

(2004) 11 AHC CK 0152

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 30849 of 2002

U.P. State Road Transport Corporation

APPELLANT

Vs

Ramesh Kumar Yadav and Others

RESPONDENT

Date of Decision : 08-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 6 AWC 5342 : (2005) 1 UPLBEC 247

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : M.M. Sahai, for the Appellant; S.N. Dubey, CSC, for the Respondent

Final Decision : Dismissed

Judgement

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

2. This writ petition has been filed challenging the validity and correctness of the award dated 12.6.2001 passed by the Labour Court in Adjudication Case No. 104/96.

3. Respondent No. 1 was appointed as a Cleaner on 17.7.1981 in the Fazalganj Depot, Kanpur Region of the petitioner-Corporation. He claims that he was qualified for the post of Assistant Store Keeper/Junior Clerk. The petitioner started taking work from him of the aforesaid post. He raised a demand for giving him the designation and pay scale of Assistant Store Keeper/Junior Clerk which was not paid heed to by the employers and as such he raised the following industrial dispute which was referred to the Labour Court (2), U.P., Kanpur and was registered as Adjudication Case No. 104/96 : -

^^D;k lsok;kstdksa }kjk vius Jfed jes"k dqekj ;kno iq= jke n;ky ;kno in&Dyhu] Qtyxat fMiks] dkuiqj {ks= dks mlds dk;Z dh iz?fr ds vuqlkj lgk;d HkaMkjiky@dfu"B fyfid dk inuke rnuqlkj osrueku ficl in nature ;k tkuk pkfg, \\ ;fn gka] rks fdl frfFk ls rFkk vU; fdl fooj.k lfgr **

"Whether the designation of Assistant Store Keeper/Junior Clerk and accordingly the pay scale should be given by the employers to their worker Ramesh Kumar Yadav S/o Ram Dayal Yadav, Cleaner, Fazalganj Depot, Kanpur Region according to the nature of his work? If yes, from which date and why?

4. On receipt of summons the employers did not file any written statement before the Labour Court in spite of several opportunities granted to them. They also did not file any documentary evidence before the Labour Court in support of their case even though they were again and again granted opportunities for submitting the documents. On the contrary the worker not only filed his written statement but also filed three documents along with a list of documents 11-B (2) and 21 documents along with another list of documents 12-B (2) in support of his case. He also filed an application (paper No. 20-D) for summoning of original copies of the documents which had been filed with the aforesaid application. In spite of an order passed by the Labour Court for submitting the said documents the petitioner did not produce the documents summoned by the Labour Court.

5. The workman gave his evidence and details of his duties, which he alleged to have performed pursuant to the oral directions/orders of the Assistant Regional Manager in the year 1990-91. According to him he was attached with the Store Keeper in the Store department to do the work of maintaining in cards, posting in ledgers, issue store goods on indents, requisition of store goods from the Regional Office and preparation of statement of store goods every month etc.

6. Shri Mohd. Ilyas, the witness on behalf of the employers, also corroborated the evidence/statement of the workman. He had stated in his statement (23-C) that he was working as a Senior Foreman in the Fazalganj Depot and no clerk was deputed there, as such the respondent-workman performed all the clerical works and prepared statements etc. The relevant extract of his evidence is as under :-

o"KZ 93 esa tc mudh rSukrh Qtyxat fMiksa esa twfu;j QksjeSu ds :i esa gq;h Fkh ml le; fookn ls lacaf/kr Jfed QksjeSu dk;kZy; esa dk;Z dj jgk Fkk vkSj vc Hkh QksjeSu dk;kZy; esa dk;Z dj jgk gS A {ks=h; izca/kd ,oa Isok izca/kd ds ;gk? Is tks vkns"k vkrs gSa] mlesa ls dqN LVsVesaV okn ls lacaf/kr Jfed }kjk cuk;k tkrk gS A fookn ls lacaf/kr Jfed ls Dyhuj dk dk;Z ugha fy;k tkrk gS A muds }kjk mPp vf/kdkfj;ksa ls fyfid dh rSukrh dh ekax dh gS] ijUrq muds ;gk? Isok izca/kd }kjk dksbZ fyfid rSukr ugha fd;k x;k gS A okn Jfed vkt Hkh deZpkjh dh mifLFkfr IEcU/kh dk;Z ?bathfu;fjax foHkkx esa? muds ns; ikokauksa ds Hkqxrku ds laca/k esa fy[kk i<+h clksa ds laca/k esa tks vkns"k muds }kjk fn, tkrs gSa mudh fy[kk i<+h vkSj mPp vf/kdkfj;ksa dks tks LVsVesaV Hksts tkrs gSa mudh Hkh muds funsZ"kkuqlkj fookn ls lacaf/kr Jfed }kjk cuk;k tkrk gS lwph 20@Mh ds is-d-40 ,oa 42 ds uhys xksy ?ksjs esa muds gLrk{kj gSa A muds LFkku ij dksbZ fyfid rSukr ugha fd;k x;k gS fookn ls lacaf/kr Jfed }kjk gh fyfid; dk;Z muds dk;kZy; esa fd;k tkrk gS A**

7. Shri Sandeep Laha, the second witness on behalf of the employers, stated in

his statement (paper No. 25-C) that he was deputed as the Assistant Regional Manager in the Fazalganj Depot. He denied the claim of the workman that he was working as the Assistant Store Keeper there. He states that he was employed as a Cleaner and the work of Assistant Store Keeper was never taken from him. In his cross-examination he admitted that the Senior Foreman could tell as to who performed the clerical works.

8. The Labour Court on the basis of oral evidence as well as documentary evidence Exs. 12, 13 and 14 as well as 19, 20, 21, 22, 23 and 24 held that the workman worked as a Clerk in the office of the Senior Foreman Shri Mohd. Ilyas during the relevant period and that his application for designating him as the Assistant Store Keeper/Junior Clerk and for granting corresponding pay scale of the same was forwarded by him along with his comments. The Labour Court further held that there was scarcity of clerks in the Fazalganj Depot and therefore, clerical work was taken from the workman.

9. In *The Workmen and Others Vs. Hindustan Lever Ltd.*, , it has been held that the Tribunal can decide the industrial dispute regarding promotion also. In paragraphs 11 and 12 of the said decision it has been held :-

"11. Since the decision of the Constitution Bench of this Court in *All India S.M. and A.S.M.'s Association v. General Manager, Central Railway* (6), it is well-settled that equality of opportunity in the matter of public employment guaranteed by Article 16(1) not only ensures it at the time of entry in public employment but ensures it even in the matter of promotion also. If equality in the matter of promotion is constitutionally guaranteed as the fundamental right, it is time to reconsider this archaic view of the *laissez faire* days that promotion is a Management function. The whole gamut of labour legislation is check, control and circumscribe uncontrolled managerial exercise of power with a view to eschew the inherent arbitrariness in the exercise of such functions. In the decisions of this Court it is assumed without controversy that promotion is a managerial function. It may have to be re-examined in an appropriate case. But it is not necessary to go so far in this case and we would proceed on the assumption that the passing observation made by the Constitution Bench in *Brooke Bond* case settled the law as far as this country is concerned that promotion is a Management function though we would like to point out that the expression "terms of conditions of employment" would ordinarily include not only the contractual terms and conditions but those terms which are understood and applied by the parties in practice or habitually or by common consent without ever being incorporated in the contract. In England, it is settled law that promotion is comprehended in the expression "terms of employment of the employees". In *British Broadcasting Corporation v. Hearn and Ors* and in *R. Industrial Disputes Tribunal and Anr. v. Ex parte Queen Mary College, University of London*, it was held that claim for promotion is connected with terms of the employment of the employees.

12. Even on the footing of the law, as it stands at present in this country, the

promotion is a Management function, the industrial dispute referred to the Tribunal was not one for claiming promotion. The Tribunal committed a grave error in so mis-interpreting the dispute referred to it. The Tribunal overlooked the fact that the demand was in respect of workmen already promoted i.e. in respect of whom managerial function of selecting personnel for promotion had been already performed. The demand was in respect of already promoted workmen, may be in an officiating capacity, for their classification from acting or temporary to confirmed that is permanent, in the higher grade to which they were promoted, after a reasonable period of service which according to the Union must be three months of service. By no canon of construction, this demand could be said to be one for promotion. Therefore, the decision in Brooke Bond case and followed in the case of this very employer had no application to the facts of this case and the Tribunal misdirected itself in rejecting the reference on this narrow ground."

10. No other point has been argued or pressed.

11. The workman had proved his case before the Labour Court and the Labour Court on the basis of documentary as well as oral evidence that the workman was discharging the duties of Assistant Store Keeper/Junior Clerk has recorded a finding of fact. As the employers had not produced the original documents in spite of summoning the same by the Labour Court adverse inference was drawn by it. It was further held that the evidence led by the second witness of the employers Shri Sandeep Laha ,was contrary to the evidence led by their own witness Shri Mohd. Hays, Senior Foreman. According to Shri Laha it was the Senior Foreman to verify the fact whether the workman performed the duties of a Clerk or not. Shri Mohd Ilays, first witness of the employers who was also, the Senior Foreman, verified this fact and as such the Labour Court rightly discarded the evidence of the second witness Shri Sandeep Saha. Ordinarily granting of promotion is a managerial function but as the labour Court has recorded a finding of fact that the respondent-workman was working as a Clerk in the petitioner-establishment, hence he was entitled for corresponding pay scale of the post of Assistant Store Keeper/Junior Clerk.

12. The findings of fact recorded by the Labour Court are based on evidence led by the parties before it. The Labour Court for recording the findings has given cogent and convincing reasons. There is no perversity or illegality in the impugned award. It is not a case, which requires interference by this Court in exercise of extraordinary powers under Article 226 of the Constitution.

13. The writ petition is accordingly dismissed. Interim order dated 5.8.2002 is discharged. No order as to costs.