
(2012) 05 AHC CK 0082

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17313 of 1997

U.P.S.R.T.C. and Another

APPELLANT

Vs

Brij Nandan Lal and Others

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2012) 7 ADJ 121 : (2012) 134 FLR 385

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : V.M. Sahai, M.M. Sahai and Mayank, for the Appellant; B.N. Singh and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard Sri Mayank, Advocate, holding brief of Sri M.M. Sahai for the petitioner and Sri B.N. Singh, Learned Counsel appearing for respondent No. 1. This writ petition is directed against the award dated 31st October, 1996 of Labour Court (5), U.P. Kanpur in Adjudication Case No. 64/1990 whereby it has held that respondent workman Sri Brij Nandan Lal is entitled for designation and post of Store Clerk w.e.f. 6.12.1989 with all consequential benefits.

2. The facts in brief given rise to the present dispute are as under:

3. The workman Brij Nandan Lal admittedly was engaged as Mazdoor on 1.6.1963 in Farrukhabad Depot of erstwhile State Transport Department of U.P. Government which subsequently became Uttar Pradesh State Road Transport Corporation (hereinafter referred to as "UPSRTC") a statutory body under State Road Transport Act. He claims that after promotion of one Om Prakash Shakya, Store Clerk as Assistant Store Keeper on 1.2.1979, post of Store Clerk fell vacant and the authorities concerned deployed the workman Braj Nandan Lal to perform duties of Store Clerk. He has functioned and discharged the aforesaid duties but

has not been given designation and other consequential benefits of the said post. He raised an industrial dispute in 1989. The conciliation proceedings having been failed on the recommendation of Conciliation Officer, the State Government in exercise of power u/s 4-K of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "Act 1947") vide notification dated 6.12.1989, made the following reference for adjudication by Labour Court respondent No. 2:

4. The workman filed a detailed written statement and also adduced certain documents to show that he had been performing certain duties which are clerical in nature. The documents also include his own letter in which he has claimed to have been discharging duties as Store Clerk since 1979 and therefore claimed regular appointment on the said post. A document said to be letter dated 17.7.1986 sent by Deputy Manager, Central Zone recommending for regular appointment of the workman in stores was also filed before the Labour Court.

5. The employer, on the contrary, took the stand in the written statement that the workman was a permanent Mazdoor i.e. a Class IV employee and was never appointed on the higher post of Store Clerk by any competent authority in accordance with procedure prescribed in the rules. In fact the workman was employed to function under the Store Keeper and discharge duties of unskilled nature. He did not function as Store Clerk at all. In any case it is submitted that ministerial post of Class III i.e. Store Clerk is a promotional post from a Class IV employees and in the garb of designation, promotion cannot be allowed.

6. The Labour Court by means of the impugned award, however, has answered the reference in favour of the workman.

7. Sri Mayank, Learned Counsel appearing on behalf of the petitioner contended that by means of impugned award the Labour Court in effect has granted promotion to the workman concerned ignoring statutory provisions under which such promotion could be made from the employees working as Class IV and therefore, Labour Court acted wholly illegally has also exceeded its jurisdiction. He placed reliance on the decision of this Court in U.P.S.R.T.C. Vs. Imtiaz Ahmad and Others,

8. Sri B.N. Singh, however, appearing on behalf of the workman submitted that it is a simple case of granting designation and status to the workman and not a promotion and in fact, it is a case of fitment". He placed reliance on Apex Court's decision in Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited, and this Court's decisions in National Textile Corporation (U.P.) Ltd. Unit : Swadeshi Cotton Mills Vs. Presiding Officer, Labour Court I and Others, , Nagar Mahapalika, Gorakhpur v. Labour Court, Gorakhpur and others, 1997 (75) FLR 147, U.P. State Road Transport Corporation Vs. Ramesh Kumar Yadav and Others, and Civil Misc. Writ Petition No. 27769 of 1995 (M/s Swadeshi Cotton Mills v. The Presiding Officer and others) decided on 10.3.2003.

9. I have heard Learned Counsel for the parties and perused the record.

10. The question up for consideration is, "whether here is a simple case of fitment or in the garb of granting designation and post, the Labour Court has granted promotion to the workman".

11. From the impugned award as also the pleadings it is evident that appointment on a post of Clerk in UPSRTC is governed by statutory rules framed by the petitioner- Corporation as also the departmental instructions issued in this regard. Learned Counsel for the petitioner pointed out that on a clerical post there are two sources of recruitment namely direct recruitment and promotion of Class IV employees. It is not disputed that the workman never participated in a selection for a clerical post as a direct recruit. He has also not been promoted thereon by the Competent Authority after following the procedure prescribed for promotion. It is also evident that the petitioner employer took a specific stand that there was no post of Store Clerk at the place where workman was posted and this fact could not be contradicted by the workman. The Labour Court itself has observed that if the post was not available, the workman ought to have been allowed pay and salary admissible to a clerical staff on the principle of "equal pay for equal work". In my view the Tribunal has clearly misdirected itself by ignoring that in order to apply principle of "equal pay for equal work" existence of a post has to be shown. Even otherwise, no principle of service jurisprudence has been shown to exist that a person if not recruited or employed in accordance with the procedure prescribed, yet, if worked or discharged duties of a particular nature, he would have a lien and right to claim a particular designation and even if it does not exist.

12. The concept of "holding over" has been held inapplicable in the matter of employment by the Apex Court in *State of Orissa and Another Vs. Mamata Mohanty*, and the Court said:

The concept of adverse possession of lien on post or holding over are not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed on post does not create any right in his favour.

13. Here is not a case where the workman was appointed by the competent authority following a procedure prescribed in law on a particular post and thereafter a dispute was raised in respect to the nature of appointment or category of appointment or classification of appointment like permanent, temporary, ad hoc etc. The decision of Apex Court therefore in *Workmen Employed by Hindustan Lever Ltd. (supra)* would not apply to the facts of this case, inasmuch as, there it was a case where workmen were already promoted on the post of which they were claiming benefit and it was only the nature/ classification on the said post which was disputed, as is evident from para 12 of the judgment wherein the Apex Court has observed:

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.

14. The dispute in the present case, in my view, is akin and covered by the law laid down by Apex Court in U.P. State Sugar and Cane Development Corporation Limited Vs. Chini Mill Mazdoor Sangh and Others, , wherein the workmen were employed as seasonal workman but they claimed to have worked throughout the year like permanent workmen and hence claimed benefit of a permanent workmen. The reference was made "whether the workman can be declared permanent". The Labour Court answered the reference in favour of the workmen. The Apex Court referring its earlier Constitution Bench judgment in Management of Brooke Bond India (P) Ltd. Vs. Workmen, and Workmen Employed by Hindustan Lever Ltd. (supra), held in paras 21, 22, 23 and 24 as under:

21. That there are different categories of workers employed in the sugar industries, and, in particular, during the crushing season, is not disputed by any of the parties. It is not denied that apart from the permanent workmen, the other categories of workmen are employed during the crushing season which begins in the month of October in a given year and continues till the month of April of the following year. It is the period during which the sugarcane crop is harvested, and, thereafter, transported to different mills where they are crushed for production of sugar. Admittedly, as will appear from Standing Order No. 2, a muster- roll of all employees, who are not permanent, is maintained by the different sugar mills and at the beginning of the crushing season the seasonal labour who had worked during the previous crushing season are asked to join their duties for the crushing season in their old jobs. It is also not denied that the pay scales of the different categories of workmen are different.

22. It has been submitted on behalf of the appellant that even when the seasonal workmen are employed during the off season they are paid the same wages as are paid to them during the crushing season, which is one of the basic distinctions between them and permanent workmen who are on the rolls of the sugar mills. It is also an admitted position that, in terms of the policy followed by the sugar mills, promotions are given from one category to the next higher category depending on the number of vacancies as are available at a given point of time. Even in the instant case, of the 39 workmen referred to in the terms of reference, 13 had been made permanent by the appellant which supports the case of the appellant that promotion is given from one category to the higher categories as and when vacancies are available and that such function was clearly a managerial function which could not have been discharged by the Labour Court.

23. We are in agreement with the views expressed by the Constitution Bench of

this Court in the Brooke Bond case (supra) as also those of the three-Judge Bench in the Hindustan Lever case (supra). In our view, this is not a case of fitment depending on the nature of the work performed, but a case of promotion as and when vacancies are available. Both the Labour Court as well as the High Court do not appear to have considered this aspect of the matter with the attention it deserved and proceeded on the basis that this was a case where the respondent Nos. 2-15 had been denied their right to be categorised as permanent workmen on account of the nature of the work performed by them throughout the year. The High Court has, in fact, merely relied on the findings of the Labour Court without independently applying its mind to the said aspect of the matter.

24. We, therefore, accept the submissions advanced by Mr. Upadhyay and allow the appeal. The Award of the Labour Court and the Judgment of the High Court impugned in this appeal, are set aside.

15. Applying the criteria laid down by the Apex Court, here also, from a Class IV post a workman is promoted in cadre which is a Class III, as and when the vacancy are available, after following the procedure prescribed in law therefore what was claimed by the workman was promotion and not a mere fitment. The mere fact that a person is discharging duties of a particular nature would not entitle him to claim a right to the post or else other benefits of that post unless he is appointed on the post in accordance with the procedure prescribed in law.

16. From the award of Labour Court it also does not appear that the whole sole duties, responsibilities and obligations of Store Clerk were conferred upon the workman. Whatever said by the workman, even if is accepted, it only shows that he was allowed to discharge some duties of clerical in nature but that by itself does not mean that he was given full fledged responsibility of a Class III post with all attending obligations, liabilities and consequences. This aspect has been considered by this Court in U.P.S.R.T.C. Kanpur v. Imtiaz Ahmad (supra) and in paras 7, 8 and 9 the Court held as under:

7. Moreover, directing prospective grant of designation and pay-scale is nothing but promotion ignoring the claim of other similarly situate workmen. Labour Court did not even bother to verify as to whether any post of mechanic was vacant or not.

8. Merely, because a person possesses minimum qualification, he cannot be granted promotion. Possessing such qualification is only one of the necessary prerequisites. The others inter alia are availability of the post in the next grade and consideration of all other similarly situate employees and their seniority in the feeder cadre. Promotion in U.P.S.R.T.C. is governed by Rules and Regulations. Labour Court cannot by-pass the same. If such type of approach is approved then any officer may unduly favour any of his subordinates by taking the work of higher grade from him and thereafter that person obtains from the labour Court award for grant of pay scale and designation of the said higher post.

9. A mechanic is required to perform different types of jobs. Particular type of job may require different types of operations. Some stages of an operation may be quite simple requiring to be performed even by unskilled labour other stages may be gradually complicated requiring to be performed by more competent mechanics. Merely because a mechanic of lower grade is also involved in a particular job it does not mean that he is entitled to be automatically promoted to the higher grade mechanic who is also involved in the same type of job.

In my view, this judgment squarely apply to the present case.

17. The question whether it is a case of promotion or not has not been considered by this Court in U.P. State Road Transport Corporation v. Ramesh Kumar Yadav and others (supra) where the issue was raised whether question of non promotion would be an industrial dispute or not was considered and decided which is not the issue raised in this case. The aforesaid judgment, therefore, would have no application to the case in hand.

18. Similarly in Nagar Mahapalika, Gorakhpur (supra) also the issue whether it is a case of promotion or not was not considered hence the said decision does not constitute a precedent binding on this Court and has no applicable to the present dispute.

19. In National Textile Corporation (U.P.) Ltd. (supra), the Court has held that promotion is a managerial function but then it has recorded its finding in short that in the matter before the Court that was not a case of promotion and therefore the Court did not interfere with the award of the Labour Court. The judgment is a short judgment and does not apply to the facts of the case where the appointment of the post is governed by the statutory provision framed namely U.P. State Road Transport Corporation Employees (Other than Officers) Service Regulation, 1981.

20. In view of above discussion, in my view, the impugned award of Labour Court cannot sustain. The writ petition is allowed. The award dated 31st October, 1996 (Annexure 1 to the writ petition) passed by Labour Court (5), U.P. Kanpur in Adjudication Case No. 64/1990 is hereby set aside.

21. No order as to costs. However, the benefit, if any, with respect to the salary etc. if already given to the workman concerned, the petitioner shall not recover the same.