

SUPREME COURT OF INDIA

Cement Corporation of India Ltd.

Vs.

Presiding Officer, Industrial Tribunal-cum-Labour Court

(S. Rajendra Babu and S. N. Variava JJ.)

21.03.2001

ORDER

1. The Dalmia Dadri Cement Limited came to be closed on March 18, 1980 when the services of its employees including respondent No. 2 Bhim Sain Prabhakar were terminated. However, services of 95 employees were retained. Thereafter, under the *Dalmia Dadri Cement Ltd. (Acquisition and Transfer of undertaking) Act, 1981* the undertaking of the Dalmia Dadri Cement Limited stqpd vested in the Government of India and its management was handed over to Cement Corporation of India who is the appellatant before us.

2. Respondent No. 2 was appointed afresh with effect from December 31, 1981 pursuant to the letter of appointment dated December 18, 1981, offering him fitment in Grade IV in the year 1985-86 and that arrears would be paid only from January 1, 1984. Thereafter, respondent No. 2 filed an application under Section 33C(2) of the *Industrial Disputes Act, 1947* claiming that he is entitled to be fitted in Grade V with effect from January 1, 1982 with three service weightage increments placing reliance upon the award made on July 18, 1983 by the Arbitrators in the industrial dispute between the Workmen in the Cement Industry represented by the Indian National Cement and Allied Workers Federation, Bombay and the Employers in the Cement Industry represented by the Cement Manufacturers Association.

3. The appellatant management contested that respondent No. 2 is not entitled to be fitted in Grade V or for promotion to any higher post as he had been appointed only as a clerk in terms of the appointment letter dated December 18, 1981 and he cannot claim any upgradation fitment in a higher grade. The Labour Court took note of the award dated July 18, 1983 and found that respondent No. 2 had been placed in Grade II with effect from July 6, 1983 and subsequently vide order dated November 25, 1985 he was placed in Grade IV with effect from January 1, 1984. Ultimately, the Labour Court found that the respondent No. 2 is entitled to be fitted in Grade V with effect from January 1, 1982 when the award of 1983 was implemented and ordered to the effect that the respondent No. 2 is entitled to be fitted in Grade V from January 1, 1982 with three service weightage increments in Grade V and in Grade VI with effect from January 1, 1986.

4. The matter was carried to the High Court by way of a writ petition and the High Court dismissed the matter in limine. Hence, this appeal by special leave petition.

5. From the narration of the facts it is clear that the services of respondent No. 2 stood terminated from the erstwhile Dalmia Dadri Cement Ltd. on its closure and in fact the respondent No. 2 made an application in terms of Section 17 of the *Dalmia Dadri Cement Ltd. (Acquisition and Transfer of Undertaking) Act, 1981* wherein he made a claim that compensation as provided under Sections 25F and 25FFF of the Industrial Disputes Act which was adjudicated by the Commissioner of Payments for Dalmia Dadri Cement Ltd. and that such amount was received by him.

6. Thereafter, a fresh agreement appears to have been entered into between appellant management of the workmen to recruit ex-employees of the erstwhile Dalmia Dadri Cement Ltd. factory on certain terms and conditions in the light of Section 25H of the Industrial Disputes Act.

7. In the circumstances, it is clear that the respondent No. 2. started a fresh career under the appellant on being appointed with effect from December 18, 1981. He may have been given benefit of certain increments with higher start of salary but that circumstances would not confer any right upon him to make any claim for any advantage for period of service rendered in the erstwhile employment from which he was retrenched. Therefore the Labour Court could not order payment of three additional increments. In that view of the matter the order made by the Labour Court shall stand quashed to that extent only. However, since respondent No. 2 has retired from service now, whatever payments may have been made to him need not be recovered. Appeal shall stand allowed accordingly to the extent stated above.