
(2002) 02 AHC CK 0049

Allahabad High Court

Case No: C.M.W.P. No. 20263 of 1999

U.P. State Road
Transport Corporation

APPELLANT

Vs

Sayeed Mohd. and
Another

RESPONDENT

Date of Decision: Feb. 4, 2002

Acts Referred:

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 4A

Citation: (2002) 2 AWC 1087 : (2002) 94 FLR 1225 : (2002) 2 UPLBEC 118 : (2002) 2 UPLBEC 1118

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Advocate: Vivek Saran and Ajay Singh, for the Appellant; V.K. Barman and Pankaj Barman, S.C., for the Respondent

Final Decision: Dismissed

Judgement

Anjani Kumar, J.

This writ petition was dismissed after hearing the counsel for the parties by me vide order dated 4.2.2002 for the reasons to be recorded later on.

2. Now here are the reasons for dismissing the writ petition.

3. The respondent-workman raised an industrial dispute which has been referred by the State Government u/s 4K of U. P. Industrial Disputes Act which runs as under :

^D;k Isok;kstkdssa }kjk vius Jfed Jh lbZn eksgEen i; ½iq= Jh gwcnkji; ½ lgk;d eSdsfud dks eSdsfud ds in ij izksUur u fd;k tkuk mfpr rFkk@vFkok oS/kkfud gS \ ;fn ugha rks IEcfU/kr Jfed D;k fgrykHk@{kfriwfrZ i; ½fjyhQi; ½ ikus dk vf/kdkjh gS dli frfFk Is ,oa vU; fdu fooj.kksa lfgr **

4. The case set up by the concerned workman was that he was appointed after selection in trade test in the year 1958 on the post of Cleaner. He possessed the certificate of High School and a certificate from Government Polytechnic in the Motor Mechanic Trade also. The workman concerned was promoted by the order dated 11.4.1961 on the post of Fitter. That after coming into existence of U. P. State Road Transport Corporation, the workman was declared permanent vide order dated 31.10.1973 on his substantive post and was promoted on the post of Assistant Mechanic w.e.f. 12.5.1978. According to workman concerned in view of the Government order dated 4.5.1965, it is clear that such of the employees who have completed two years trade course from Government Polytechnic in the Motor Mechanic Trade are eligible for the post of Motor Mechanic. The workman concerned goes on to say that even after 25 years of service, he is still working as Assistant Mechanic and has not been promoted on the post of Motor Mechanic. The workman concerned further says that the persons junior to him who are less qualified, have been promoted on the post of Motor Mechanic but the workman concerned was excluded. This clearly shows that the employers are biased and prejudiced against the workman concerned.

5. That the workman is not promoted inspite of the representation made by him. It was, therefore, prayed that the workman concerned should be promoted on the post of Motor Mechanic w.e.f. October, 1981.

6. The case set up by the employer is that the concerned workman was appointed on the post of Cleaner in the year 1958 and he was promoted on the post of Fitter on 11.4.1961 and thereafter he was promoted on the post of Assistant Mechanic and is working as such. It is further stated by the employers that at present, there is no vacancy in the grade of Motor Mechanic and the concerned workman has worked as Assistant Mechanic. A technical objection was also raised on behalf of the employers that the dispute should not have been referred to the Labour Court, as the remedy to the concerned workman is available before the U. P. Public Services Tribunal. The allegation of bias was also denied.

7. The labour court after considering the rival pleadings and evidence on record has arrived at the conclusion that by the Government Order dated 4.5.1965, the workman concerned may be eligible for promotion but since there is no post, he was not promoted. The labour court has further found that the employers cannot be said to be biased or prejudiced because for the reason stated that the workman was not promoted and since there is no vacancy on the post of Motor Mechanic, the labour court cannot issue a direction for promotion of the workman concerned. The labour court has further found that only on the ground that the persons who are junior to the workman concerned, have been promoted and. therefore, the action of the employers is biased, is not correct. The promotion to the post of Motor Mechanic was amongst the eligible persons working in the grade of Assistant Mechanic and is based on seniority-cum-merit. The labour court as a fact found that there was no vacancy in the grade of Motor Mechanic, therefore, labour court declined to grant any relief to the workman concerned. Labour court has further

recorded one more reason for not granting any relief to the workman concerned though the workman concerned claimed that the persons junior to him have also been promoted but the two persons have not been impleaded. In the facts and circumstances of the present case, and according to the law laid down in the case of *Jaswant Singh v. State of U. P.*, 1986 (53) FLR 25, it is held that the non-impleadment of persons who are said to be superseded to the workman concerned is fatal and no relief in the absence of such persons who are said to be junior and promoted instead of workman concerned, can be granted.

8. In this view of the matter, the labour court answered the reference against the workman. Aggrieved by the aforesaid award the workman concerned preferred a writ petition being Writ Petition No. 4044 of 1987 which has been allowed by order of this Court dated 13.5.1993 with the following directions :

"In view of the circumstances made above, the writ petition is allowed and the award of the labour court dated 13th August, 1986, Annexure-3 to the writ petition, is set aside and the Labour Court is directed to decide the matter afresh possibly within a period of four months from the date of production of a certified copy of this order.

As Sri Kamal Ahmad, Shri Harish Chand Chaudhart and Vinod Kumar (Vinod Massey) have been promoted and their right may be affected in case the petitioner is promoted and placed senior to them, the Labour Court shall Implead them as parties and give opportunity of hearing to them also before finally adjudicating the rights of parties.

It will be open to the parties to lead fresh evidence in the matter.

The parties shall bear their own costs."

9. On remand, the parties were allowed to adduce fresh evidence as directed by this Court and the labour court answered the reference that non-promotion of the petitioner is because of the bias and prejudice because of the fact that the employers have not produced any documentary evidence which has been sought for by the workman concerned. It was, "therefore, directed by the labour court that the concerned workman should also be promoted at least w.e.f. the date from which Harish Chand Chaudhari and Vinod Massey have been promoted on the post of Motor Mechanic and the workman shall be treated to have been promoted on the post of Motor Mechanic till the date he retires from service and whatever consequential benefits were attached to the post of Motor Mechanics, shall be payable to the workman concerned.

10. It is this award which has been challenged by the employers before this Court by means of the present writ petition.

11. The finding recorded by the labour court that the non-promotion of the workman concerned is because of the bias and prejudice of the employer is a finding of fact after considering the evidence on record pursuant to the remand order of this Court.

12. Learned counsel for the petitioner has not been able to demonstrate that this finding recorded by the labour court can be said to be either perverse or suffers from error of law.

13. In this view of the matter, this being a finding of fact, this Court will not interfere in exercise of power conferred under Article 226 of the Constitution of India.

14. For the reasons stated above, the writ petition is dismissed. Interim order, if any, stands vacated.