

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 03.01.2020

Order Passed on : 05/02/2020

W.P.(227) No. 6364 of 2011

1. R.K. Bajpai, S/o. A.R. Bajpai, R/o. Qtr. No.3/6/37, Risali Sector, Bhilainagar, Tahsil and District – Durg (C.G.)
2. Islamuddin, S/o. Late Jalaluddin, R/o. Qtr. No.9B, Str. No.9, Sector-7, Bhilainagar, Tahsil and District – Durg (C.G.)

---- Petitioners

Versus

1. Managing Director, Bhilai Steel Plant, Steel Authority of India Ltd., Ispat Bhawan, Bhilai.
2. Member Judge, Industrial Court, Chhattisgarh at Raipur, Near Ghadi Chowk, Raipur (C.G.)

-----Respondents

For Petitioners	: Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate
For Respondent No.1	: Mr. Sandeep Dubey, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

05/02/2020

1. This petition has been brought challenging the order dated 11.03.2011, passed in Civil Appeal No.54/CGIR/2011 and also against the order dated 08.08.2011, passed in Review Application No.9/CGIR/Act/2011.

2. It is submitted by the learned counsel for the petitioners that the petitioners were appointed as Technicians-cum-Operative Trainee in Bhilai Steel Plant for a period of six months by order dated 29.11.1994. The petitioners and others were regularized vide order dated 25.08.1995 w.e.f. 29.05.1995 and also were re-designated along with others as Loco operators w.e.f. 18.03.1996. Subsequently 16 Loco operators were promoted as Senior Loco Operators in S-6 grade w.e.f. 30.06.2006, however, the petitioners were left out without any reasonable cause.
3. It is further submitted on behalf of the petitioners, that there is a procedure of eligibility test and interview for the purpose of promotion from one cluster to another, which was not performed in this case. Circular dated 17.06.1977 (Annexure P-7) regulates procedure to be adopted for promotion. In Clause 5.1, it is clearly provided that skill test will be carried out ordinarily for the existing vacancies and the candidates shall be called three times in numbers. In this case the number of candidates were not available three times, therefore, the petitioners should have been called before promotion so given to the rest of the Loco Operators.
4. These petitioners then filed an application before the Labour Court, Durg. The Labour Court, Durg allowed the application of the petitioners and ordered the respondent to provide petitioners seniority from 30.06.2006. This order was challenged by the respondent in appeal before the State Industrial Court, Raipur. Member Judge of the Industrial Court has passed the impugned order dated 11.03.2011, where in was held that the petitioners filed

an application before the Labour Court beyond limitation and granting promotion is the discretion of the employer and the order of the Labour Court was set-aside. The review petition filed has also been dismissed.

5. It is submitted that the impugned orders are illegal, arbitrary and not sustainable. The respondent No.1 was bound to follow the guidelines laid down in the circular dated 17.06.1977, therefore, it is prayed that this petition be allowed and relief be granted to the petitioners.
6. Counsel for the respondent No.1 submits that the application filed by the petitioners before the Labour Court are hopelessly barred by limitation as it is provided under the provisions of M.P. Industrial Relations Act, 1960. It is also submitted that this ground that there had been a guideline for calling candidates thrice the number of vacancies has been raised before this Court for the first time, which can not be considered as it was a matter for consideration before the Court below, therefore, this petition is without any substance, which may be dismissed.
7. In reply, it is submitted on behalf of the petitioners that before approaching the Labour Court, this petitioners had made representation to the authorities for grant of seniority to them. The learned Labour Court has held that the petitioners had spent time in making representation for grant of seniority and held that the suit was not time barred in the order dated 01.07.2010 passed by it. According to the guidelines in the circular dated 17.06.1977, skill test was essential, which was not followed, therefore, the order

passed by the Labour Court was correct and should not have been interfered by the learned Appellate Court. Relying on the judgment of Supreme Court in case of **S.S. Rathore Vs. State of M.P.**, reported in **AIR 1990 SC 10**, it is submitted that in case of service disputes cause of action does not arise from the date of original adverse order but on the date, when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. It is submitted that this is a similar case, the petitioners made representation on which no orders were passed by the respondent No.1. Therefore, the application filed by the Labour Court was within limitation.

8. I have heard the learned counsel for the parties and perused the documents placed on record.
9. The fact of appointment of the petitioners and others, their confirmation and their re-designation as Loco Operators is undisputed. The dispute has been arisen by the order dated 30.06.2006 by the respondent No.1 in which 16 Loco Operators were promoted as Senior Loco Operators w.e.f. the date of order. The petitioners were left out in that order simply for the reason that in gradation their names stood below the names of the promoted Loco Operators.

10. The grounds raised by the petitioner that no skill test was held was entertained by the Labour Court. The requirement of skill test has not been disputed or varied by the appellate Court but the ground of allowing the appeal setting aside the order of the Labour Court is only this that the application so filed by the petitioners before the Labour Court was beyond limitation, therefore, only question that is present before this Court is whether the representation made by the petitioners, before the Labour Court can be considered as within limitation and if so what would be the effect.
11. The relevant portion of Section 62 of the M.P. Industrial Relation Act, 1960 provides as under :-

“Section 62. Commencement of proceedings—
Proceedings before a Labour Court shall be commenced-

- (i) in respect of a dispute falling under clause (a) of paragraph (A) of subsection (1) of Section 61 within two years from the date of the dispute;

x x x x x x

12. The learned Appellate Court has placed reliance on the clause 1 of Section 62 of the M.P. Industrial Relations Act, 1960, for which the dispute should be under Clause (a) of paragraph (A) of Sub-section 1 of Section 61 of the Act, 1960, which is reproduced as under :-

“Section 61. Powers of Labour Court— (1) In addition to powers conferred under other provisions of this Act, a Labour Court shall have power to—

(A) decide-

- (a) disputes regarding which application has been made to it under subsection (3)

of section 31 of the Act;”

13. The provisions mentioned in Section 31 (3) is also reproduced as under :-

“Section.- 31 Notice of change—

(1) x x x x x

(2) x x x x x

(3) A representative of employees or an employee desiring a change in respect of an industrial matter specified in Schedule-II or any other matter arising out of such change may make an application to the Labour Court in such manner as may be prescribed.”

14. The change mentioned in the Section 31 (3) of the Act, 1960 has been defined in Section 2 (7) of the Act 1960, which means the limitation in an industrial matter. On perusal of this provision of law under the Act, 1960, it is very much clear that Section 62 (i) provides for limitation for different dispute, which is not a dispute regarding non-grant of promotion to a employee or regarding the challenge given to the procedure adopted for promotion etc. Therefore, finding of the order of appellate Court on this point that the application preferred by the petitioners before the Labour Court was beyond limitation was totally erroneous.
15. There is no specific denial on the part of the respondent regarding the promotion policy and guidelines vide circular dated dated 17.06.1977, therefore, it was the burden upon the respondent No.1 to call candidates thrice the number against the existing vacancies and conduct a skill test before passing the order of promotion etc., which has not been conducted in this case. Therefore, the learned

Labour Court had passed the correct order, which has been erroneously and illegally set-aside by the appellate Court. Hence, this petition is allowed. The impugned order is set-aside and the order of the Labour Court is restored with a direction to the respondent No.1 to comply with the same.

16. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram