

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1979 of 2015
IN
Civil Writ Jurisdiction Case No. 1099 of 1998**

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The Management of the National Textile Corporation (WBABO), Marketing
Division, S.P. Verma Road, Patna

.... Appellant/s

Versus

1. The Presiding officer, Industrial Tribunal, Bailey Road, Patna
2. National Textile Corporation Karamchari Union, National Textile Showroom,
Udyog Bhawan, East Gandhi Maidan, Patna- 1
3. National Textile Corporation Employees Association, Division Office, S. P.
Verma Road, Patna- 1

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kripa Nand Gupta
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 28-01-2017

Delay of 28 days is condoned for the reasons indicated
in I. A. No. 8802 of 2015.

Matter is thereafter heard on merits.

The management is in appeal, because they lost before
the Learned Single Judge in their effort to get the Award of the
Industrial Tribunal, Patna, dated 27th of August, 1998, set aside.

The dispute arose, because discrimination was being
practiced by the management of the appellant in matter of extending
pay-scale to the workmen, working at the sale centre or show-room



at Patna viz-a-viz similarly and identically placed employee at Calcutta Division, Bhubaneswar Division and Assam Division.

The Learned Single Judge in a very detailed hearing and consideration has very significant observation to make after discussing all the aspects in following terms, which is extracted from the order:

“The management when takes this plea, is required to bring documentary material to substantiate the stand, but relevant materials have not been brought, as the management has taken plea, onus is upon them to bring supportive material but have not brought material on record to show variation of degree of responsibility, educational qualification, manner or source entry of the employees at Calcutta are different than that of the employees of Patna Depot. The workmen deposing before the Tribunal having discharging same been accepted by the Management witnesses in Para-9, in that circumstance, onus shifts upon the Management to show what is the difference in identity of work, nature of responsibility and the educational qualification. But the Management nowhere in its written statement or through witness has brought any material to show that there was no identity of work and other factors are not similar as stated above. The balance further tilts in favour of workmen union from the recital of minutes of meeting which is Annexure-9 (Ext-D) where in the proceeding the Chairman cum-Managing Director accepted the disparity exists. It will be relevant to quote from Annexure-9, which is as follows:

“Approval of disparity by extending NTC scale of pay to the Godown/Divisional Office, Employees of Patna, Bhubneshwar & Guwahati



Division in line with Calcutta.

Chairman-cum-M.D. explained that it is unfortunate that such disparity exists. He however, agreed in principle for removal of the disparities but there are certain formalities to be followed. It is necessary to have the clearance of the component authority i.e. Holding Company for this purpose. He however, indicated that the question of extension of the Central D.A. scale to specific employees, if cleared by the Holding Company, can be done only by way of Agreement with the concerned union indicating the names of employees to whom this will be applicable. He has assured that he will take up this issue as early as possible with the concerned authorities.”

This recital shows that there is disparity in the pay scale, though nature of work at Calcutta Depot vis-à-vis Patna Depot does not have any marked distinction. But at the same time it is well known while considering and comparing the identity of work there cannot be mechanical and mathematical exactitude in weighing the nature of duty performed by the two classes of employees. In such view of the matter, this Court should not interfere with the finding without there being perversity in the award while exercising power under Article 227 of the Constitution of India empowers superior Court to interfere only when the Tribunal or the court has failed to consider the relevant materials were required to be taken, irrelevant facts have been taken into consideration, the findings are against the weight of evidence, so much so the findings arrived by the Tribunal are perverse as no prudent person will arrive to such a finding.

In the present case one more fact comes to the mind of Court, some employees posted in Patna are getting NTC pay scale and one S.N.Jha was posted at Calcutta Depot has been transferred to Patna Depot is getting NTC pay scale equal to



employees of the Calcutta Depot.

In the recent judgment of Hon^{ble} Supreme Court the question of entitlement of N.T.C. scale came for consideration.

2003 Supreme 7348 (NTC v. NTC Show Room E Association, the Hon^{ble} Supreme Court has refused to interfere with the award when it is found that the employees posted in the show rooms in the State of Karnataka was transferred from the show rooms to the Head Office i.e. Corporate Office.

In the present case also appears, one S.N.Jha, posted at Calcutta Depot was transferred to Patna who is getting the NTC scale so much so certain employees are getting NTC pay scale as that of Calcutta Depot.

Another point that has been raised by the Management is the Patna Depot is incurring heavy loss, in that circumstance, it will not be feasible and practical to pay the pay scale as that of the staff of Calcutta Depot.

It is admitted fact that the Depot at Calcutta, Guahati, Bihar and Orissa constitute one class, staff posted at aforesaid places are employees of subsidiary company which prepares consolidated profit and loss account. If other employees are getting even after loss, it does not stand to reason why these employees should be left out from the benefit of NTC pay scale staffs of Calcutta constituted different class without any reasonable and intelligible basis leads to an arbitrariness violates Article 14 of the Constitution of India and the reason assigned by the Tribunal cannot be said to be perverse requiring interference by this Court.”

In the opinion of the Court, the finding of the Learned Single Judge based on material, which has emerged from the



decision of the management and acceptance of the position, nothing much more is required to be done by this Court, especially when the Learned Single Judge has committed no error of law, as such, which requires to be rectified in appeal.

The whole effort in filing the appeal on behalf of the company is to shake off any kind of financial liability, which may be created by the decision of the Industrial Tribunal, which has been affirmed by the Learned Single Judge. The act of the appellants is a clear case of discrimination and violation of Article 14 and 16 of the Constitution of India and that too by a public sector undertaking.

Appeal has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

SKM/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	31.01.2017
Transmission Date	

