

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1043 OF 2011
(Arising out of SLP(C) No. 14784 of 2008)

Jiten Kumar Sahoo & Ors.

...Appellants

Versus

Chief General Manager
Mahanadi Coalfields Ltd. & Ors.

...Respondents

WITH

CIVIL APPEAL NO. 1044 OF 2011
(Arising out of SLP(C) No. 18031 of 2009)

JUDGMENT

JUDGEMENT

R.M. Lodha, J.

Delay condoned in SLP (Civil) No. 18031 of 2009.

Leave granted in both petitions.

2. The appellants have preferred these two appeals, by special leave, because consequent upon the judgment and order passed by the High Court of Orissa at Cuttack, they are likely to lose their job of more than 14 years with the Mahanadi Coalfields Limited (for short, 'MCL').

3. MCL is a Government of India undertaking. By the end of 1993, 38 vacancies of Mazdoors, Category-I (I.T.I.) had occurred in the MCL. MCL sent a requisition to the local employment exchange for sending a list of eligible candidates for filling up the said vacancies. The local employment exchange, in response to that requisition, sponsored 664 candidates. Out of these 664 candidates, 375 candidates submitted their biodata. After scrutiny of the biodata of these candidates, MCL called 316 candidates for the written test. Pursuant thereto, 289 candidates appeared for the same on October 29, 1995. They were also called for trade test in different batches during the period December 26, 1995 to January 5, 1996. Finally, 240 candidates secured qualifying marks. There is a dispute of fact about merit list as according to the contesting private respondents (writ petitioners before High Court), a merit list comprising 226 I.T.I.

candidates was prepared by the MCL as they were found suitable in all respects, but MCL denies having prepared a merit list of 226 candidates for employment. However, it is an admitted position that, of the candidates who secured qualifying marks, 24 were given appointment as Mazdoor Category-I (I.T.I.). 14 vacancies – 5 vacancies in the trade of Auto Electrician and 9 vacancies in Scheduled Caste/ Scheduled Tribe category – could not be filled up due to non-availability of the candidates. Subsequently, it appears that fresh 84 vacancies of Mazdoor Category-I (I.T.I.) occurred and MCL requested the local employment exchange for their permission to fill up fresh vacancies from amongst the candidates who had qualified in the written test and the trade test conducted as above. There was no response from the local employment exchange to that requisition and, accordingly, MCL filled up 51 vacancies out of 84 fresh vacancies by giving employment to those candidates who had already undergone the apprenticeship with them in the year 1991-92. The present appellants are amongst those candidates.

4. The private respondents herein and few others aggrieved by the appointment of the appellants and some others

to the posts of Mazdoor – Category I (I.T.I.) having been given preference as they had undergone the apprenticeship with the MCL, filed various writ petitions before the High Court of Orissa. They prayed that appointments given to 51 such appointees be quashed. They also prayed for their (writ petitioners') absorption in the vacant posts without calling them to appear for fresh written test and/or interview.

5. MCL and its functionaries who were impleaded as respondents in the writ petition filed their counter affidavit and contested the writ petitions on diverse grounds. The defence of the MCL was that the preference was given to the apprentices who had undergone training with them in the interest of the company as coal mines use very specific and specialized high value heavy earth moving machines like dragline, shovel, dumpers, heavy duty dazers, drills and craines and those who have been extensively trained on these machines are of much use than the candidates who were trained in other industries not dealing with heavy earth moving machines. MCL justified their action on the basis of a decision of this Court in *U.P. State Road Transport Corporation and Another v. U.P. Parivahan Nigam*

*Shishukhs Berozgar Sangh and Others*¹. It was submitted by MCL that the preference to MCL apprentices was not influenced by any consideration other than the interest of the company.

6. It is pertinent to mention here that neither the appellants nor others whose appointments were challenged in the writ petitions were impleaded initially. It was after 10 years or so that the present appellants were impleaded as party respondents in the writ petitions. On their impleadment and service of notice, the present appellants filed their counter affidavit in opposition to the writ petitions and denied the claim of the writ petitioners.

7. The High Court vide its judgment dated May 2, 2008, however, held that MCL ought to have filled up the newly sanctioned 51 posts of Mazdoor – Category I (I.T.I.) from the merit list prepared earlier strictly in the order of merit and no preference could have been given to those who had undertaken apprenticeship with MCL. The High Court, accordingly, directed MCL to fill up 51 posts strictly in the order of merit as per the select list prepared earlier. The High Court further directed that those who were likely to lose their job could be adjusted in suitable posts in the existing and future vacancies without asking

¹ (1995) 2 SCC 1

them to face any recruitment test. It is this judgment and order of the High Court which is impugned in these two appeals.

8. In our judgment, these appeals have to be allowed. There is no dispute of fact that the appellants herein were not initially impleaded as party respondents in the writ petitions although primary relief in the writ petitions was to quash their selection and appointments. The appellants were impleaded for the first time after ten years or so. By that time the appellants got promoted from Mazdoor Category-I to Mazdoor Category-II and then to Mazdoor Category-III and thereafter to the posts of Fitter. In view of these circumstances, the writ petitioners were not entitled to any discretionary relief by the High Court in exercise of its extraordinary jurisdiction.

9. The appellants in their counter affidavit before the High Court set up the following specific grounds:

“5. That the petitioners have impleaded the present Opp. Parties after about 10 (ten) years of their appointment as well as selection to the post of Mazdoor Category-I (ITI). Therefore the writ application is liable to be dismissed as against the present Opp. Parties being grossly barred by limitation and on the ground of unexplained delay, laches and negligence of the petitioner.

6. That the petitioners though had the knowledge of the appointment, posting,

continuance in service and subsequent promotions of the Opp. Parties had not challenged the same for about 10 (Ten) years and have acquiescence their claim and waived their claim if any. Therefore, this Hon'ble Court in exercise of its equitable jurisdiction may be pleased to dismiss the writ application.

7. That the petitioners are estopped by acquiescence, waiver, conduct and by negligence to challenge the appointment of the Opp. Parties who are discharging their duties sincerely to the best satisfaction of the authority being selected and appointed to the post for about ten years.”

10. The High Court unfortunately has failed to take into consideration the material aspects stated in the counter affidavit filed by the appellants. As a matter of fact, on promotion of the appellants to the higher posts, other candidates have been appointed to the posts of Mazdoor – Category I in place of the appellants. If the order of the High Court is allowed to stand, it would not only affect the appellants who, during the continuation of their service, had got three promotions, but also will seriously affect the persons who have been appointed in their place and were not impleaded before the High Court.

11. For what we have discussed above, we do not think we need to deal with the merits of the issue as to whether the

High Court was right in holding that MCL could not have preferred to give appointments to those who had undertaken training with them.

12. The appeals are, accordingly, allowed; the judgment and order dated May 2, 2008 passed by the High Court of Orissa, Cuttack is set aside. The parties shall bear their own costs.

.....J.
(Aftab Alam)

..... J.
(R.M. Lodha)

NEW DELHI.
JANUARY 27, 2011