AIR 2010 SC 3125 : (2010) AIRSCW 3311 : (2010) 3 JT 328 : (2010) 3 LLJ 615 : (2010) 3 SCALE 392 : (2010) 4 SCC 421 : (2010) 1 SCC(L&S) 1065 : (2010) 4 SCR 1106 : (2010) 2 Supreme 689

Supreme Court of India

Case No: Civil Appeal No. 2808 of 2010 (Arising out of SLP (C) No. 7409 of 2007) , Civil Appeal No. 2809 of 2010 (Arising out of SLP (C) No. 7835 of 2007) and Civil Appeal No. 2810 of 2010 (Arising out of SLP (C) No. 7952 of 2007)

M.D., T. Nadu Magnesite Ltd.		APPELLANT
	Vs	
S. Manickam and Others		RESPONDENT

Date of Decision: March 29, 2010

Acts Referred:
Constitution of India, 1950 â€" Article 226, 227#Tamil Nadu Magnesite Limited Service Rules â€" Rule 2.17

Citation: AIR 2010 SC 3125 : (2010) AIRSCW 3311 : (2010) 3 JT 328 : (2010) 3 LLJ 615 : (2010) 3 SCALE 392 : (2010) 4 SCC 421 : (2010) 1 SCC(L&S) 1065 : (2010) 4 SCR 1106 : (2010) 2 Supreme 689

Hon'ble Judges: S. S. Nijjar, J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: T. Harish Kumar, Prasanth P. and V. Vasudevan, for the Appellant; K.K. Mani and Ankit Swarup, for the Respondent

Final Decision: Dismissed

Judgement

Surinder Singh Nijjar, J.
Leave granted.

2. By this judgment, we shall dispose of the above three appeals as the facts and the legal issues involved in all the appeals are common. The writ

petitioners before the High Court have been impleaded as respondent No. 1 before this Court.

3. The appellant herein, TANMAG, is a company fully owned by the Government of Tamil Nadu. By G.O.Ms. No. 41 Industries Department,

dated 10.1.1979, it was decided to implement the policy decision taken by the Government of Tamil Nadu to reserve the mineral prone areas of

magnesite for State exploitation. TANMAG was accordingly formed for implementing the policy. It is the common case of the parties that the

respondents were duly selected and appointed, on the respective posts, in the aforesaid company. They were appointed as Assistant Project

Engineer (Mechanical), Junior Foreman (Mechanical) and Deputy Manager (Mechanical) respectively by orders dated 12.9.1983, 23.11.1988

and 18.8.1989. At the time of joining, the respondents executed bonds to serve in TANMAG for a minimum period of three years. The

TANMAG confirmed the services of the respondents through its proceedings dated 25.10.1985, 30.4.1991 and 24.8.1989 respectively. The

respondents were paid the revised pay by the TANMAG as per the Pay Commission''s recommendations made by the Government of Tamil

Nadu.

4. In the year 1990, through G.O.Ms. No. 855 Industries (MME.II) Department, dated 16.8.1990 the Government of Tamil Nadu decided to

implement the Chemical Beneficiation Project in joint venture with M/s. Kaitan Supermag Limited. The share holding pattern of the joint venture

was as follows:

TANMAG : 26%

M/s. Kaitan Supermag Ltd. : 25%

General public : 49%

Therefore, TANMAG had control over JVC.

5. The appellant through letter dated 18.3.1991 conveyed to the respondents that they are in excess of the cadre strength in TANMAG and called

upon them to express their willingness to work in the Joint Venture Company with the then existing pay and other facilities without any

disadvantage. It was also mentioned in the said communication that if no option is given, the appellant will have no option but to terminate their

services under Clause 2.14 of the Service Rules of the Tamil Nadu Magnesite Limited (hereinafter referred to as the Service Rules). The

respondents were reluctant to leave the service of TANMAG. However, after prolonged correspondence, the appellant transferred the

respondents to the JVC, without any monetary loss and alteration of service conditions with seniority and other benefits; by orders dated

20.06.1991 and 31.07.1991 respectively.

6. On 21.6.1996 respondent No. 1 S. Manickam, petitioner in Writ Petition No. 3707/2001, represented that since his transfer to JVC he had

been working in the same cadre. Had he continued in TANMAG he would have become eligible for promotion. Even though under the transfer

order it was provided that there would be no change in terms and conditions of employment, apart from other facilities he was monetarily losing

more than Rs. 2,000/- a month. It was also pointed that since JVC had not been able to take up any work on chemical beneficiation project, he

was apprehensive about his future employment prospects. Since there was uncertainty in the implementation of the project and originally his

employment was for Rotary Kiln Plant, he be reverted back to TANMAG. It appears that no decision was taken on the representation.

7. By G.O.Ms No 140 dated 11.5.98 it was decided to close the JVC. A joint request was made by six employees in the letter dated 31.10.1998

including the three respondents herein seeking reversion back to TANMAG. By letter dated 26.11.98 the respondents and the other employees

were informed that they were permanently transferred to the JVC, namely, M/s. India Magnesia Products Limited (hereinafter referred to as

IMPL). Accordingly, they were relieved from the service of the company from the afternoon of 31.7.1991. As such they have no lien in

TANMAG and no right to claim a reversion of their services from M/s. IMPL to TANMAG. Thus their request was rejected.

8. The order dated 26.11.1998 was challenged by the respondents in the respective writ petitions contending that the respondents were recruited

by TANMAG and were transferred with all service benefits, pay protection, etc., to M/s. IMPL (the JVC) when it was formed. When it was

closed all its assets were transferred back to TANMAG. The employees transferred from TANMAG to the JVC should also be automatically

reverted back to TANMAG. The action of TANMAG in not re-transferring the respondents to its service is erroneous. They, therefore, prayed

for quashing the said order dated 26.11.1998 with a consequential direction to TANMAG to re-transfer/absorb the respondents in the service of

TANMAG with all benefits such as seniority on par with their immediate juniors, arrears of pay and allowances with service benefits that would

have been accrued in favour of the respondents if they had continued in the service of TANMAG.

9. The TANMAG resisted the writ petitions by filing counter affidavit by contending that TANMAG is a separate entity and no writ is maintainable

against it. It was pleaded that even though the Board of Directors are named by the Government, the Company is managed by the Managing

Director under the control and superintendence of the Board of Directors. It is also stated in the counter affidavit that the respondents were

recruited for the project as per the advertisement. Thereafter the respondents were transferred to the JVC on the basis of the advance notice dated

18.3.1991. It was made clear that their services were permanently transferred and they were relieved from TANMAG from 31.7.1991. It is

accepted that their service conditions were protected at the time of transfer to the JVC. After the transfer the respondents have lost their lien. They

became the employees of the JVC. Therefore they have no right to demand reversion to TANMAG merely because the JVC had been closed. It

is also stated in the counter affidavit that the respondents having opted and given their willingness to be absorbed in the JVC, it was not open to

them to claim that they should be re- transferred to TANMAG on the closure of the JVC.

10. The learned single Judge after considering the rival submissions held that the respondents have lost the lien in TANMAG due to their transfer to

the JVC. On transfer, they became the staff of the JVC. The claim of the respondents for being sent on deputation, under Clause 2.17 of the

Service Rules having been rejected they cannot claim that they should be reverted back to TANMAG. Consequently the writ petitions were

dismissed.

11. Being aggrieved by the aforesaid judgment of the learned single judge respondents filed the three writ appeals. On behalf of the respondents it

was submitted before the Division Bench that TANMAG was a shareholder of JVC. It had transferred the land and machinery to the aforesaid

company. The services of the respondents had been transferred to the JVC as the appellant had an interest in JVC. In such circumstances the

company was not justified in claiming that the respondents had lost their lien in TANMAG on being transferred to JVC. They are, therefore,

entitled to be reverted back to TANMAG. It was emphasised that none of the respondents was willing to join the joint venture company. They

were literally compelled to join in view of the agreement that had been signed by them at the time when they initially joined the services of

TANMAG.

12. On the other hand, it was submitted by the appellant that on the permanent absorption of the respondents in the JVC, they had lost their lien.

The closure of the JVC cannot revive the lien in TANMAG.

13. The Division Bench upon consideration of the submissions of the parties concluded that the respondents are entitled to be taken back by

TANMAG in terms of the earlier transfer order, which protects the service conditions of the respondents. It was further held that TANMAG is not

justified in contending that appellants having lost their lien in TANMAG cannot be retransferred. The assurance given in the letter dated 11.5.1991

clearly states that the transfer of service is without any disadvantage. It was, therefore, held that the stand taken by TANMAG is contrary to the

assurance given to the respondents when they were compulsorily transferred to the JVC. It is noticed that all the assets of JVC on its closure have

been taken over by TANMAG. There is no justification in denying absorption of the respondents who are unable to seek any other employment at

this age of above 50 years. It is held that TANMAG is bound by the assurance given to the respondents while seeking their consent for transfer to

JVC. This is particularly so, as it was stated that the terms and conditions of employment enjoyed by them in TANMAG are protected. It is further

held that since JVC was closed at the instance of TANMAG, the appellant has put the respondents in a disadvantageous position. Therefore,

TANMAG is estopped from contending that the respondents will not be absorbed. With these observations the judgment of the learned Single

judge has been set aside. The appellant has been directed to absorb the respondents with continuity of service and other attendant benefits without

back wages.

14. We have heard the learned Counsel for the parties. Mr. P.P. Rao, learned Senior Advocate, appearing for the appellant submitted that the

Division Bench has erred in applying the principle of estoppel. The only promise made to the respondents was that during their services with the

JVC their terms and conditions and employment will be protected. No assurance was given that JVC will not be closed down in the future at any

time. There was also no promise held out that in case the company is closed down they would be reabsorbed in the appellant. In any event learned

senior counsel submitted that the writ petition did not even claim the relief on the basis of the promissory estoppel. There are no pleadings to lay

the foundation to claim any relief on the basis of the doctrine of promissory estoppel.

15. Learned Counsel for the respondents, however, submitted that initially 16 persons had been transferred to the JVC. Subsequently most of

these persons joined some other concerns. They are, therefore, not claiming re-absorption. At present, there are only three respondents who need

to be accommodated by the appellant.

16. We have considered the submissions made by the learned Counsel for the parties. A perusal of the correspondence would show that initially

the respondents were reluctant to leave the services of the appellant. However, they were aware that their services were liable to be terminated

due to non-availability of work for which they were qualified. On 2.5.91 respondents addressed a letter to the appellants that they would like to

continue the services in TANMAG, otherwise as per Clause 2.17 of the Service Rules they were wiling to work in the JVC. Rule 2.17 of the

Service Rules provides as under:

The Management reserves the Right to depute any staff member/officer of the company to any other organization, on terms not inferior to those

enjoyed by him in the company.

The request of the respondents to be sent on deputation was not accepted by the appellants. By letter dated 11.5.1991 the respondents were

informed that it is not possible to depute them to JVC as per Clause 2.17. The respondents were permanently transferred to the JVC by letter

dated 20.6.1991. They were also informed that the date of joining in service in TANMAG shall be deemed to be the date of joining at the JVC for

reckoning the length of service for all purposes including the payment of gratuity. Therefore, it becomes quite evident that the appellant as well as

the respondents were well aware about the nature of terms and conditions which were protected. After the permanent transfer fresh letter of

appointment dated 25.7.1991 was served upon the respondents. Therefore, it is clear that the services of the Respondents having been terminated,

their lien in TANMAG, also stood terminated.

17. It was only when the respondent No. 1 S. Manickam, petitioner in Writ Petition No. 3707/2001 became apprehensive about the closure of

the unit, he submitted a representation on 21.6.1996 to the respondents seeking re-absorption in TANMAG. In this letter, the respondent narrated

the entire history of his services with TANMAG. It is emphasized that his services were transferred to the JVC under compelling circumstances. At

that time, he had been assured that there will not be any change in the terms and conditions of employment as stipulated in TANMAG. It is stated

that he had accepted the transfer under compelling circumstances and joined JVC on the clear understanding that all privileges, perquisites and

other facilities enjoyed by him in TANMAG shall be protected. His grievance was that since his transfer to JVC, he has been working in the same

cadre in which he had joined TANMAG in 1983. Had he remained in TANMAG, he would have become eligible for promotion. He also

emphasized that there was a loss of more than Rs. 2000/- per month in his remuneration. Finally, he stated that it has not been possible for the

JVC to take up the work on Chemical Beneficiation Project. Many of the officers whose services had been transferred to JVC along with him

have left the service. He was therefore apprehensive of his future employment career. Hence, he sought his reversion back to the respondents.

18. A perusal of the aforesaid letter makes it abundantly clear that there was no representation made to this respondent that he would be ensured

employment till the age of superannuation with the JVC. The other two respondents have also not referred to any document which would indicate

that any promise of future continuous employment was held out to them by TANMAG. In fact they had been earlier categorically informed that

their services were liable to be terminated as they had become surplus. They were offered an alternative to be transferred to the JVC. Therefore,

with their eyes open, the respondents had accepted the job in JVC. Their request for deputation, as provided under Clause 2.17 of the Service

Rules, had been specifically rejected. They were in danger of losing their jobs under Clause 2.14 which enables the company to terminate services

of the employees by giving three months'' notice or salary in lieu thereof. They, therefore, accepted the alternative of a job with JVC. This was

clearly, so to speak, ""lesser of the two evils"". A job in JVC was better than no job at all. The Division Bench noticed that the respondents had

accepted the loss of their lien in TANMAG. They were seeking re-absorption on the closure of the JVC. There was no assurance that there will

be no closure of the JVC under any circumstances. The Division Bench in its anxiety to help the respondents, who were in danger of losing their

jobs at the age of 50 years and above, seems to have stretched the principle of promissory estoppel beyond the tolerable limits. Undoubtedly,

while exercising the extraordinary original jurisdiction under Article 226/227 of The Constitution of India the High Court ought to come to the

rescue of those who are victims of injustice, but not at the cost of well established legal principles. The circumstances in which a High Court could

issue an appropriate writ under these articles was delineated by a constitution bench of this Court in the case of 289080 wherein Gajendragadkar,

J. speaking for the court observed as follows:

Under Article 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High

Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the

special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the

jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an

appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or

threatened. The existence of a right is thus the foundation of a petition under Article 226.

The aforesaid settled position was reiterated in the case of 285029 in the following words:

Although the powers of the High Court under Article 226 of the Constitution are far and wide and the Judges must ever be vigilant to protect the

citizens against arbitrary executive action, nonetheless, the Judges have a constructive role and therefore there is always the need to use such

extensive powers with due circumspection. There has to be in the larger public interest an element of self- ordained restraint.

In this case, there is no finding recorded by the Division Bench as to which legal or fundamental right of the respondents has been infringed. The

relief in this case is granted only on the basis of the doctrine of promissory estoppel. In these circumstances it was the duty of the High Court to

analyze the facts to ensure that the principles of estoppels could appropriately be invoked in this case to help the respondents. In our opinion, the

High Court erred in not performing this cautionary exercise. In view of the factual situation, as noted above, we are unable to accept that the

respondents were put to disadvantage acting upon any unequivocal promise made by the appellants.

19. The doctrine of promissory estoppel as developed in the administrative law of this country has been eloquently explained in 270755 by Dr.

A.S. Anand, J, in the following words:

11. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the

doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct

made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal

relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other

party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding

on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to

the dealings, which have taken place or are intended to take place between the parties.

In our opinion, on the basis of facts on record in this case, the claim of the respondents would not be covered by the principles enunciated above.

In view of the facts narrated above, the Division Bench clearly committed an error of law in concluding that there has been a breach of principles of

promissory/ equitable estoppel. Therefore, the High Court erred in issuing the direction/writ in the nature of mandamus directing the appellants to

reabsorb the appellants in the service of TANMAG.

20. Before we part with the judgment, it would be appropriate to notice that during the hearing of these appeals, the respondents had been

permitted to make the representation to the appellants for reconsideration of their request. The respondents had, therefore, submitted a

representation on 15.2.2010. Learned Counsel for the appellant, however, stated that it was not possible for the appellant to accommodate the

respondents, however, in case in future any vacancy arises, the request of the respondents may be considered.

21. In view of the above, the appeals are allowed. The impugned judgment of the Division Bench under appeal is set aside. There will be no order

as to costs.