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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7431-2015

Date of Decision : August 08, 2018

Union of India

.... Petitioner.

Versus

The Branch Secretary, Uttariya Railway Mazdoor Union,
and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Puneet Jindal, Senior Advocate
with Mr. Lupil Gupta, Advocate
for the petitioner.

Mr. Ram Pal Rana, Advocate,
for respondent No.1.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash award dated 12.06.2014 (Annexure P/5) notified on 12.09.2014, passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh (for short, "**the Tribunal**") being contrary to the law and facts.

2. Facts relevant for the purpose of decision of this writ petition; that one K.K.Kappor joined as Clerk with Railways Department with effect from 17.4.1963. Later on, he was promoted as Senior Clerk w.e.f. 1.10.1980 in the revised pay scale of Rs.330-560. Vide order dated

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3.1.1983 (Annexure P/1) said K.K. Kapoor was asked to officiate as Head Clerk as a local arrangement against vacancy in the Security Office of RPF, Northern Railway, Ferozepur with effect from 01.01.1983. In March, 1983, said K.K. Kapoor was temporarily transferred to Personnel Branch, DRM Office, Ferozepur and subsequently, he was promoted as Head Clerk with effect from 1.1.1984. To this extent, facts are not disputed from either side.

3. The contention was raised on behalf of Branch Secretary, Uttariya Railway Mazdoor Union (respondent No.1) that the workman was promoted as officiating Head Constable w.e.f. 1.11.1983 and his services were being utilized as Head Clerk and his services were to be regularized w.e.f. 1.1.1983 as Head Clerk.

4. To the contrary, the Management has come with the plea that the said period when he was asked to officiate as Head Clerk on adhoc basis, cannot be taken into consideration for ordering his promotion because there were other employees senior to him as well.

5. Learned counsel representing respondent No.1 contended that said K.K. Kapoor is entitled for promotion right from the date when he was asked to officiate as Head Clerk, i.e. w.e.f. 1-1-1983 vide order Annexure P/1. More so, for the purpose of his promotion as Head Clerk, he was not required to undergo any written examination. The approval regarding order (Annexure P/1) was obtained from the Headquarters. He had made representation to the department for regularization of his promotion as Head Clerk w.e.f. 1.1.1983, but the same was rejected in the

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year 1996 and thereafter, the demand notice was issued in 1996 itself. The Tribunal has already returned the findings while taking into consideration all these facts.

6. While arguing this point, learned senior counsel, representing the petitioner – Union of India, submitted that the order (Annexure P/1) vide which said K.K. Kapoor was asked to officiate as Head Clerk was purely temporary arrangement and on the basis of that, the workman cannot seek any benefit as adhoc promotion does not confer any right for regular promotion. Learned senior counsel also placed reliance upon judgment of Hon`ble Supreme Court in **Union of India Vs. Dharam Pal etc., 2009(8) SLR 274**, wherein similar controversy was before Hon`ble Apex Court and it was observed as under:-

“When an ad hoc appointment is made, the same must be done in terms of the rules for all purposes. If the mandatory provisions of the rules had not been complied with, in terms of Direct Recruit (supra), the period shall not be taken into consideration for the purpose of reckoning seniority. Furthermore, it is one thing to say that an appointment is made on an ad hoc basis but it is another thing to say that inter se seniority would be determined on the basis laid down in another rule.”

7. Identical matter was before Hon`ble Apex Court in **Direct Recruit Class-II Engineering Officers' Association and Ors. v.State of Maharashtra and Ors. [1990] 2 SCC 715**, wherein Hon`ble Apex Court observed as under:-

“... an employee appointed to a post according to rule would

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be entitled to get his seniority reckoned from the date of his appointment and not from the date of his confirmation. It is, however, also well settled that where the initial appointment is only ad hoc, not according to rules and made a stop-gap arrangement, the period of officiation in such post cannot be taken into account for considering the seniority.

8. Learned senior counsel also took the plea that the reference before learned Tribunal is otherwise not maintainable because reference can be made before the Tribunal under Section 10 of the Industrial Disputes Act, 1947 (for short, “**the Act**”) with regard to matters, which are covered under Second and Third Schedules appended to the Act and the said Schedules do not make any reference to seniority matters. As the matter in controversy primarily revolves around the seniority matter *inter se* the workman and others, that was not within the purview of learned Tribunal as per provisions of Section 10(1)(c) of the Act, the relevant extracts of which are reproduced here under :-

“10. Reference of disputes to Boards, courts or Tribunals

(1) Where the appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-

(a) – (b). xx xx xx xx

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication;”

Rather, the same is to be adjudicated upon by Central Administrative Tribunal.

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9. Having considered the submissions made by learned counsel for the parties and appraisal of the record as also the settled proposition of law, this Court is of the considered view that the Tribunal has not considered the legal aspect that as per provisions of Section 10(1)(c) of the Act, such a reference, primarily involving seniority matters, could not be adjudicated upon by the Industrial Tribunal and as such, the award dated 12.09.2014 (Annexure P/5) pronounced by the Tribunal deserves to be set-aside.

10. In view of the above, the present writ petition is accepted and the impugned award dated 12.09.2014 (Annexure P/5) pronounced by the Industrial Tribunal, is set-aside.

11. Resultantly, the writ petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

August 08 , 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes