

Workmen

Vs

M/S. Williamson Magor & Co. Ltd. and Another

Civil Appeals Nos. 351 and 352 of 1976

(V.D. Tulzapurkar, Baharul Islam, A. Varadarajan JJ)

07.12.1981

JUDGMENT

BAHARUL ISLAM, J. –

1. These two connected appeals by special leave are on behalf of Workmen of M/s. Williamson Magor & Co. Ltd. (renamed as M/s. Macneill & Magor Ltd.) represented by Williamson Magor & Company Employees' Union (hereinafter called 'the Union') and are directed against the Award of the 7th Industrial Tribunal, West Bengal.
2. The material facts may be stated thus :
3. According to the Union, all the employees of the aforesaid Company, the respondent before us (who will hereinafter be called 'the management') are the members of the Union. Disputes had arisen between the workmen and the management but they ended in a number of agreements as a result whereof the employees derived some benefits. Subsequently the management appointed one Mr. P. K. Kaul as a staff officer, who, according to the Union, started to create a cleavage between the workmen, and with that end in view, at his instance, the management started giving indiscriminate and arbitrary promotions and/or upgradations to some of the employees who are its favourites, disregarding the rightful claims of a number of other employees so much so that even junior members were given promotions superseding the rightful claims of the senior employees. The Union took up the cause of the workmen with the management. According to the Union, there is no norm and/or standard guiding promotion and/or upgradation of the employees. According to the Union, the action of the management is arbitrary, mala fide and intended to victimise the employees who are loyal to the Union.
4. At the material time there were two grades of employees namely, Special Grade, with a higher scale of pay and General Grade.
5. This is an admitted position that the management did not have any norm to determine how many clerks should be in each of the said grades or in each of the scales of pay; nor is there any fixed quota in the Special Grade to be filled up by promotion from the General Grade; nor is there any rule determining the number of vacancies to be filled up by promotion or upgradation. Accordingly to the Union, the normal rule should be promotion/upgradation by seniority. As this was not done, unrest cropped up. On the management having upgradation/promotion two junior clerks, namely, Anil Chandra Ghosh and Parameshwar Banerjee from General Grade to Special Grade on March 1, 1972, superseding the claims of senior clerks, without assigning any reason, the Union protested. Far from rectifying the unjust action, the management again promoted/upgraded another person,

Shri Saroj Mukherjee to Special Grade on July 1, 1972, superseding the claims of many others who were senior to him. According to the Union, the management arbitrarily promoted/upgraded the aforesaid three persons and unjustly denied promotion/upgradation to 12 senior clerks. This was, according to the Union, victimisation and unfair labour practice. According to the Union, the aforesaid three favoured clerks and the 12 superseded clerks were doing exactly similar work. The three promoted/upgraded persons after their promotion/upgradation used to do the same work as before, occupying the same chairs and working on the same tables as they had done before the date of upgradation/promotion. According to the Union, there were no jobs related to grades or scales of pay, and the promotion/upgradation has no impact except mere increase of pay consequent upon the higher scale of pay given to each person promoted. As a dispute arose between the management and the Union, the Government of West Bengal referred the following issue to the 7th Industrial Tribunal, West Bengal for adjudication :

Whether promotion of Sharbashree Saroj Kumar Mukherjee, Anil Chandra Ghosh and Parameshwar Banerjee from General Grade clerks to Special Grade clerks in preference to the twelve (12) workmen marked in Annexure 'A' attached herewith is justified ? To what relief, if any, are the workmen marked in Annexure 'A' entitled ? The names of the persons in the said Annexure 'A' were the same as mentioned in paragraph 10 above.

6. During the pendency of the aforesaid reference before the Tribunal, the respondent on May 23, 1974 again promoted from the General to the Special Grade two clerks, namely, Sudhir Ranjan Chakraborty and Jyoti Prasad Paul superseding 56 senior and efficient clerks of the General Grade inclusive of the 12 senior grades clerks already superseded in 1972 and concerned in the reference aforesaid. As a dispute arose, the Government of West Bengal made a reference to the same Industrial Tribunal for adjudication of the following issue :

Whether promotion of the workmen mentioned in Annexure 'A' attached herewith from General Grade to Special Grade or Supervisory Grade in preference to the workmen mentioned in Annexure 'B' attached herewith is justified ?

To what relief, if any, are the workmen mentioned in Annexure 'B' entitled ?

7. Before the Tribunal, the parties led evidence and proved Exs. K-1 and K-2, settlements arrived at between the management and the Union earlier. On a consideration of the oral and documentary evidence adduced before it, the Tribunal has arrived at the following findings :

(1) No agreed norm for promotion/upgradation was formulated. (2) Both the parties felt that it was desirable that certain norms should be laid down for promoting and/or upgrading workmen.

(3) That in spite of the fact that no norm had been formulated, the management promoted as many as 15 workmen during the pendency of the first reference.

(4) That promotion and/or upgradation is a managerial function and that the Union can have no say in such matter. The Tribunal has found "it is now more or less well settled that the promotion/upgradation is the administrative function of the management and it can be hardly disputed before any court of law and/or tribunal unless it is proved that in effecting such promotion, the management violated the

principles of natural justice and/or existing rules or norms". The Tribunal also has found, on a consideration of the evidence of the management witness, Shri P. K. Kaul, that although the witness said that at the time of giving promotion, recommendations of the departmental heads and other authorities were taken into account, his evidence was not supported by any document. The Tribunal has also found that although in terms of earlier agreements, it was the duty of the management to investigate allegations by the Union of discriminatory and unfair promotion and/or upgradation, the management did not do so. It further found that Ex. B disclosed that on December 21, 1972, the Union demanded of the management investigation into the matter of the said discriminatory promotions but curiously enough, there is nothing before me to show that the management did, in compliance with the said agreement, investigate into the matter as agreed upon".

(5) Ultimately the Tribunal held that the promotion of the three persons mentioned in the first reference "cannot be justified because when it was agreed upon that the management would investigate in case any complaint is made, but even in spite of the complaint lodged by the Union, the management did not investigate." The Tribunal has even found the management did not care to establish the justification of the promotions of the aforesaid three persons superseding the claims of others.

(6) The Tribunal has also found, "It is not their (management's) case before me that, in fact, the management found those three persons suitable to the rest of the workmen".

(7) Similarly, with regard to the second reference, the Tribunal came to the finding that "junior persons were given promotions superseding the claims of a number of senior workmen, but there is nothing before me from where I can say that the management was justified in giving promotion to them".

8. The above enumeration of the findings of the Tribunal clearly shows that the action of the management in promoting junior clerks of the General Grade superseding the claims of the senior clerks of the same grade was arbitrary and unjustified. The Tribunal has categorically found, "I am constrained to observe that no material has been placed before me nor it has been claimed in evidence that the management found that these people were more efficient and competent than the rest of the workmen. In the premises, I am bound to hold that I cannot justify the promotion of the said persons named in the two references and dispose of the first issue accordingly". But to our amazement, it failed to pass any consequential order, and instead held, "I cannot give any relief to these workmen when their positive case is that there is no standard or norms for giving promotion". In other words, although the Tribunal categorically held that the actions of the management were unjustified, it expressed its inability to give any relief to the workmen in the case. We do not think that the Tribunal should be so powerless. The industrial tribunals are intended to adjudicate industrial disputes between the management and the workmen, settle them, and pass effective awards in such a way that industrial peace between the employers and the employees may be maintained so that there can be more production to benefit all concerned. For the above purpose, the industrial tribunals, as far as practicable, should not be constrained by the formal rules of law and should avoid inability to arrive at an effective award to meet justice in a particular dispute. The Tribunal in the instant case, in view of its findings, first of all should have declared that the promotions of the aforesaid 15 persons were illegal and unjustified, their promotions being the result of arbitrary action of the management which was nothing but unfair labour practice, and the

promotions in question should have been cancelled. The Tribunal also, in our opinion, in consultation with the management and the Union, should have framed norms/rules of promotions and directed the management to give promotions/upgradation in accordance with those norms/rules.

9. We do not agree with the claim of the Union that promotions or upgradations should be on the basis of seniority alone. The National Industrial Tribunal in its Award gave the following wholesome directions :

I give the general formula which has been accepted by many concerns namely, all things being equal, seniority shall count for promotion. If the senior person has been overlooked in the question of promotion, he is at liberty to ask the concern for reason why he has been overlooked, in which case the concern shall give him the reasons provided that it does not expose the concern or the officer giving any reasons to any civil or criminal proceedings.

10. The management has failed to follow this direction in the case in hand.

11. Although we agree that promotion/upgradation is a managerial function, it must not be on the subjective satisfaction of the management but must be on some objective criteria.

12. Mr. Pai, learned counsel appearing for the management, made two submissions before us. Firstly, he submitted that unlike in public sector undertaking, promotion is not a condition of service in a private company. We are unable to accept the submission of Mr. Pai in toto. If there is no scope of any promotion or upgradation or increase in salary in a private undertaking, the submission of the learned counsel may be justified but if there are grades and scopes of upgradation/promotion and there are different scales of pay for different grades in a private undertaking, and, in fact, promotion is given or upgradation is made, there should be no arbitrary or unjust and unreasonable upgradation or promotion of persons superseding the claims of persons who may be equally or even more, suitable. The second submission of Mr. Pai is that although there were no norms, the promotions of the persons in question were not arbitrary and that the findings of the Tribunal in this regard were incorrect. He led us through the material evidence of the witness examined. We are unable to agree with learned counsel and do not find any reason to differ from the findings of the learned Tribunal that the promotions of the 15 persons were arbitrary and unjustified. Mr. Pai also submitted that unless victimisation was proved by the Union, the management's action should not be disturbed. The word 'victimisation' has not been defined in the statute. The term was considered by this Court in the case of *Bharat Bank Ltd. v. Employees*. This Court observed, "It s (victimisation) is an ordinary English word which means that ascertain person has become a victim, in other words, that he has been unjustly dealt with". A submission was made on behalf of the management in that case that 'victimisation' had acquired a special meaning in industrial disputes and connoted a person who became the victim of the employer's wrath by reason of his trade union activities and that the word could not relate to a person who was merely unjustly dismissed. This submission, however, was not considered by the Court. When, however, the word 'victimisation' can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are the poorer section of the people compared to the management.

13. This Court in the case of *Employees' Association v. Management of K. C. P. Ltd., Madras* observed : (SCC p. 44, para 5)

In Industrial Law, interpreted and applied in the perspective of Part IV of the

Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without overstepping the proved facts,.....

14. We would therefore accept the interpretation of the word 'victimisation' in the normal meaning of being the victim of unfair and arbitrary action, and hold that there was victimisation of the superseded workmen.

15. Even if promotion may not be a condition of service in a private company and promotion may be the function of the management, it may be recognised that there may be occasions where the Tribunal may have to cancel the promotions made by the management where it is felt that persons superseded have been so superseded on account of legal mala fide or victimisation. Although in spite of the allegation of mala fide, the Union has not been able to prove factual mala fide, in this case malice in law and effectual victimisation are obvious due to the fact that unjustified promotions of some junior persons were made superseding, without any reason or necessity, the cases of a large number of senior persons.

16. As a result of the foregoing, consideration, we allow the appeals and, accepting the findings of the Tribunal, give the following directions :

(1) The management, in consultation with the workmen or their representatives and under the direction, supervision and control of the Labour Commissioner of the region, shall frame norms/rules fixing quota for the grades and for promotion/upgradation of its workmen, in the light of the observations made above, within two months from the date of the receipt of a copy of this judgment by the Labour Commissioner.

(2) The upgradation and/or promotion shall be made by the management in terms of the norms/rules so framed.

(3) That meanwhile the promotions/upgradations of Sharbashree Saroj Kumar Mukherjee, Anil Chandra Ghosh and Parameshwar Banerjee from General Grade to Special Grade clerks in preference to the 12 workmen mentioned in Annexure 'A', which is the subject-matter of the first reference, namely, Reference No. 3278-IR/IR/11L-132/71 dated April 2, 1974, and the promotions/upgradations of the persons mentioned in Annexure 'A', from the General Grade to Special Grade or Supervisor Grade in preference to the workmen mentioned in Annexure 'B', which is the subject-matter of the second reference, namely, Reference No. 7537-IR/IR/11L-132/71 dated December 10, 1974, are cancelled : and the workmen whose promotions are cancelled and the workmen who were superseded shall be at par with effect from the date of this judgment till promotions/upgradation are made by the management in terms of the norms/rules to be prepared; and no future promotions/upgradations shall be made until the norms/rules are framed.

17. The appeals are allowed with costs.

18. (Send a copy of this judgment to the Labour Commissioner forthwith.)

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