

(2014) 10 KL CK 0193
In the High Court Of Kerala
Case No : WP (C). No. 20236 of 2013 (D)

The Managing Director

APPELLANT

Vs

Industrial Tribunal

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 2(p)

Citation : (2014) 10 KL CK 0193

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : K. Anand Senior Advocate, Latha Krishnan Joseph Sebastian (Parackal), Advocate for the Appellant; T.J. Michael, Govt. Pleader, C.S. Ajith Prakash, Paul C. Thomas and S.R. Dayananda Prabhu, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The management impugn the award passed against them by the Industrial Tribunal, on a reference initiated by the 2nd respondent; Union of workmen. The dispute revolved around a promotion policy, which inter alia contained a stipulation that promotion from skilled workmen to the cadre of Supervisor (Assistant Engineer) will be confined to ITI holders. The Tribunal found that the said stipulation is discriminatory, insofar as the ITI holders and non-ITI holders were integrated into one cadre and were treated similarly throughout their service.

2. The 2nd respondent seeks to sustain the award and the additional respondents 3 to 16, who are ITI holders who were already promoted to the supervisor cadre, support the management; but only insofar as seeking to sustain their status in their promoted post; without disturbance.

3. The learned Senior Counsel appearing for the management would assail the award on various grounds. It is contended that the promotion policy was arrived at under a valid settlement with the two representative Unions in the year 1991.

The 2nd respondent-Union had been recognized only much later. The promotion policy, which was introduced in the year 1991, was challenged only in the year 2009 on the alleged discrimination between ITI and non-ITI holders. All the workmen had, throughout the intervening period, enjoyed the benefits of the promotion policy and has later on, turned around to challenge a particular stipulation. It is also asserted that specification of qualification for promotion is an exclusive managerial function and considering the duties in the promoted post, there could definitely be classification, especially considering the specialised nature of the work in the supervisory cadre, as brought out in evidence before the Tribunal. There is patent illegality in the Tribunal interfering with the award, is the contention. The learned Senior Counsel would place reliance on *Hardev Singh Vs. Union of India (UOI) and Another*, to counter the contention of the respondent-Union that the fact that ITI and non-ITI holders were recruited together to the cadre of skilled workmen cannot for all time result in equal treatment of the said employees. *M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and Another*, is relied upon to contend that mere performance of similar duties and functions in a post would not deviate from the fact that a classification could be made within such common cadre on the basis of the educational qualification.

4. The Tribunal has elaborately considered the contentions of both the management and the workmen and has also extracted the promotion policy. The stipulation, which leads to promotion to the supervisory cadre, was interfered with as discriminatory, thus answering the reference made as to whether there was denial of promotion to non-ITI skilled workmen, in the affirmative. The findings so rendered, as is indicated in the operative portion, are for the following reasons: The ITI and non-ITI holders were recruited to the same category of skilled workmen and no distinction was sought to be drawn between such different categories and all the workmen were treated equally and seniority too was determined accordingly. The other units of the holding Company did not discriminate between ITI holders and non-ITI holders with respect to promotion to supervisory cadre. The management having accepted the experience in the trade of non-ITI holders as being sufficient, for initial recruitment as skilled workers, there could be no discrimination meted out later.

5. As has been rightly pointed out by the learned counsel appearing for the respondent-Union, this Court is not sitting in appellate jurisdiction and the contours of jurisdiction in examining an award of the Tribunal is limited, insofar as looking at whether there is any patent illegality or perversity in the findings of the Tribunal and whether the findings of the Tribunal are based on any evidence. Re-appreciation of evidence, definitely is not called for. Reliance to that end on *Essen Deinki v. Rajiv Kumar [2002 KHC 1391]* is apposite.

6. The learned counsel for the respondent-Union handed over a document, marked before the Industrial Tribunal as Exhibit P2, being an advertisement dated 03.02.1982, which appeared in a vernacular daily, where unskilled and

skilled/semi-skilled workmen were to be appointed by the parent Company. The learned counsel would in fact assert that there was no distinction in the qualification and ITI was not at all specified as a qualification.

7. However, an analysis of Exhibit P2 [marked before the Tribunal] would be uncalled for, especially since the Tribunal does not at all consider the document, despite it having been produced in evidence; nor was any argument advanced on that count before the Tribunal. In fact the contention of the respondent-Union as recorded by the Tribunal, in the initial part of the award was that at the time of inception of the Company in 1982, the notification inviting the applications for skilled workers prescribed 5 [five] years experience in foundry and in the case of ITI holders the experience was relaxed to 3 [three] years. The assertion before the Tribunal was that this alone was the preference given on the initial selection for appointment and after integration into one cadre, there was no distinction at all between ITI and non-ITI holders. Hence, the contention based on the notification cannot at this stage be countenanced by this Court, since that would lead to reliance on a material which was not specifically spoken of before the Tribunal or considered by the Tribunal and would lead to re-appreciation of evidence.

8. This Court is not convinced that the contention of the management with respect to there being a binding settlement with the representative Unions can be accepted. The Tribunal had specifically found that the settlement did not disclose that, it had been arrived at under Section 2(p) of the Industrial Disputes Act, 1947, neither in the course of a conciliation proceedings nor drawn up in the proper manner, a copy of which had been sent to the appropriate Government and the conciliation officer. Rule 59 of the Kerala Industrial Disputes Rules, 1957 was also referred, to negative the contention of the management. There is no scope for interference on such findings and the promotion policy arrived at, purportedly under a settlement between the management and the workmen, would nevertheless be liable to be examined by the Industrial Tribunal.

9. Examining the promotion policy, it is seen that guidelines are laid down for promotion of unskilled workmen to the skilled category, skilled workmen [from Grade VII to Grade I] and skilled workers to the supervisory category. Different qualifying years are prescribed for promotion from unskilled to skilled and within the various grades under the skilled category. For promotion to the post of Supervisor, an ITI or equivalent qualification is a must and a graduation is insisted upon for promotion to the ministerial category.

10. The learned counsel for the respondent-Union argued that there is a finding of fact by the Tribunal, that there is no change in the work in the promoted category and relies on paragraph 11 in the 14th page of the award. It is to be noticed that the said paragraph is an extract from the promotion policy and it merely states "placement of the employees in the promoted grade will not entitle any change in the nature of duties performed...". The said stipulation is definitely applicable only to the promotion between various grades within the skilled

category and does not at all refer to the promotion to the supervisory cadre.

11. Paragraph 11 of the promotion policy dealing with the supervisory grade, in fact, assumes significance.

"11. The number of vacancies in the supervisory grade or in skilled category will be analysed with the help of an Industrial Engineer and will be published by the Management from time to time in consultation with the unions and the vacancies will be filled from among the eligible workers as per the promotion policy in the ratio mentioned in clause 3 above. Any employee otherwise qualified will be allowed to apply against the open quota irrespective of the provisions in the promotion policy, i.e., skilled worker with Diploma/Degree or an unskilled worker with technical/non-technical qualification can apply against the open quota, for supervisory/skilled category respectively irrespective of the number of experience and such candidates will be considered separately".

The management, hence, speaks of an open merit appointment to the supervisory cadre, wherein a skilled worker with diploma or degree or an unskilled worker with technical or non-technical qualification can apply, irrespective of the number of years prescribed to decide the eligibility for promotion as per the promotion policy. This clearly brings out the intention of the management to have a higher qualification for recruitment to the supervisory cadre; whether it be by direct recruitment or by promotion.

12. Coupled with this, is the specific contention of the management that the management is running a sophisticated foundry unit, where the pattern and moulds are made as per the casting requirement of customers, which involved development of patterns as per the drawings forwarded by the customers; which makes the job in the supervisory category technical in nature, for which, necessarily, a technical qualification is warranted.

13. The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, dealt with a classification on the basis of educational qualification after persons appointed directly and by promotion were integrated to a common class of Assistant Engineers. The promotion from the feeder category was confined to the graduates in exclusion to diploma holders, which the Hon'ble Supreme Court found to be not violative of Articles 14 and 16 of the Constitution of India. The classification based on the educational qualification was held to be not one resting on an unreal or unreasonable basis. The higher educational qualification was held to be presumptive evidence of a higher mental equipment and the prescription was upheld as one achieving administrative efficacy in the engineering services. Para 55 is extracted herein:

"We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders

does not violate articles 14 and 16 of the Constitution and must be upheld".

14. M.P. Rural Agriculture Extension Officers Association (*supra*) was a case in which different pay scales were prescribed, on the basis of educational qualification, to employees purportedly performing similar duties and functions. The Hon"ble Supreme Court found the same to be not arbitrary or discriminatory.

15. In view of the binding precedents, it cannot be held that the view of the Tribunal that merely because the ITI holders and non-ITI holders were performing the very same work in the category of skilled workmen can lead to a presumption that the promotional avenues should also be the same. It is borne out from the pleadings that while the ITI holders were specifically conferred with a promotional avenue to the supervisory cadre, the non-ITI holders were conferred with a monetary benefit, viz., "Master Scale", on completion of five years thereon and also a separate promotional avenue as is evident from para 6 of the promotion policy:

"An employee from the skilled category can apply for promotion test to the supervisory category on completion of 4 years service in GI grade, subject to conditions regarding qualification, attendance and performance. Two separate grades namely S2 and S1 above GI category will be created along with the next Long Term Agreement for those skilled workers who do not possess ITI qualification and hence not eligible for being considered for promotion to E14. An employee who completes five years service in S2 grade will be considered for promotion to S1 grade subject to other conditions".

This position is continuing from 1991 onwards and there is no evidence on record to indicate that which of the employees recruited together were granted the promotion and who were all continued in the master scale with a monetary benefit. The plea of discrimination remains unsubstantiated, for lack of evidence. The Union merely asserts integration to a cadre to allege discrimination.

16. The findings of the Tribunal with respect to the ITI and non-ITI holders being treated equally in the category of skilled workmen cannot be the sole reason to find the prescription of promotional opportunity to ITI holders to be discriminatory. The further finding that in other units of the holding Company there is no discrimination with regard to promotion to the supervisory post between ITI holders and non-ITI holders is on the sole deposition of a management witness. The said fact does not, however, necessarily lead to conclusion of an equal treatment in the management unit also, especially when there is absolutely no evidence with respect to the work involved in the other units of the holding Company. There is also no contention or evidence that even when the management-Company was a unit under the holding Company, the workmen in the different units were interchangeable. The mere fact that other units offered a promotional avenue to ITI holders cannot, hence, lead to a conclusion of discrimination between the ITI and non-ITI holders, in the subject Company under the management, a different legal entity, carrying on quite

distinct nature of work.

17. One another finding of the Tribunal is that the management had accepted experience in the trade as sufficient qualification for recruitment as skilled workers. The Tribunal itself has found that at the time of recruitment ITI qualification could not have been made mandatory for recruitment of skilled workmen, since at that point of time ITI courses were not offered in many trades. It was, hence, the recruitment was made to the post of skilled workers from ITI holders and non-ITI holders, the latter, on establishing experience in the field. Apposite would be a reference to the words of Krishna Iyer, J. in the concurring judgment in Triloki Nath Khosa (supra):

"However, in those young days few engineering graduates in the State and few engineering colleges in the country compelled Government to recruit diploma holders and promote them to higher offices. But circumstances have changed, needs have increased, availabilities have expanded and inequalities at the educational level have been partly eliminated. And so personnel policy, with an eye on efficiency, has changed".

That would be more significant in 1991 when the promotion policy was introduced; a decade and a half later from Triloki Nath Khosa (supra)..

18. Further, even at the time of recruitment, the ITI holders were given a preference, insofar as prescribing a lesser experience. The fact of there having been a common cadre, hence, does not deviate from the fact that the ITI holders had a higher educational qualification, which was given due weightage at the time of selection to the cadre; from which, they have also been granted a promotional opportunity based on their qualification. The finding of the Tribunal that the stipulation of a promotional opportunity confined to ITI holders, is discriminatory; hence is found to be a perverse view not possible of being arrived at on a reasonable analysis of the facts and the available evidence.

On the above reasoning, Exhibit P3 award of the Industrial Tribunal will have to be set aside. This Court does so. The writ petition would stand allowed, leaving the parties to suffer their respective costs.