

CASE NO.:
Appeal (civil) 941 of 2006

PETITIONER:
B.H.E.L & Anr.

RESPONDENT:
B.K. Vijay & Ors.

DATE OF JUDGMENT: 02/02/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No. 18305 of 2005)

S.B. SINHA, J:

Leave granted.

The respondent herein is a Diploma Holder in Mechanical Engineering. He was appointed as a Charge Man in the year 1976 by the appellant in its Jhansi Unit. He had successfully completed his diploma course in Industrial Safety from Central Labour Institute, Bombay in 1979-80. The said Jhansi Unit of the appellant is a factory within the meaning of the provisions of the Factories Act, 1948 (hereinafter referred to as 'the Act'). Section 40B of the Act provides for employment of such number of Safety Officers as may be specified in a factory wherein 1000 or more workers are ordinarily employed. Rules were framed by the State of Uttar Pradesh in terms of the provisions of the said Act known as U.P. Factories (Safety Officers) Rules, 1984 (herein after referred to as 'the Rules'). Rule 5 of the said Rules reads as under:

"Rule 5 \026 The Chief Safety Officer or the Safety Officer in the case of factories where only one Safety Officer is required to be appointed shall be given the status of a departmental head or a senior executive in the factory and he shall work directly under control of the Chief Executive of the factory. Every other Safety Officer shall be given appropriate status corresponding the status of an officer holding a position next below other departmental heads in the factory;

Provided, that where any dispute arises as to the status of a Safety Officer or Chief Safety Officer, the case shall be referred to the State Government, whose decision shall be final."

The respondent was appointed as an Assistant Foreman (Safety). He was placed in SA II grade. The said scale of pay was accepted by the respondent without any demur whatsoever. A notification dated 02.01.1985 was issued by the State Government notifying the appellant as a Safety Officer in the factory, for which a Safety Officer was required to be appointed. As the number of employees working in the said Unit was 1600, indisputably only one Safety Officer was required to be appointed. The respondent, who at the relevant time was working as an Assistant Foreman was said to have been nominated to look after the safety provisions as contained in the Act and the Rules, in addition, to his existing work. He was however, re-designated as Assistant Foreman (Safety).

The respondent was first promoted to the post of Foreman (Safety) in the pay-scale of Rs. 965-1665 on 25.6.1986. On a query made by the Director of Factories, the appellant informed him that the respondent was the in-charge of Safety in its factory being in the pay-scale of Rs. 1965-52-1225-55-1685 and had been enjoying an independent status.

A complaint petition came to be filed in the court of Chief Judicial Magistrate, Jhansi by the Assistant Director, Factories, Agra purported to be in terms of Section 92 of the Act alleging violation of the provisions of Section 40B thereof, read with Rules 4 and 5 of the Rules. In the said proceeding, the respondent did not intervene. He was not examined as a witness. He, in fact, did not raise any grievance in the said proceeding before the learned Chief Judicial Magistrate. In fact, he had not raised any grievance even before the authorities under the Factories Act. Before the learned Chief Judicial Magistrate, the contention raised on behalf of the enforcing agency was that the respondent being a Safety Officer, should have been given E1 (Executive) pay-scale being Rs.1100-60-1940/- in terms of Rule 5. The learned Chief Judicial Magistrate opined:

"Shri B.K. Vijay, Safety Officer in the factory was not provided pay scale and status as per rule. It is proved from document exhibit A-4 which is personnel policy of BHEL that in the BHEL separate grades have been made for executive pay scale and non executive pay scale in which the lowest officer has been provided Rs. 1100-60-1940 scale and in non executive grade maximum pay scale of Foreman/Sr. Office Supdt./Sr. Assistant Gr.I/Sr. Artisan II/Accountant 965-52-1225-55-1665 and pay scale 880-42-964-48-1492 of immediate junior Asstt. Foreman/OS/Sr. Artisan B2/Sr. Assistant Gr.II/Sr. Accountant II has been provided."

It was further held:

"Evidence produced by prosecution proves beyond doubt that during inspection Shri B.K. Vijay was neither given pay scale of executive grade nor was given to him status of departmental head or sr. executive under Rule 4 and 5."

The said judgment, indisputably, has attained finality. In the meanwhile, the respondent was promoted to the post of Sr. Safety Officer in E2 grade and further more promoted to the post of Deputy Manager (Safety) in E-3 grade w.e.f. 25.6.2004.

A reference was made to the State Government pursuant to the observations made by the learned Chief Judicial Magistrate. The Respondent also made representations on 6.5.2002, 23.5.2003 and 28.5.2002. In his representation dated 27.4.2001 he prayed for fixation of wage arrears and allowances stating :

"I was awarded following promotions, after my appointment as Safety Officer (Asstt. Foreman- Non Executive Cadre) w.e.f. 19.3.1985.

Sl.
No.
Designation (Status)
w.e.f. (date)

Pay scale
Basic pay +
allowances

1.

Foreman (E-3)

25.6.86
Rs.965-52-
1225-55-
1665
Rs. 1445 +
allow.

2.

Gen. Foreman (E-4)

25.8.92

Rs. 2500-
120-4300
Rev. Rs.
4000-175-
4300

Rs. 3700 +
allow.
Rs. 5400 +
allow.

3.

Safety Officer (E-1)
(Executive Cadre)

15.6.95

Rs. 2500-
120-4300
Rev. Rs.
4000-175-
4300

Rs. 3820 +
allow.
Rs. 5575 +
allow.

4.

Sr. Executive
Officer (E-2)
(executive cadre)

25.6.97

Rs. 4000-
200-5800-
250-8300
Rev. 12500-
500-18000

Rs. 6550 +
allow.
Rs. 13000 +
allow.

He filed a writ petition before the Allahabad High Court being Civil Misc. Writ Petition No. 20571 of 2001 wherein he also did not contend that he was entitled to E-6 grade. He again in Civil Misc. Writ Petition No. 35123 of 2001 did not make any prayer that he should be given E-6 grade. Only in Civil Writ Petition No. 34259 of 2002 he inter alia made the following prayer:

"(I) a writ, order or direction in the nature of certiorari quashing the order dated 8.7.02 passed by Principal Secretary Labour U.P. State Government Lucknow (Annexure-17);

(II) a writ, order or direction in the nature of mandamus directing the Respondents particularly Respondent No. 2 and 3 to treat the petitioner as placed in E-6 level of its employees as categorized by BHEL itself w.e.f. 19.3.1985 and pay difference of pay and other allowances together with increment and other benefits including promotional benefits as had become due to the petitioner from time to time."

By reason of the impugned order the said prayers were granted. The appellant is, thus, before us.

Mr. Gaurab Banerjee, learned Senior Counsel appearing on behalf of the appellant has drawn our attention to the scales of pay payable for both executive and non-executive grade of employees and submitted that if the respondent herein is to be granted the pay-scale of E-6 w.e.f. 19.3.1985, and furthermore if he is to be given promotions to which he might have been entitled to, his salary would be more than the Chief Executive of the Company.

Mr. Bharat Sangal, learned counsel appearing on behalf of the respondent, on the other hand, urged that in terms of rule 5 of the Rules, the respondent became entitled to salary payable to a Sr. Executive. As the respondent was not earlier aware of the position that the company had divided the executive cadre as Executive and Sr. Executive, he could not make the said prayer earlier. The learned counsel has also drawn our attention to a supplementary counter affidavit filed by the appellant before the High Court and submitted that the appellant had no knowledge that the scale of Sr. Executive was payable and thus no such claim could be raised.

In the year 1985 the respondent was appointed as Assistant Foreman. Standard Executive Designations of the company are as under:

Designation
Salary Grade
Qualifying
Service for
Promotion
1.
SUPERVISORY
(TECHNICAL) \026 NON
EXECUTIVE SALARY
GRADE

a)

Chargeman

SA I

5 years

b)

Assistant Foreman

SAII

5 years

c)

Foreman

SAIII

5 years

d)

General Foreman

SAIV

5 years

e)

Executive Foreman

SAV

4 years

f)

Sr. Executive Foreman

SAVI

4 years

g)

General Executive Foreman

SA VII

4 years

2.

EXECUTIVE \026 Other than
Board Level

h)

Executive (earlier
Officer/Engineer)

E1A

4 years from

SAIV under

10% quota.

i)

Sr. Executive (earlier Sr.
Officer/Sr. Engineer)

E2

4 years

j)

Dy. Manager

E3

3 years

k)

Manager

E4

4 years

l)

Sr. Manager

E5

3 years

m)

Dy. General Manager

E6

3 years

n)

Sr. Dy. General Manager

E6A

3 years

o)

Additional General Manager

E7

1 year

p)

General Manager I/c/General
Manager

E8

3 years

q)

Executive Director

E9

4 years

3.

TOP MANAGEMENT

POSTS (BOARD LEVEL)

q)

Director

Presidential

appointees

selected on the

PSEB

recommendation

r)

Chairman & Managing
Director

Presidential

appointees

selected on the

PSEB

recommendation

The respondent does not deny or dispute the scale of pay payable to different grades of employees, as noticed hereinbefore, but stated that as regard the post of Sr. Engineer/Sr. Officer, the designation was amended only for the purpose of this case. The said contention of the respondents has been denied and disputed. It has not been disputed that he has been appointed as Safety Officer on 25.6.1993. The post of Sr. Engineer/Officer/Sr. Executive having a pay-scale of Rs. 13750-550-18300/- replaced w.e.f. 1.1.2000, and not during the pendency of this special leave petition. A Safety Officer is appointed for the purpose of Factories Act only. A Safety Officer in terms of Rule 5 is merely given the status of a departmental head or a Sr. Executive in the factory. Such status is conferred because he would be posted under the Chief Executive of the factory and would report only to him. As regards safety aspects, other officers would be bound by his direction.

In terms of the proviso appended to Rule 5, the decision of the State Government, in any dispute raised as regards the status of the Safety Officer, is to be final. The respondent did not raise such a dispute. He made representations only after the judgment was passed in the criminal case. In the criminal case the learned Chief Judicial Magistrate imposed a fine of Rs. 500 on the persons who were accused therein. Despite the finding in the said criminal case, it was open to the appellant to contend before the State Government that having regard to the facts and circumstances of this case, the respondent was not entitled to the remunerations payable to Sr. Executive Officer.

In P. Ramanatha Aiyar's Advance Law Lexicon, 3rd edition, Volume 4, at page 4469, the expression "status" has been defined as under:

"Status is a much discussed term which, according to the best modern expositions, includes the sum total of a man's personal rights and duties (Salmond, Jurisprudence 253, 257), or, to be verbally accurate, of his capacity for rights and duties. (Holland, Jurisprudence 88).

The status of a person means his personal legal condition only so far as his personal rights and burdens are concerned. Dugganna v. Ganeshayya, AIR 1965 Mys 97, 101. [Indian Evidence Act (1 of 1872), S. 41]

In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. (Roshan Lal v. Union, 1967 SLR 832)."

The said expression has been defined in 'Black's Law Dictionary' meaning "Standing; state or condition; social position. The legal relation of individual to rest of the community. The rights, duties, capacities and incapacities which determine a person to a given class. A legal personal relationship, not temporary in its nature nor terminable at the mere will of the parties, with which third persons and the state are concerned."

Only because a person is given a particular status, the same would not mean that his other terms and conditions of service would not be governed by contract of employment or other statute(s) operating in the field. We may notice that a three-Judge Bench of this Court in Indian Petrochemicals Corporation Ltd. & Anr. v. Shramik Sena & Ors. [(1999) 6 SCC 439] observed as under:

"We hold that the "workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes."

The High Court unfortunately did not consider the matter from the aforementioned perspective.

The contention of the Respondent that the Appellant has admitted in its rejoinder affidavit that not only he was to be given the status of E-6 grade but also the salary payable therefor cannot be accepted. The Appellant had all along taken the stand that the remuneration payable to a senior executive in the cadre of E-6 were not admissible to the Respondent. The explanation given by the Appellant in their reply to the counter-affidavit filed in this court appears to be justified particularly in view of the fact that their stand had all along been that the Respondent was not entitled to the salary payable to the senior executive in E-6 grade.

Before us, however, Mr. Banerjee stated that the appellants have no objection to grant the scale E-2 Grade to the Respondent w.e.f. 19.3.1985. The High Court, however, wrongly proceeded on the basis that only because the respondent is to be given the status of a Sr. Executive, he was entitled to corresponding pay, allowances and other benefits. It is one thing to say that under the Act, a status is conferred for the purpose thereof but it would be another thing to say that pay, allowances and other benefits are not to be paid in terms of the contract of employment or the statute operating in the field. The promotion rules relied upon by the respondent as well as by the

High Court clearly show that the cadre of Sr. Executive was for the purpose of the promotion rules.

Before a person in terms of the promotion rules is promoted to the post of Sr. Executive, he must hold a post in the executive cadre having salary payable to E-1 to E-5 grade. We have furthermore noticed that so far as pay and other allowances are concerned the 'personnel manual' itself suggests that E-2 grade is a grade for Sr. Engineer/Sr. Officer/Sr. Executive. The chart of 'standard executive designations' in the company shows that before a person is placed in the next higher grade he has to be in the next below post for the number of years mentioned therein.

Furthermore, promotion to the selection posts is not automatic. Nobody has a right to promotion, particularly to the selection posts. In ordinary course the respondent was required to spend 43 years of time for reaching E-6 grade. He being in the grade of SA II in the year 1985, could not have been granted the salary payable to the officer of the rank of Dy. General Manager. Everybody concerned including the officers of the State proceeded on the said basis. As noticed hereinbefore even in the complaint petition filed before criminal courts, the authorities under the Act merely contended that the authorities of the appellant had violated rule 4 and 5 of the Rules and thus punishable under Section 92 of the Factories Act only on the premise that the respondent had not been given the salary of E-1 grade.

In *Tarsem Singh & Anr. v. State of Punjab & Ors.* [(1994) 5 SCC 392] it was stated:

"Promotion as understood under the service law jurisprudence means advancement in rank, grade or both.

[See also *State of Rajasthan v. Fateh Chand Soni* (1996) 1 SCC 562)]

Promotion thus being not automatic, the High Court committed a manifest error in issuing the impugned directions.

For the foregoing reasons, the impugned judgment cannot be sustained. However, it has been conceded that the Respondent may be allowed to draw E-2 grade from 19.03.1985. It is directed that the entire amount paid to the Respondent pursuant to or in furtherance of the order of the State Government or the High Court in E-1 grade shall be adjusted. It goes without saying that the salary etc. paid to him by the company for the aforementioned period shall also be adjusted i.e. to say only the difference of the amount payable to the Respondent herein shall be paid. The appeal is, therefore, allowed in part and to the extent mentioned herein before.

However, in the facts and circumstances of the case there shall be no order as to cost.