

(2004) 12 BOM CK 0070
In the Bombay High Court
Case No : Writ Petition No. 972 of 2003

Union of India (UOI)

APPELLANT

Vs

K.M. Chaudhari and Others

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 33(C), 33(C)(2)

Citation : (2005) 3 BomCR 884

Hon'ble Judges : Rebello F.I., J

Bench : Single Bench

Advocate : Suresh Kumar, for the Appellant; T.R. Yadav, for the Respondent

Final Decision : Allowed

Judgement

Rebello F.I., J.—The respondents on account of failure by the petitioners to grant them promotion had sought reference. An award came to be passed in favour of the respondents dated 20-1-1995. The award was in the following terms:

"1. The management of Western Railway, Bombay are not justified in

i) in not including the names of 28 khalasis Helpers working under SEF (TRS) Bombay Central in the seniority list issued vide No. E.L.T. 1030-1-6(TRS) dated 16-7-88 and issued vide No. E.L.T. 1030-1-6(TRS) dated 16-7-1988 and

ii) in not including the names of 28 khalasi helpers in the list of eligible candidates for "Dastkari Pariksha" issued by the Divisional Railway Manager vide No. ELT-1130-1 (TRC) dated 13-7-88.

2. The management is directed to revise the seniority list based on promotion or upgradation as on 1-1--84,

2-A. The management is also directed to give promotions to these workers as per the seniority to skilled category.

3. The management is also directed to give them all the consequential benefits

arising out of the said gradation lists and seniority.

4. The management to pay Rs. 28,00/- as the cost of this reference to the claimants."

2. The petitioners herein subsequent to the order passed in reference held examination. The results were declared and by memorandum dated 22-7-1998 the respondents were declared to have passed the examination and consequent thereafter office orders were issued to the petitioners in terms of the award. By the said office orders, the respondents were given back dated promotion and their pay was fixed based on that date. It is also given promotion and their pay also fixed. However, the arrears of pay was not paid. That was only paid from the date of actually passing of the order. The respondents being aggrieved by the office orders, preferred an applications u/s 33(C) of the Industrial Disputes Act contending that considering the terms of the order of reference which are directed consequential benefits, the petitioners who were given promotion from the back date would be also to be entitled to the arrears of salary. The learned Presiding Officer of the Labour Court on an application by the respondents was pleased to allow the applications and directed payment of arrears and allowances arising out of promotion in view of the award dated 20-1-1995. On failure to pay within time as set out therein, the petitioners were directed to pay interest thereon., It is this order, which is subject-matter of the present reference.

3. On behalf of the petitioners, their learned Counsel contends that the order of learned Labour Court is without jurisdiction and or disclosing error of law apparent on the face of record in as much as the learned Labour Court did not consider para 228 of the Indian Railway Establishment Manual (I.R.E.M.). It is pointed out that the office orders were passed on the said paragraph. I.R.E.M. are the rules in force. The respondents therefore, were not entitled to any amounts of arrears contrary to para 228. It is therefore, contended that the order of the learned labour Court be set aside.

4. On the other hand on behalf of the respondents, their learned Counsel points out that the respondents were wrongfully denied their promotions. The Industrial Tribunal allowed the reference and directed that the seniority is re-fixed. Once there was directed to pay all consequential benefits, it is submitted that the petitioners had no choice but to comply with the award of the Reference Court. The Labour Court has merely allowed application u/s 33(C)(2) based on the award and consequently cannot be said that the order suffers from any error of jurisdiction and or for that matter any error of law apparent on the face of record. The petition is therefore, to be baseless.

5. The issue before this Court is whether considering para 228 of the I.R.E.M. the Labour Court who was within jurisdiction to direct payment of back wages. Para 228 reads as under :

"228. Erroneous Promotions. - (1) Sometimes due to administrative errors, staff are over-looked for promotion to higher grade could either be on account of

wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types :

(i) Where a person has not been promoted at all because of administrative error, and

(ii) Where a person has; been promoted but not on the date from which he would not have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-viz. their juniors already promoted, irrespective of the date of promotion, pay in the higher grade on promotion may be filed proforma at the paper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

6. Reading of Section 228 would show that the para provides for fixation of pay from the date of promotion. The para, however, also sets out that no arrears on this Court shall be payable as such promotion with back date was not shouldered with duties and responsibilities of the higher post. The question that emerges is even though the Reference Court would be within its jurisdiction to consider application u/s 11A of the Industrial Disputes Act, 1947 to issue directions, is it open to such Reference Court to pass order which would be contrary to the condition of services which are applicable to the workman. It may be mentioned that in the matter arising before the Central Administrative Tribunal, Ernakulam Bench in the case of M. Balkrishna Nair v. Divisional Personnel Desk Officer, had taken a view that the employee will be entitled to the benefit of the salary from the date he was granted promotion and not from the actual date from which the promotion was given and directed that the said clause be treated as deleted. The matter was taken up before the Apex Court which pleased to hold that the Tribunal was not right in directing deletion of the clause and accordingly allowed the appeal to that extent. In other words para 228 or the clause subsists.

7. On behalf of the respondents, their learned Counsel contends that once the Tribunal passed the order and consequential benefits of the pay, the petitioners could not have been denied or interpret the award in their own terms. Reliance is placed in the judgment of Food Corporation of India v. S.N. Nagarkar, 2002(1) L.L.N. 1165 to contend that once the order of back dated promotion, a party who has been granted such back dated promotion, cannot be denied arrears of back wages. Reliance is then also placed on the judgment of Division Bench of Orissa High Court in Dr. Jugal Kishore Satpathy v. State of Orissa and Ors., 2003 Lab.I.C. 33 to contend that if the party has been denied promotion and consequential promotion was granted, the promotee then cannot be denied benefit of back wages. Reliance is also placed in the judgment of the learned

Single Judge of Patna High Court in the case of Sitaram Prasad Srivastava v. State of Bihar and Ors., 2002(93) F.L.R. 1199 to contend that the person who is denied promotion but has subsequently granted promotion cannot be denied back wages. Lastly reliance was placed in the judgment of the Apex Court in the case of Vasant Rao Roman v. Union of India, J.T. 1993(2) S.C. 451. In that case, arrears were not granted following memo. The Apex Court held that memo was not applicable.

8. Having considered the case of the parties and the law as declared by the Apex Court, there is no clear and fast rule by which in every case of back dated promotion that the courts are bound to award back wages or the monitory benefits. It depends on the facts and circumstances of each case. In the instant case, the issue squarely to be considered is para 228 of I.R.E.M. was it open to the Tribunal to grant arrears of back wages contrary to what is set out in I.R.E.M. In my opinion the answer must clearly to be in the negative. Even though the Industrial Tribunal in the course of adjudication can rewrite the contracts, none the less when there are valid rules made which have the force of law, unless that rule bye-law or notification is struck down, it will not be open to the Tribunal or the Court to bypass the rule or notification and grant relief contrary to it. The relief in these circumstances, must be tailored bearing in mind the condition of service applicable to the parties. If para 228 provides the case of back dated promotion only for fixation of pay and not arrears, and if the case of the respondents fall within the parameter of the said paragraph, then it was not open to any Court or Tribunal to grant the relief for the same.

9. Having said so, on examining the issue before me from the orders of the Reference Court i.e. Industrial Court it is not clear whether the expression consequential benefits means back wages. The Labour Court however, has construed the expression "consequential benefits" in the award to also mean back wages. In the normal course that interpretation would have been lawful and justified. In the instant case, however as pointed out as there was rule in force namely para 228, then the award of the Tribunal when it speaks of consequential benefits must be read to mean the consequential benefits in terms of the condition of service as applicable to the workman. In the instant case the respondent herein. In the instant case, para 228 clearly provided for the case of denial of promotion, particular pay to be given has to be fixed. Once that was the case, the Labour Court in granting relief has acted without jurisdiction and or the order clearly discloses error of law apparent on the face of the record.

10. The view taken by me stands fortified by the view taken by the Division Bench of this Court in Shri Jaysing Rangarao Raut Vs. Maharashtra State Electricity Board, wherein after considering a similar rule, the learned Division Bench held that no arrears of wages could have been awarded.

11. Considering above; the petition will have to be allowed.

In the light of that, petition made absolute in terms of prayer Clause (a). There

shall be no order as to costs.