.09.1979 whereas, Sri E. Chandraiah was promoted to the same category nearly six months later on 01.03.1980. Therefore, Sri E. Chandraiah is liable to be treated and shown as junior to Sri Nagula Rajam. There is nothing improper or illegal about this finding of fact. Further, when Sri Chandraiah was sought to be reverted on the basis that, the promotion which is to be given to Tradesman was erroneously given to him, the Industrial Tribunal passed an award in I.D.No.

42 of 84 clearly declaring the Tub Repairing Maistry also to be a Tradesman and he is also entitled to the benefit of the promotion scheme. The said award in I.D.No. 42 of 84 has become final and all benefits were accordingly restored to Sri E. Chandraiah. In that view of the matter, the Industrial Tribunal has not committed any error in holding that, parity of treatment should be meted out to Sri Nagula Rajam also. In view of these findings and in the absence of any evidence either oral or documentary brought before the Industrial Tribunal, it would be totally unfair for the Management of the Singareni Collieries Company to set up pleadings to the contra. Without availing the opportunity that has been provided to them to lead appropriate evidence before the Industrial Tribunal, when the reference was made by the Government of India, no factual dispute should be permitted or allowed to be raised by it before a Writ Court. All factual disputes are required to be raised by the Industrial Tribunal so that, the Industrial Tribunal will be in a position to adjudicate upon the same and return its findings thereon. Only thereafter, the findings can be scrutinized as to their sustainability. Without raising any such factual dispute properly and getting it adjudicated, it is not at all open to the appellant to agitate any factual dispute before us.

4. It is a settled principle of law that, a senior should not be unjustly denied the benefit, which has been extended to his very junior. In the instant case, Sri Nagula Rajam was senior whereas, Sri E. Chandraiah was his junior. Therefore, Sri E. Chandraiah cannot derive more advantages or benefits, without providing a similar opportunity to his senior namely Sri Nagula Rajam. We, therefore, do not find any merit in this writ appeal and it is accordingly dismissed but however, we prefer not to impose any costs