
(1997) 70 DLT 447 : (1998) RLR 154

Delhi High Court

Case No: Civil Writ Petition No. 1916 of 1997

Bharat Aluminium
Company Employees"
Union

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: July 7, 1997

Acts Referred:

Constitution of India, 1950 " Article 226

Citation: (1997) 70 DLT 447 : (1998) RLR 154

Hon'ble Judges: Dalveer Bhandari, J

Bench: Single Bench

Advocate: M.L. Mehra, A.M. Singhvi and Suman Batra, for the Appellant;

Judgement

Dalveer Bhandari, J.

(1) The petitioner has preferred this writ petition with the prayer that the appointment of respondent No. 4 Shri S.K. Ghosh as Chairman and

Managing Director of Bhalco, w.e.f. 14.2.1997 be quashed.

(2) The petitioner has also prayed that respondent No. 4 be directed not to disturb the functioning of the petitioner as Director (Personnel) and not

to take away any administrative functions which she was holding as Director (Personnel). An advance copy of the writ petition was given to the

respondents and in pursuance to that. Dr. A.M. Singhvi, learned Additional Solicitor General appeared for the respondents. He pointed out that

the petitioner had earlier preferred a writ petition bearing No. 716/97 with the prayers: (i) that the respondents be directed to consider the case of

the petitioner for appointment as Chairman-cum-Managing Director, (ii) and direct the respondents to hold fresh interviews for the selection for the

post of Chairman-cum-Managing Director of BHALCO.

(3) Dr. Singhvi pointed out that the earlier petition was heard at length, and the petitioner was represented by Shri Mukul Rohtagi, Senior

Advocate and Mr. Ramesh Babu, Advocate and after arguing the petition for quite sometime, Mr. Rohtagi, learned Counsel who appeared for the

petitioner withdrew the writ petition and the writ petition was dismissed as withdrawn.

(4) Dr. Singhvi submitted that the present writ petition in substance is seeking the same relief. He also pointed out that the earlier petition was

argued at length and when the Court was about to dismiss the petition in limine, at that stage, the learned Counsel for the petitioner prayed that the

petitioner be permitted to withdraw the petition. In these circumstances, now the petitioner cannot be permitted to reagitate the same issues in this

petition. He also submitted that this petition is a total abuse of the process of law.

(5) I do not find any substance in the prayers of this writ petition. However, in view of my judgment dated 7.7.1997 in Writ Petition No. 554 of

1997, nothing really survives in this petition. This writ petition is accordingly rejected. No costs.

(6) The petitioner Bharat Aluminium Company Employees' Union (for short Bhalco Union) is a registered and a recognised Union has preferred a

quo warranto writ petition, with the prayer that the respondent Smt. Usha Roy is continuing as Director (Personnel) of Bhalco without any

authority of law and without any order of appointment in her favor Bhalco is a Government of India - owned company. In the petition, it is prayed

that she be directed to show the authority and relevant rules and regulations under which she is holding the post of Director (Personnel) of

BHALCO.

(7) Brief facts which are necessary to properly comprehend the scope of the present writ petition are recapitulated as under.

(8) Respondent No. 2 was appointed on tenure as a Director (Personnel) for a period of five years w.e.f. 25.10.1989. It is alleged that on

1.11.1994, respondent No. 2 was relieved from the said post. It is further alleged that from 1.11.1994 to 28.4.1995, there was no appointment or

extension in favor of respondent No. 2 as Director (Personnel) or on any other position, and she remained in employment with Bhalco without any

authority of law. ;

(9) On 28.4.1995, respondent No. 2 was granted extension till 1.5.1995 as Director (Personnel). It is incorporated in the petition that when there

was no appointment in favor of respondent No. 2, Therefore, even the extension granted to her was consequently illegal and invalid. In any event,

on 25.5.1995, respondent No. 2 was granted extension for three months up to 31/7.1995.

(10) It is mentioned in the petition that again from 15.10.1995, till date, there has been neither any fresh appointment nor any extension in favor of

respondent No. 2 as Director (Personnel). It is also mentioned in the petition that on 29.9.1995., respondent No. 2 was granted additional charge

to the post of Director (Operations and Project). It is submitted by learned Counsel for the petitioner that when respondent No. 2 was not

holding any appointment or was not given extension as Director (Personnel), how could respondent No. 2 be given additional charge of any other

post? It is submitted that additional charge can only be given to any employee or official who is an employee or official of that organisation. It is

alleged that on 9.2.1996, respondent No. 2 was given additional charge to the post of Chairman-cum-Managing Director in addition to her

duties as Director (Personnel). It is submitted that when respondent No. 2 was not even the Director (Personnel) of Bhalco, how could she be

given the additional charge of Chairman-cum-Managing Director of BHALCO. On 9.8.1996, respondent No. 2 was given further extension for

three months to the post of the C.M.D. while there was no appointment or extension as Director (Personnel). On 6.11.1996, respondent No. 2

was given three months" further extension to the post of C.M.D. but again there was no appointment or extension as Director (Personnel).

(11) On 10.2.1997, a regular incumbent Shri S.K. Ghosh was duly appointed to the post of Chairman-cum-Managing Director in accordance with

the rules and regulations of BHALCO. It is categorically submitted that after 10.2.1997 or from 11.2.1997 onwards, respondent No. 2 has not

been given the post of Director (Personnel) in Bhalco and she is continuing without any authority of law.

(12) The main argument of the learned Counsel for the petitioner is that respondent No. 2 Ms. Usha Roy is holding the public office as Director

(Personnel) of Bhalco, a Government of India's Undertaking without there being any order in her favor either of this post or of any other post in

BHALCO.

(13) The learned Counsel for the petitioner submitted that no person can hold public office or remain in the Government service without there being

an order of appointing that person to that particular post. Mr. Kapur, learned Counsel appearing for the petitioner Workers' Union also submitted

that there is no order of appointment or extension order after 10.2.1997 in favor of respondent No. 2 appointing her as Director (Personnel) or to

any other post in Bhalco, and consequently, her continuance in Bhalco is entirely illegal and without any authority of law. It is also prayed that

respondent No. 2 be directed to pay exemplary damages/costs for misusing the official position under illegal appointment of respondent No. 2, and

further direction her to compensate BHALCO.

(14) An advance copy of the petition was given to the respondents according to the rules and in pursuance to that, two separate counter-affidavits

have been filed on behalf of the respondents. On specific query by the Court, Dr. Singhvi, learned Additional Solicitor General appearing for the

respondents fairly stated before the Court that after 14.2.1997, the Government has not issued any letter of employment appointing her as Director

(Personnel) or to any other post in BHALCO. He further submitted that respondent No. 2 has not been given any extension to the post of Director

(Personnel) or to any other post in Bhalco after 14.2.1997.

(15) In the counter-affidavit filed by Mr. Anil Shukia, Assistant Manager (Law) of Bhalco, it has been submitted that Shri S.K. Ghosh, Executive

Director, Steel Authority of India was appointed as C.M.D. of Bhalco vide order dated 14.2.1997, for a period up to 17.10.2000. It is mentioned

that Shri Ghosh resumed charge on 14.2.1997, relieving Smt. Usha Roy. In this counter-affidavit, details of the earlier orders by which the

petitioner was given appointment or extension has been given in chronological order, but even in this counter-affidavit, there is nothing to show that

after 14.2.1997, the petitioner was given any appointment or extension. The statement of the Additional Solicitor General, Dr. A.M. Singhvi is

further corroborated by the counter-affidavit filed on behalf of respondent No. 7 Bhal CO.

(16) Respondent No. 2, Ms. Usha Roy has also filed a separate reply affidavit to the writ petition. In her detail reply also, she has not been able to

place on record or show any order by which she has been given any appointment/extension after 14.2.1997.

(17) Though learned Additional Solicitor General Dr. Singhvi made categorical statement before the Court that there is no appointment or extension

granted to Smt. Usha Roy after 14.2.1997. On the direction of the Court, Dr. Singhvi has also placed the entire record dealing with the case of

Smt. Usha Roy before the Court.

(18) I have carefully perused the entire original record and there is no order on record by which respondent No. 2, Smt. Usha Roy was given any

appointment or extension after 14.2.1997. Admittedly, respondent No. 2 Smt. Usha Roy is functioning with respondent No. 7 Bhalco, as Director

(Personnel) without there being any order of appointment or extension in her favour. It is astonishing how respondent No. 7 Bhalco has permitted

Smt. Roy to continue beyond 14.2.1997 and how the Bhalco, a Government undertaking, has been paying her salary and other allowances after

14.2.1997?

(19) In these circumstances, her (respondent No. 2) continuance after 14.2.1997 with Bhalco is absolutely illegal and without any authority of law.

(20) I am not directing respondent No. 2 Smt. Usha Roy to refund the salary and allowances received by her from Bhalco after 14.2.1997

because she could not have continued without Bhalco permitting her to do so.

(21) The writ petition deserves to be allowed. Respondent No. 2 Smt. Usha Roy henceforth shall not be permitted to function with respondent

No. 7 Bhalco as Director (Personnel) or in any other capacity till any valid order of appointment is issued in her favor granting her appointment by

a Competent Authority of respondent No. 7, BHALCO.

(22) The writ petition is accordingly allowed but in the peculiar facts and circumstances of this case, I direct the parties to bear their own costs.