

(2009) 01 AHC CK 0204

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31731 of 1998

U.P. State Road Transport Corporation Central Workshop,
Kanpur and others

APPELLANT

Vs

Vimal Mishra and others

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2009) 121 FLR 118

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : J.N. Singh and Vivek Saran, for the Appellant; S.N. Dubey, B.N. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard the learned Counsel for the parties.

The Petitioners have challenged the award of the Labour Court, by which two workers have been given the pay scale and designation of a Senior Clerk/Office Assistant Grade I w.e.f. January 1990.

2. The facts leading to the filing of the writ petition is, that four workers had raised a reference u/s 4-K of the U.P. Industrial Disputes Act. The terms of the reference order was "whether the four workers are entitled to be given the designation and pay scale of a Senior Clerk/Office Assistant Grade I on the basis of work, which they were performing ? If so, to what relief are the workers are entitled to and from which date?

3. The workers in the written statement contended that they are working in the legal cell department of the U.P. State Roadways Corporation and were deputed to do necessary pairvi before the Labour Court. Tribunal, etc. and were entrusted the task of filing written statements, affidavits, various documents, etc. and that as per the order of the Corporation dated 27.1.1977, such work was required to

be done only by a Sr. Clerk/ Office Assistant Grade I. The workers contended that they were designated as Junior Clerk/ Office Assistant Grade II and were being paid the wages on that scale and that the Corporation, by adopting an unfair labour practice, was taking the work of Senior Clerk/ Office Assistant Grade I. The workers, therefore, prayed that on the basis of work which they were performing, they were entitled to be given the necessary fitment on that post and, consequently the pay scale.

4. The Petitioners also filed the written statement and denied the claim raised by the workers and submitted that in the Legal Cell, Senior Clerks as well as Junior Clerks are deputed to do the legal work of the department, and there is no distinction of the Work entrusted to the Senior Clerk or to the Junior Clerk. The employers further took a stand that the post of Senior Clerk can only be filled up by way of promotion on the basis of seniority from the seniority list of Junior Clerks posted in the legal department. The employers further took a stand that it

was not a case of fitment but a case of promotion which is outside the jurisdiction of the Labour Court and that if the workers are given the designation of a Senior Clerk, the same would jeopardise the seniority list since the workers in question are way down in the seniority list prepared by the employers.

5. The Labour Court after considering the material evidence on record found that the stand taken by the employers was incorrect and accordingly allowed the claim of two of the workers, namely, the claim of Vimal Mishra and Jai Prakash and denied the claim of Sri Dinesh Tewari and Vimal Pandeya. The Petitioners, being aggrieved, has filed the present writ petition.

The learned Counsel for the Petitioners submitted that the Labour Court, by giving the designation of a Senior Clerk to the workers in question, has disturbed the seniority list and that the Labour Court has not considered the factum that the workers were way down on the seniority list and that the post of Senior Clerk could only be filled up by way of promotion from the senior most person in the seniority list of the Junior Clerks. The learned Counsel also submitted that there was no distinction of the distribution of work in the Legal Cell between a Junior Clerks and Senior Clerk which distinction has net been considered by the Labour Court in spite of evidence being filed.

6. Having heard the learned Counsel for the Petitioners, this Court finds that the submission raised is bereft of merit and that the award of the Labour Court does not require any interference. The Labour Court has considered the impact of the order of the employer dated 27.1.1977 which document was proved and admitted before the Labour Court. This document categorically states that the work performed by the employees in the Legal Cell of the department to do pairvi in the legal cases before the Labour Court, High Court and Tribunal and other Courts, would be done by a Senior Clerk/Office Assistant Grade I and that the work will not be performed by a Junior Clerk. This document has not been denied by the Petitioner before the Labour Court or before this Court.

7. In the light of this document, the stand taken by the Petitioners and the submissions made before this Court falls through and it becomes immaterial if the seniority list is disturbed or the post of a Senior Clerk is filled up by a person who is junior in the seniority list. It is not a case of promotion but a case of fitment. The Labour Court has categorically found that the two workers were performing the work and doing pairvi of legal cases before various Courts which fact has not been denied by the employer. As per the order of 27.1.1977, the work performed in the legal cell was required to be done by a Senior Clerk. The employers deputed the workers to do when pairvi of the cases and paid the wages of a Junior Clerk which in the opinion amounts to an unfair labour practice. Consequently, the Court finds that the Labour Court was justified in granting the fitment to the workers in the pay scale of Senior Clerk/Office Assistant Grade I with effect from January 1990, i.e., the date when the dispute was raised before the Conciliation Officer.

In view of the aforesaid, this Court does not find any infirmity of the award passed by the Labour Court. The writ petition fails and is dismissed. In the circumstances of the case, there shall be no order as to costs.