
(2004) 02 AHC CK 0221

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 2633 of 1989

Swadeshi Cotton Mills
Karmachari Sangh

APPELLANT

Vs

Swadeshi Cotton Mills
(under the
Management of
National Textile
Corporation Ltd.) and
Presiding Officer,
Labour Court

RESPONDENT

Date of Decision: Feb. 17, 2004

Acts Referred:

Constitution of India, 1950 – Article 226

Citation: (2004) 02 AHC CK 0221

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: K.P. Agrawal and Rakesh Verma, for the Appellant; V.B. Singh and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record.

2. The brief facts of the case are that the petitioner Swadeshi Cotton Mills Karmachari Sangh is a registered Trade Union of the employees of the

Swadeshi Cotton Mills, Naini, Allahabad (hereinafter referred to as the Mills). The respondent No. 1 M/s Swadeshi Cotton Mills, which is wholly

owned by National Textile Corporation Ltd., Naini, Allahabad is a Government of India undertaking. It was engaged in manufacturing cotton and staple fibre yarn.

3. The workman concerned in the dispute Sri Gopesh Verma was appointed as pay sheet clerk on 23.7.1965 and thereafter he was promoted and

designated as Establishment Incharge w.e.f. 1.1.1968 and worked as such till 13.5.1976. Thereafter again he was transferred in Store Department

as Assistant and subsequently he was designated as Assistant Store Incharge w.e.f. 1.5.1980. Store Incharge Sri A.P. Shukla resigned his services

and his resignation was accepted by the company on 30.10.1981. Hence workman concerned was directed to take charge from him, which was

taken on 30.10.1981, the concerned workman represented to the management for designating him and payment of corresponding pay scale of

Store Incharge. He raised an industrial dispute inter alia Stating that since he was performing the duties of store incharge last about 6 years

continuously as such he is entitled to be designated as Store Incharge and pay for the post of Store Incharge. On conciliation proceedings having

failed the dispute; was referred to Labour Court at Allahabad where it was registered as adjudication case No. 21 of 1987. The reference is as

under:-

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,oa rnuqlkj osru eku fn;k tkuk pkfg, \ ;fn gk] rks fdl frfFk ls rFkk vU; fdu fooj.kksa lfgr \

4. On receipt of summons the employers filed their written statement inter alia stating that concerned workman was Assistant Store incharge only

and never appointed as Store Incharge and a; number of clerks were working under him and that he supervises the work of clerks under him and

controls their work and gives them directions. It was further stated that the present dispute relates to the promotion in the garb of designation,

which is the exclusive function of the management and cannot be subject matter of adjudication. The " monthly emolument of Shri Gopesh Verma

was Rs. 960 - + V.D.A.+Adhoc Rs. 45/- per month at that time. Shri Gopesh Veram. Assistant Stores Incharge was working as a temporary

measure looking after the work of stores and is being given an allowance of Rs. 150/-k per month for that work National Textile Corporation

(U.P.) Ltd., Kanpur has a framed rules for appointment for the posts of departmental incharge including stores incharge prescribing qualifications

and experience for the post. The post has to be advertised and his candidature has to be considered along with other candidates. It was also

contended that his appointment as Store Incharge will amount to promotion and the Labour Court has no jurisdiction to decide the question of

promotion or any other relief what so ever.

5. From the record it appears that the concerned workman was ?never appointed as Store Incharge but had been given charge of the post

temporarily for Which he was paid Rs. 150- per month as additional allowance. The post of Store Incharge had to be filled up according to the

procedure prescribed for appointment recruitment after due advertisement and selection process.

6. The Labour Court gave impugned award dated 26th April 1988, which was enforced by publication on the notice board on 19.7.1988. By the

impugned award the Labour Court held that the Gopesh Verma, the concerned workman couldn't be granted the designation and corresponding

pay scale of the Store Incharge in view to {he nature of duties discharged by him and he is not entitled to any relief what so ever.

7. The Labour Court dealing with the preliminary objection of the employers that Gopesh Verma was not a workman within the meaning of Act

took into consideration, the evidence led by the parties wherein nature of duties were elucidated by the witnesses. The Labour Court after

considering the oral and documentary evidence held that he was a workman. The Labour Court further held that from the record it is crystal clear

that demand for higher post or pay scale or both amounts to promotion which is management function. Relying upon the judgment in Hindustan

Lever Ltd v. Workman 1973 (27) FLR 393 and 1960 (1) LLJ 272 Vishnu Suger Mills v. Workman the Labour Court held that until and unless

and malafide- are proved the non-promotion cannot be said to be arbitrary. It cannot be held that workman has been victimized.

8. The Labour Court in paragraph 7 and 9 concluded as under:-

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vr% bl fookn esa esjk iapfu.kZ;@,okMZ bl izdkj gS fd Jh xksis"k oekZ iq= Jh IR; ukjk;.k yky] lgk;d LVksj bUpktZ dks mlds dk;kZuqlkj

LVksj bUpktZ dk in uke ,oa rnuqlkj osrueku fn;k tkuk IEHko ugha gS vkSj u mlds vf/kdkjh gS A mUgSa dksbZ Hkh vuqrks""k ;k fjyhQ orZeku

esa nsuk IEHko ugh gS A

9. Counsel for the petitioner had stated that the award of the Labour Court is misconceived and that the Labour court has gone off the tangent in

holding that it was a case of promotion. He submits that controversy before the Labour Court was as to whether the workman who was

discharging his duties of the post of Store Incharge should be given the post and corresponding pay scale of Store Incharge according to the nature

of work and duties performed by him. He submits that since the workers was already performing the work of Store Incharge. It was a case of

fitment and not a case of promotion and the Labour Court has wrongly applied the case of Hindustan Lever Ltd and Vishnu Suger Mills Ltd. The

Labour Court is liable to be quashed.

10. Counsel for the respondents submits that Sri Gopesh Verma is not entitled for any promotion as stores Incharge. Since it is a matter of

promotion and post has to be filled in according to the rules. The post has to be advertised and all the eligible persons both working in the mills

have to be considered thereafter selection is made. He was never selected for promotion nor approached as such. In these circumstances, the

Labour Court was fully justified while refusing any relief to the concerned workman Sri Gopesh Verma. He further submits that the respondent is

not a workman. The post of Store Incharge is supervisory post and as such the entire dispute is misconceived and the writ petition is riot

maintainable. He relies on the case of State of Orissa v. Rajendra Kumar Das reported in 2003 (99) FLR 389 where in the Apex Court has

considered the case of peon who claimed the post of Daftari which carried higher scale. It was held that it is a Case of promotion and it is right of

management to decide who is to be promoted as Daftari. Admittedly the post of Daftari carried higher scale. Mere working on a post for some

time without appointment does not confer any right to such posts.

11. From the record it appears that the workman had not been discharging supervisory, managerial or administrative duties and the Labour Court

has rightly come to the conclusion that Sri Gopesh Verma was a workman within the meaning of the Industrial Disputes Act 1947.

12. In so far as promotion is concerned the counsel submits that this Court as well as the Hon"ble Apex Court have settled that it is not open for

the Labour Court to issue any direction for promoting one Individual without considering cases of other eligible persons, The Supreme Court has

also settled that it is not open for the Labour Court to issue direction for promoting one individual but cant direct the management to consider the

case for the purposes of promotion or appointment of all the eligible candidates.

13. The appointment to this post can only be made by the N.T.C. (U.P.) Ltd. Head Office, Kanpur. The principle of equal pay for equal work is

also not attracted. A large number of senior hands were available in various mills of N.T.C. (U.P.) Ltd. who may have better claim for the post of

Store Incharge that is why the Selection on the said post is made through Head Office. He has relied upon 1960 SC 668 (Brook Bond Case)

where it has been held that promotion is managerial function and unless there are findings of malafide, the court cannot direct promotion. In 1961

(1) LLJ 10 at page 13 Supreme Court has held that Tribunal is not competent to issue direction of promoting a particular individual, as the task of

promotion cannot be under taken by the Tribunal in isolation by ignoring cases of other suitable hands. Similar is the view taken by the Supreme

Court in 1974 SC 17 Hindustan Lever Case. In 1987 SC 1889 it has been held that promotion is managerial function and the management should

be given opportunity to consider the matter with openness and all the eligible hands should be considered. Allahabad High Court in Writ No.

29008 of 1982 decided on 4.5.1982 and the writ petition No. 8909 of 1982 relation to the swadeshi Cotton Mills decided on 25.8.1982, Writ

Petition No. 14064 of 1997 Keshav Kumar Gupta v. State of U.P. and Ors. in case it has been held by the Supreme Court that the Tribunal

should not order the promotion, at the best it can direct the Govt to consider the matter of promotion with due regard to various situations.

14. The post of Store incharge is of Grade-5 whereas the Assistant Store Incharge is a lower post with lesser scale of pay. He was paid Rs. 150/-

per month for holding charge of the post of Store Incharge. The workman was never appointed as Store Incharge. A judicial notice can be taken

that this mill is lying closed for about 10 years and is in process of closure.

15. In view of the above claiming higher designation or higher pay-scale or both would amount to the claim for promotion In the instant case the

workman was appointed as Assistant Store Incharge and his demand/claim for higher post and corresponding pay scale is claimed for promotion,

which is management function.

16. Admittedly there are other persons who are senior to the workman and there case has to be considered alone for promotion, if any.

17. The Labour Court has rightly rejected the prayer for appointment of the petitioner as Store Incharge. No perversity has been shown in the

finding of fact recorded by the Labour Court. For the reasons stated above it is not a fit case for interference under Article 226 of the Constitution

of India. The writ petitions fails and is dismissed. No order as to costs.