

R. C. Sharma

Vs

The Chief Secretary, Government of Madhya Pradesh, Bhopal and Others

Civil Appeal No. 1907 (NL) of 1970

(C.A. Vaidialingam, A.N. Grover, A.K. Mukherjea JJ)

25.04.1973

JUDGMENT

GROVER, J. –

This is an appeal by certificate from an order of the Madhya Pradesh High Court. The facts may be shortly stated. Prior to April 1, 1963, three undertakings namely : (1) Gwalior Engineering Works, (2) Gwalior Potteries, and (3) Gwalior Leather Factory and Gwalior Tannery, Morar, were owned and managed by the Madhya Pradesh State. The employees in these undertakings were in the service of the Madhya Pradesh State Government. These undertakings were transferred to the Madhya Pradesh Industries Corporations Ltd. hereinafter called the "Corporation". The employees of these undertakings thus ceased to be in the service of the State Government and became employees of the Corporation. On February 16, 1963, the Government of Madhya Pradesh had made an offer to the employees of the three undertakings which was as follows :

"Whereas the State Government had decided to transfer the management of the : (1) Gwalior Potteries, (2) Gwalior Engineering Works, (3) Gwalior Leather Factory and Tannery and Tent Factory (hereinafter referred to as the said undertakings) to the Madhya Pradesh State Industries Corporation (hereinafter referred to as the said Corporation) with effect from 1st day of April, 1963;

And whereas from the after the aforesaid date the said undertakings will cease to exist;

Now, therefore, it is proposed to transfer your services to the said Corporation on the conditions detailed below :

(1) Your present pay and scale, and other conditions of service and benefits to which you are at present entitled will not be affected by transfer.

(2) The transfer of your services will not be treated as an interruption in your service. In other words you will be entitled to leave and other benefits on the same basis as if your services under the State Corporation was a continuation of your total uninterrupted services under the said undertakings."

The person to who the letter was addressed was required to let the General Manager of each of the Undertakings know by the 20th day of March, 1963, whether he agreed to the transfer of services to the Corporation on the conditions mentioned above. It is not necessary to refer to the other terms of

the offer. This offer had been accepted by the employees of the three undertakings.

2. However Gwalior Shasakiya Audyogik Karamachari Sangh, Laskhar, Gwalior, filed an application under Section 33C(2) of the Industrial Disputes Act, 1947, on August 28, 1968, claiming that the Dearness Allowance should be paid by the Corporation at the same rate and on the same basis on which the Madhya Pradesh State Government was paying this allowance to its employees. It was alleged that the Corporation had paid the same rates as were being paid by the Madhya Pradesh State Government for about two years but later on the Corporation declined to pay the same rates of Dearness Allowance to its employees. The Labour Court did not accede to the contention of the Union of the employees that they were entitled to Dearness Allowance at the same rates and on the same basis on which it was being paid to the employees of the State Government. A petition was filed under Article 226 of the Constitution by R. C. Sharma - the Secretary of the Union mentioned before. The High Court dismissed the petition.

3. The short question involved in this appeal is whether under the terms of the offer made and accepted by the employees they are entitled to the same Dearness Allowance as is being paid by the State Government to its employees. The first term made it quite clear that when the employees of the erstwhile undertakings of the State would join the services of the Corporation their subsisting pay and scale and other conditions of service and benefits to which they were entitled at that time would not be affected by the transfer. The case of the Union was that the second term or condition entitled them to the same Dearness Allowance which the employees of the Madhya Pradesh State Government were getting. Now this term or condition was confined only to the question of the effect of the transfer on the service of an employee. It was made clear that the transfer of service would not be treated as an interruption in his service. This was amplified by saying, "you will be entitled to leave and other benefits of the same basis as if your services under the State Corporation was a continuation of your total uninterrupted services under the said undertakings". The High Court relied on an earlier decision given by it in Misc. Petition No. 237 of 1968, decided on March 26, 1969. According to the decision leave and other benefits that were secured under condition No. 2 were leave and such benefits which depended upon the length of service, e.g., gratuity, pension, etc. The object of creating a fiction of continuity of service was not to make the Corporation employees Government employees and to make applicable to them any change effected in the conditions of service of Government employees; but what was intended was to secure to the transferred employees leave and benefits depending upon the length of service by making their service fictionally uninterrupted. Ordinarily the change of employers would have the effect of interrupting service. Condition No. 2 was, therefore, meant to overcome that situation. That condition dealt solely with the effect of the transfer of service on the benefits to which an employee would be entitled if there was no interruption in his service. The second sentence therein, namely, "in other words", etc. was merely explanatory of the first sentence that the transfer of service will not be treated as an interruption in the service. The second sentence was not intended and could not be read as meaning that whatever benefits an employee of the State Government were to get in future the employees of the Corporation would automatically become entitled to them. As pointed out by the High Court in the earlier judgment if condition No. 2 was to be read as securing to a transferred employee benefits which the Government might in future confer upon its employees that would contradict condition No. 1 which secured only such benefits to which a transferred employee was entitled at the time of transfer. We are in entire agreement with this view of the High Court.

4. Mr. C. K. Daphtary who appeared for the appellant tried to persuade us that condition No. 2 should be so interpreted as to confer on the employees of the Corporation the same benefits to

which the employees of the State became entitled in the course of subsequent years. We are unable to construe condition No. 2 in the manner suggested. All that that condition secured was that the employees should not suffer in the length of their service and in the enjoyment of the benefits which an uninterrupted service confers on them because of the transfer of their service from the State Government to the Corporation.

5. We find no ground on which we can interfere in the order of the High Court. The appeal fails and it is dismissed but in the circumstances we make no order as to costs.

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