

**(2011) 01 AHC CK 0143****Allahabad High Court****Case No:** Writ C No. 12559 of 1989

U.P. State Electricity Board and  
Another

APPELLANT

Vs

P.O. Labour Court and Another

RESPONDENT

**Date of Decision:** Jan. 21, 2011**Hon'ble Judges:** Sibghat Ullah Khan, J**Bench:** Single Bench**Final Decision:** Disposed Of**Judgement**

Sibghat Ullah Khan, J.

Heard learned Counsel for the parties.

2. This writ petition is directed against award dated 02.02.1989 given by Presiding Officer, Labour Court, U.P. Agra in Adjudication Case No. 8 of 1986. The matter, which was referred to the labour court, was as to whether the action of the Petitioner employer of not giving the post and designation of R.G.C. (Routine Grade Clerk) to its workman Badri Singh Yadav son of Narain SinghYadav (represented by Union, Respondent No. 2 in this writ petition) was just and valid or not. The case taken by the Union on behalf of the workman was that the workman was appointed on the post of Mate on 04.10.1973, however with effect from the date of appointment the work of R.G.C. was taken from him.

3. The dispute was raised in the year 1984 {being C.P. Case No. 205 (Agra) of 1984}. The labour court held that since the time of his appointment, the workman was doing the work of R.G.C., hence he must be given designation and pay-scale of R.G.C. with effect from the date of his appointment, i.e. 04.10.1973. An interim order was passed on 15.02.1993 staying the operation of the impugned award until further order.

4. The labour court has held that workman had mentioned that for different periods he had done the work which is normally performed by R.G.C. like the work of billing,

preparation of reconciliation statement, sending of dak, preparation of stationery account and receipt book etc., job of dak dispatch in revenue section and entry in the register, the job of scrutiny of new connections and worked in the office of Fund Officer, Agra.

5. The case of the Petitioner employer was that the post of R.G.C. was to be filled up after competition however on the request of the workman concerned he was permitted to do some work, which was normally performed by R.G.C. so that he could gain some experience and knowledge, which could be helpful to him when he would appear in the examination. The workman admitted that he appeared in the examination for the post of R.G.C. in the years 1976 and 1981. The workman further stated that the result of the said examination had not been declared. It was further stated on behalf of the Petitioner employer that for appointment on the post of R.G.C. departmental examination was held which was arranged by Electricity Service Commission. The witness of the employer further stated that Executive Engineer never directed the workman to perform duty of R.G.C. The labour court held that it was proved that the workman performed some duties which are normally performed by R.G.C.

6. Firstly, the labour court did not address the question of undue delay. The case of the workman was that since 1973 he was working on the post of Mate. Raising the dispute in 1984, i.e. after 11 years, was fatal as held by the Supreme Court in the following authorities:

1. [Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar,](#)
2. [Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal,](#)
3. [Haryana Urban Development Authority Vs. Om Pal,](#)

7. Secondly, appointment on the post of R.G.C. could be made only when some one passed the departmental examination. The workman admittedly appeared in the departmental examination twice i.e. in the year 1976 & 1981, but could not qualify the same. Even if it is assumed that he was working/ discharging some of the duties of R.G.C., he could not be directed to be given the designation and pay-scale of R.G.C. The labour court has actually granted promotion, which is not permissible vide U.P. State Sugar and Cane Development Corporation Ltd. v. Chini Mill Mazdoor Sangh AIR 2009 SC 387. If the view taken by the labour court is accepted to be correct, then unscrupulous Executive Engineers or other officers can promote any employee even though he may not have qualified the departmental examination by taking from him the job of the higher post.

8. Labour court has not recorded any categorical finding that the workman was performing only and only the duties of R.G.C. and no work which is normally performed by Mate was being taken from him.

9. Learned Counsel for the Petitioner has supplied Uttar Pradesh State Electricity Board Ministerial Establishment (Offices of the Chief Engineer and Other Subordinate offices) Regulations, 1970. Under Regulation 5(d) dealing with Sources of Recruitment, it is provided that Routine Grade Clerks are to be appointed through direct recruitment on the result of a competitive examination. Learned Counsel for the Petitioner has cited two authorities of the Supreme Court reported in [Randhir Singh Vs. Union of India \(UOI\) and Others,](#) and Daily Rated Casual Labour v. Dak Tar Mazdoor March 1988 SCC 138. In these authorities, it has been held that equal pay must be given for equal work. The said authorities are not applicable to the facts of the case. The third authority cited is Workmen of M/s Williamson Magor and Co. Ltd. v. M/s Williamson Magor and Co. Ltd. 1982 (44) FLR 71. That was a case where junior was promoted. However, in the instant case, there is no evidence that any junior was promoted merely on the basis that he was performing the work of R.G.C. Juniors were promoted on the ground that they qualified the examination.

10. However, labour court has recorded the finding that some jobs of R.G.C. were being performed by the workman. In the aforesaid authority of [Haryana Urban Development Authority Vs. Om Pal,](#) it has been held by the Supreme Court that even if the workman is legally not entitled to any relief still some damages may be awarded to him.

11. Accordingly, impugned award is set aside and substituted by a direction that after retirement (which is to take place in this very month, i.e. January, 2011). The workman concerned shall be paid an amount of Rs. 50,000/- as damages.

12. Writ petition is accordingly disposed of.