
(2011) 05 AHC CK 0321
In the Allahabad High Court
Case No : Writ C. No. 21459 of 2000

U.P.S.R.T.C.

APPELLANT

Vs

Imtiaz Ahmad and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (2011) 5 ADJ 348 : (2011) 6 AWC 5641 : (2011) 130 FLR 458 :
(2011) LLR 977

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. This writ petition is directed against award dated 29.10.1999 given by Presiding Officer Industrial Tribunal(3) U.P. Kanpur in adjudication case No. 341 of 1990. The matter which was referred to the labour court was as to whether action of Petitioner employer of not giving designation and pay scale of mechanic to the Respondent No. 1 (who was semi skilled labour) was just and valid or not.

3. In the Petitioners concern there are 5 posts on which persons doing mechanical work are appointed which are to the following effect:

Unskilled, semi skilled, skilled, specialist and specialist grade I. (Mechanic is equivalent to specialist grade-I)

4. The case of the union and Respondent No. 1 was that Respondent No. 1 was performing the job of mechanic. The case of the employer was that there was no sharp division of work among the above 5 categories of employees and in any case promotion and that also after skipping several stages could not be given to Respondent No. 1 by the labour court. The case of the workman was that he was performing the duty of the mechanic since 1975-76. The labour court held that Respondent No. 1 had passed I.T.I. in motor mechanic trade that he was initially

appointed as un-skilled labour and thereafter promoted to the post of semi skilled labour. Respondent No. 1 contended that he performed certain duties like examining the engine, checking and making list of the missing and damaged parts etc. which were the jobs performed by Mechanics. He did not state that none of these jobs are ever performed by semi skilled or skilled labours. On the bald allegation that work of a particular post is being taken grant of pay scale and designation of higher post is not warranted. For such claim to succeed there must be adequate pleading and evidence giving in detail the respective duties of both the posts. It must also be pleaded and proved that the claimant workman is not performing any of the duties of the post which he is holding but is performing exclusively the duties of the higher post. The burden to prove these facts lies upon the workman. In the instant case no such effort was made by the workman. Labour court rejected the contention of the employer that the Respondent No. 1 was asking for promotion. Labour court held that what Respondent No. 1 was asking was payment according to nature of work. Ultimately, it was directed that w.e.f. the date of reference i.e. 19.09.1990 Respondent No. 1 should be given pay and designation of mechanic.

5. The labour court has actually granted promotion which can not be done by it. In this regard reference may be made to U.P. State Sugar and Cane Development Corporation Ltd. v. Chini Mill Mazdoor Sangh AIR 2009 SC 387. Moreover labour court has granted triple promotion by skipping intermediary grades i.e. of skilled and specialist.

6. There was absolutely no explanation by Respondent No. 1 that why dispute was raised after 15 years. It is interesting to note that Respondent No. 1 was appointed as unskilled labour in 1974 and was promoted to the post of semi skilled labour in 1978 still before the labour court in the year 1990 he asserted that since 1975 he was performing duty of mechanic.

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 can not 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.

10. Learned Counsel for the Petitioner has cited some of my earlier judgments and a judgment delivered by Hon. D.P. Singh, J. on 07.11.2005 in writ petition No. 21029 of 1996 where awards like the one impugned in this writ petition have been set aside.

11. I do not agree with the argument of learned Counsel for the Respondent No. 1 that it was a case of fitment. In the written argument submitted by learned Counsel for the Respondent No. 1, itself it is mentioned in para 7 that Respondent workman was placed at serial No. 20 in the seniority list instead of serial No. 2. If there was anything wrong in the seniority list then the same should have been challenged. It could not be avoided by simply asserting that Respondent No. 1 was performing the duty of higher grade. During arguments reliance was placed upon Article 39(d) of the constitution. The reliance is misplaced. On the other hand giving promotion to the Petitioner by ignoring others is clearly violative of Article 14 and 16 of the Constitution. Reliance upon M/s. Mackinnon Mackenzie and Co. Ltd. Vs. Audrey D'costa and another, is also utterly misplaced as in the said authority it has been held that ladies and gents stenographers should be paid similar pay. There was no allegation of Respondent No. 1 that he was being paid less than other semi skilled labours.

12. However, Respondent No. 1 has retired on 30.06.2009 and learned Counsel for the Petitioner has stated that under interim order dated 08.05.2005 passed in this writ petition the awarded amount (which came to about Rs. 1,60,000/-) was deposited and half of that has been withdrawn by the Petitioner.

13. Accordingly, writ petition is allowed impugned award is set aside. However, the amount of about Rs. 80,000/- which has been withdrawn by the Respondent No. 1 shall neither be refundable nor adjustable in his retiral dues. All his retiral dues shall be paid forthwith to him treating him to be working as semi skilled labour until he retired.

14. However if since the date of award till his retirement, Respondent No. 1 had become entitled to promotion (or further promotion) then for the purposes of calculation of retiral dues he must be deemed to have retired from the said promotional post.