

(2003) 11 AHC CK 0027
In the Allahabad High Court

U.P. State Electricity Board

APPELLANT

Vs

Vijai Tripathi and Another

RESPONDENT

Date of Decision : 25-11-2003

Acts Referred:

Electricity (Supply) Act, 1948 — Section 5

Citation : (2005) 104 FLR 413

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Judgement

Rakesh Tiwari, J.—Heard Counsel for the parties and perused the record.

The U.P. State Electricity Board was constituted u/s 5 of the Electricity Supply Act, 1948 and u/s 79-C of the aforesaid Act, the Board has powers to frame regulations laying down service conditions for recruitment, employment etc. for its employees. The regulations framed in exercise of aforesaid provisions are statutory in nature and are applicable on all the employees of the Board. No recruitment or promotion can be made in violation of statutory regulations framed in exercise of powers conferred u/s 79-C of the aforesaid Act. The respondent-workman in the year 1995 claimed that the work of Noter and Drafter is being taken from him and therefore, he raised an Industrial Dispute through Government in exercise of powers u/s 4-K of the U.P. Industrial Disputes Act, 1947 vide order dated 17.7.1995 for adjudication to the respondent No. 2 in following terms:

Kya Sevayojako Pwara Apne Shramik Vijai Tripathi Putra Shri Ram Manorath Tripathi Pad Shramik Shiftdin Vibhag Account Branch Bijli Ghar (Kesa) Kanpur Ko Uski Karya Ki Prakriti Ke Anusar Noter Evam Drafter Ka Padnam Evam Tadnusar Vetanman Na Diya Jana Anuchit Tatha Athwa Aavidhanik Hai? Yadi Hai, To Sambandhit Shramik Kya Labh/Anutosh (Relief) Pane Ka Adhikari Hai? Kis Tithi Se Tatha Anya Kis Vivran Sahit?

The Labour Court on 30.3.1996 debarred the employers from submitting their

written statement. The petitioner moved an application on 26.4.1996 along with written statement inter alia, stating that they could not submit the written statement in the case as no such employee i.e. Vijai Tripathi son of Sri Ram Manohar Tripathi as mentioned in the order of reference is working in their administrative department, out one Vijai Tripathi son of Sri Ram Manohar Tripathi is working who has claimed the designation of Noter and Drafter and the delay in filing the written statement had accrued due to time taken in verification of records as the percentage of petitioner was incorrectly given. It was prayed that the order dated 30.3.1996 be recalled in the interest of justice and, their written statement be taken on record. The application was rejected by the Labour Court and the written statement of the petitioner was not taken on record. However, he was permitted of file the rejoinder statement.

2. The post of Noter and Drafter is of Ministerial Cadre and the recruitment and promotion to this post is governed by U.P. State Electricity Board Ministerial Establishment (Office of the Chief Engineer and other "Subordinate Officers) Regulations, 1970. It may be stated that there is no post with the designation of Noter and Drafter in these Regulations and the posts are either Junior Noter and Drafters for Senior Noter and Drafter is a promotional post and the posts are filled by promotion from amongst confirmed Routine Grade Clerks. The post of Routine Grade Clerks are filled by competitive examination conducted by the Electricity Service Commission. It may be further stated that the educational qualification for the post for the post of Junior Noter and Drafter is bachelor degree of a recognized University or an equivalent qualifications whereas the qualifications for Routine Grade Clerk is Intermediate from Board of High School and Intermediate Education U.P. or examination recognized as equivalent thereto by the Governor.

3. It is further contended by the petitioner that the workman respondent did not possess requisite qualification for the post of Noter and Drafter as he was only Intermediate and the entire approach of the Labour Court is perverse and is against the evidence on record. It is vehemently denied that the work of Noter and Drafter was ever taken from the respondent-workman.

4. The respondent-workman gave his evidence on 1.5.1997 in support of his case stating that he was discharging the work of Noter/Drafter since his appointment. Sri M.P. Gupta, Assistant Accounts Officer also corroborated the existence given by the workman before the Labour Court that the workman was working as Noter and Drafter.

5. Counsel for the petitioner contended that the respondent-workman was appointed as "Shramik" and is performing the duties of Labourer only.

The channel of promotion from Labourer to Noter/Drafter is as under:

Channel of Promotion From Labourer to Noter/Drafter Senior Noter Drafter (Grade 1200-1800) | Junior Noter and Drafter (Grade Rs. 1100-1575) | Routine Grade Clerk (Grade Rs. 1000-1360) | Labourer (Shramik) (Grade Rs. 900-1190)

6. It is submitted that the appointment to the post of Routine Grade Clerk is made by the Electricity Service Commission and as the river side power house of Kanpur Electric Supply Administration is closed since 1991 there is over staffing and the employees have become surplus and no appointment is being made on the post of Routine Grade Clerk and that the post of Noter and Drafter does not exist in the river side over house at Kanpur. It was also submitted that the promotion is a managerial function and can not be a subject matter of Industrial Dispute.

7. Counsel for the respondent workman states that the employer indulged unfair labour practice and though the respondent workman was given a legislation of Shramik but he was performing the duty of Noter and Drafter under the instructions of the superior officers and thus, he is entitled to be given, the corresponding pay scale of Noter and Drafter. Documents were produced before the Labour Court on behalf of the workman in order to establish that he was working as Noter and Drafter and not as labourer. Though these documents were got summoned by the workman but were not produced by the employer Copies of the documents summoned were filed by the workman as secondary evidence and proved. They were also admitted by the employer. After appreciation of pleadings and evidence the Labour Court gave a finding of fact that the respondent workman was actually working as Noter and Drafter. It is also submitted that the post of Noter and Drafter is three ladders above to the post of Labour and he can not be granted promotion by the Labour Court in the garb of granting designation and pay scale over three ladders in promotion and that if discriminately the workers who are three ladders below the post are given higher posts there will be heart burning among the sincere and honest workers who are patiently waiting for their turn to get promotion and the Industrial peace will be jeopardized if these honest and deserving persons are aggrieved if promotions are given to undeserving and unqualified persons.

8. It is not disputed by the petitioner that the respondent-workman was Intermediate and was qualified for Routine Grade Clerk. From the facts narrated.