

Kanpur Dugdh Utpadak Sahkari Sangh Ltd. Vs Presiding Officer, Labour Court (I), U.P. Dugdh Shala Mazdoor Sabha and Nirmal Chandra Misra

Court: Allahabad High Court

Date of Decision: Sept. 13, 2005

Acts Referred: Uttar Pradesh Co-operative Societies Act, 1965 â€" Section 2
Uttar Pradesh Industrial Disputes Act, 1947 â€" Section 4K

Citation: (2005) 6 AWC 6193 : (2005) 107 FLR 753

Hon'ble Judges: D.P. Singh, J

Bench: Single Bench

Advocate: G.D. Misra, for the Appellant; Ranjit Saxena and Rajesh Tiwari and S.C., for the Respondent

Final Decision: Allowed

Judgement

D.P. Singh, J.

Pleadings are complete and the learned counsel for the parties agree that this petition may be disposed off finally under the

Rules of the Court.

2. Heard learned counsel for the parties.

3. This writ petition is directed against an award of the labour court dated 19.11.2003 published on 23.3.2004 by which the respondent workman

has been granted the promotional pay scale of Rs.570-1100 corresponding revised scale of Rs.1400-2600.

4. Kanpur Dugdh Sahkari Sangh Ltd., Nirala Nagar, Juhi, Kanpur is a Central Milk Cooperative Society within the meaning of Section 2(d-l) of

U.P. Cooperative Societies Act, 1965 and is governed by it and the Rules framed there-under. The respondent-workman was appointed as Junior

Clerk (Route) on 17.12.1973 in the pay scale, of Rs.200-320/-, while one N.S. Gautam was also appointed on the said post on 14.12.1974.

Both were appointed in the Marketing Department. Sri Gautam was temporarily transferred to Time Office vide order dated 15/16.10.1975 but

the respondent workman continued to work in the Marketing Department. Vide order dated 9/11.3.1976 Sri Gautam was granted 20% pay as

officiating allowance and he was designated as Assistant Time Keeper vide order dated 21.10.1978. He was designated as Time Keeper with

effect from 21.7.1979 in pursuance of an Award in Adjudication Case No. 5 of 1978, whereafter he lodged Adjudication Case No. 63 of 1988

for the enhanced scale of Rs. 570-1100 on the strength of Industry and Region wise basis as other Milk Cooperatives were giving that scale,

which was allowed to him vide Award dated 20.11.1989 with effect from 13.5.1988. The respondent workman raised no objection to the said

designation of Sri Gautam and in due course of time, as per the Seniority list of Marketing Department the workman was retrenched vide order

dated 20.8.1983. This resulted in a reference u/s 4K of the U.P. Industrial Disputes Act, which was registered as Adjudication Case No. 6 of

1986 where an award was rendered in his favour on 28.3.1988 reinstating him with full back wages together within continuity of service and all

benefits. He was reinstated as Junior Clerk (Route) and he was granted selection grade with effect from 1.11.1984 and was also designated as

Assistant Sales Supervisor with effect from 25.1.1989 like the others in his cadre. Subsequently he was designated as Sales Supervisor vide order

dated 28.10.1993. Thereafter, the respondent workman claimed that since he was senior to Sri Gautam he should also be entitled to the same pay

scale which was not granted by the management and thus the present reference and award.

5. Before we proceed to consider the arguments, it would be convenient to consider the reference, the case of the parties and the reasons given by

the Labour Court.

The reference, as loosely translated in English was; ""Whether the employers were justified in refusing to promote and grant the pay scale of Rs.

570-1100, revised scale Rs. 1400-2600 to Sri Nirmal Chandra Mishra son of Nand Lal Mishra, Assistant Supervisor, General Shift of Marketing

Section, as was granted to his junior Sri N.S. Gautam on his promotion after 22.8.1983? If no, to what relief the workman is entitled?

6. The case of the employer before the Labour Court was that Sri Gautam was transferred from the Marketing Cadre to the Time Cadre by order

dated 15/16.10.1975 and vide order dated 9/11.3.1976 he was granted 20% pay as officiating allowance due to the nature of his work. He was

designated as Assistant Time Keeper by order dated 21.10.1978 and was designated as Time Keeper with effect from 21.7.1979 in view of the

Award in Adjudication Case No. 7 of 1978. It was further alleged that the establishment remained closed between 1981-1983 and 208

employees, including the workman, were retrenched in according to their seniority in the Marketing Cadre which was challenged by him where an

Award was given in his favour in Adjudication Case No. 6 of 1986 in pursuance thereof he was allowed to join duties with effect from 20.6.1988.

Since the Award had granted continuity of service and other benefits also, the workman was given the selection grade with effect from 1.11.1984

vide order dated 11.4.1989 and thereafter designated as Assistant Sales Supervisor in the Marketing Cadre with effect from 5.8.1987 vide order

dated 8.8.1990 and thereafter he was designated as Sales Supervisor vide order dated 19.4.1993. It was further contended that the Marketing

Cadre and Time Cadre were different where the nature of work, responsibility etc. discharged by different employees was entirely different to

those of the Marketing Cadre and both could not be compared. It was also stated that the workman did not raise any objection from 1975 till the

date of his retrenchment and even thereafter for the last about a decade and therefore he acquiesced in the arrangement which cannot be changed

nor he can be treated at par with Gautam.

7. The case as set up by the workman was that since both were appointed as Junior Clerk (Route) where the workman was senior, his transfer to

the Time Office Department could not change the seniority and in view of the Award dated 28.3.1988 he was entitled to promotion and enhanced

pay scale.

8. The Labour Court found that in Adjudication Case No. 6 of 1986 lodged by the workman the Award was for grant of continuity of service with

all benefits and therefore he should have been promoted to the same pay scale as Sri Gautam who was his junior from the same date and mere

transfer to the Time Office could not change the seniority.

9. Learned counsel for the petitioner has firstly urged, and correctly, that the reference itself was defective because it presupposes the promotion of

Gautam after 22.8.1983. It is no where denied that Sri Gautam was promoted/designated as Time Keeper vide order dated 21.7.1979 and the

pay scale of Time Cadre was enhanced in Adjudication Caseno.63 of 1988 on the basis of industry-cum-region wise. There is absolutely no

evidence to show that any promotion was granted to Gautam after 22.8.1983 and in fact it could not be, because Time Keeper was highest post in

that Cadre. Therefore, the contention appears to be correct. However, since the parties have been heard on other issues also, it appears

appropriate to consider it.

10. Learned counsel for the petitioner has contended that the Cadre of Time Office and Marketing Section are entirely different where the nature

of job, responsibility etc. is entirely different and the pay scale of the two cadres cannot be compared or equated. It is further urged that the

workman having kept silent for more than a decade cannot now in the garb of the Award in Adjudication Case No. 6 of 1983 claim parity with

Gautam.

11. The Apex Court recently in the case of Haryana State Coop. Land Development Bank Vs. Neelam, , while considering the case of an

employee claiming a benefit at a belated stage, invoked the principle of ""Sub Silentio"" and held in paragraph 18 that ""It is trite that the courts and

Tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial

Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman

would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial

proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance sub silentio

12. On the facts noted above, the aforesaid principle fully applies to the case of the workman and the Labour Court was not justified in ignoring

the aforesaid principle by granting relief to the workman. Sri Gautam was sent to the Time Office in 1975, in 1976 he was given 20% enhanced

salary, in 1978 he was designated as Assistant Time Keeper thereafter he was appointed as Time Keeper on 21.7.1979. But Sri Misra did not

raise any objection and acquiesced in it and after more than a decade he raised this grievance.

13. The Apex Court in the case of Rajasthan High Court, Jodhpur through Registrar Vs. Babu Lal Arora, while considering a claim of higher pay

scale as was granted to his juniors, after considering the principle involved held that ""The employees who are in service are governed by the

conditions of employment and their promotions also take place accordingly and not on any general principle of justice and of pay, discrimination, if

any, will arise only amongst equals and not between those who are in different cadres."" It went on to hold that one of the important indicies to

justify as to whether a junior employee holding a higher post on promotion with higher emoluments would be to find out the nature of the duties

performed together with responsibility attached to that post and without considering this important aspect, no upliftment of pay scale can be

granted. In the case at hand though the specific case of the petitioner was that the post of Time Cadre apart from being a different cadre was a

post of higher responsibilities and duties, further, the seniority list of both the cadres were different, but the Labour Court lost sight of this important

aspect and therefore the Award stands vitiated. Even in the writ petition it is not pleaded by the workman that the nature and responsibility of both

the post was similar or there was a combined seniority list.

14. For the reasons given above, this petition succeeds and is allowed and the impugned Award dated 19.11.2003 is hereby quashed. No order

as to costs.