IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.1025 of 2013 (M/S)

Nagar Nigam, Haldwani-Kathgodam …Petitioner

Versus

Presiding Officer Labour Court and another …Respondents

Present: Mr. Ashish Joshi, Advocate for the petitioner.
Mr. Pooran Singh Rawat, Advocate for the respondents.

Hon'ble Sharad Kumar Sharma, J.
(Via Video Conferencing)

Brief facts which engages consideration in the present writ petition, arises from where the petitioner Municipal Corporation has put a challenge to the impugned award dated 27.11.2012, which was published on 01.12.2013, and had been passed by the Labour Court, Haldwani, District Nainital; in an Adjudication Case No.09 of 2006, whereby the Labour Court, had allowed the reference and answer the same in favour of the workman and thereby directing and holding that the respondent no.2/workman, may be accorded with the salary, as admissible and payable to him, for the post of "Street Light Inspector", and also to grant him the post and designation of the Street Light Inspector.

2. The brief backdrop of the controversy, is that the petitioner's case, which he has projected in the writ petition, is that the respondent no.2/workman, was initially inducted and appointed by the Executive Officer, Municipal Board, as a Class IV, employee by an order of 11.03.1992; and subsequently the services of the respondent no.2/workman; was confirmed as a Gang Man, (Street), by an order of 28.06.1993, which

was passed by the respondents. Owing to the efficient services rendered by the respondent no.2/workman, the petitioner/employer considering, his service credentials had promoted the respondent no.2, in the pay scale of 825-1200/- as it was then applicable, by an order of 18.10.2010, upto this stage, there happens to be no controversy at all. The controversy emerges, on the issuance of a letter being Letter No.430 dated 19.10.2001, wherein the petitioner/employer had passed the following order, thereby directing the respondent/workman to discharge the duties of Street Light Inspector. The following directions were issued:-

> ''आपको कार्य हित में मार्ग प्रकाश बिन्दुओं के निरीक्षण व स्थल पर कार्य कराने हेतु तैनात किया जाता है। आप प्रतिदिन कार्य एवं रात्रि में मार्ग प्रकाश बिन्दुओं के निरीक्षण कर आख्या उचित माध्यम से मुझे प्रस्तुत करेंगें''

3. The post and work of Street Light Inspector, carries a higher scale and responsibility, as compared to the post of Gang Man (Street).

4. In fact, if the said order dated 19.10.2001, itself is taken into consideration and which has also been argued by the counsel for the respondents also, before the Labour Court, as well as before this Court, that the apparent interpretation of the said order would be that the direction was issued by the Executive Officer of the Nagar Palika, (as it then was) directing the petitioner to discharge the work of Street Light Inspector and it is not in controversy, that subsequent to this order, the respondent workman had infact worked as a Street Light Inspector, though the contents of the letter has been otherwise interpreted by the petitioner, as if, it was only an arrangement, which was made and no lien, as such was being created by the said letter, in favour of the petitioner as against the said post,

in order to enable him to be entitled for the payment of scale; as admissible to the post of Street Light Inspector.

5. When on the demand being raised by the respondent no.2/workman, for the remittance of the salary, as admissible to the post of Street Light Inspector, the post on which according to the respondent no.2/workman, he was working ever since passing of the order of 19.10.2001, when the same was not responded with by the employer/petitioner, the respondent no.2/workman has sought a reference by invoking the provisions contained under Section 4 (K) of the U.P. Industrial Disputes Act, and as a consequence of seeking of the said reference, the State Government has issued a Government Order No.462-67CV8 (K)/2004 dated 20.02.2006, whereby a dispute was referred to be adjudicated by the Labour Court. Consequent to the aforesaid reference, which was made by the Government Order of 20.02.2006; an adjudication case was registered before the Labour Court, Haldwani and a following reference was formulated:-

> ''क्या सेवायोजकों द्वारा सम्बन्धित श्रमिक श्री डुंगरसिंह परमार, लाईनमैन से प्रकाश निरीक्षक का कार्य लिये जाने के कारण उसे कार्य की प्रकृति के अनुसार दिनॉक 19.10.2002 से प्रकाश निरीक्षक का पदनाम व वेतनमान न दिया जाना उचित तथा/अथवा वैद्यानिक है? यदि नहीं तो सम्बन्धित श्रमिक क्या हितलाभ/अनुतोष पाने को अधिकारी है? तथा किस–किस विवरण सहित''?

6. The parties to the proceedings before the Labour Court, in the reference proceedings exchanged their respective written statements and the defence, which was taken by the employer/petitioner, for the purposes of giving a challenge to the claim raised by the respondent no.2, on the ground of issuance of a letter of 19.10.2001, was that; that in the Nager Palika, as it

then was existed, there was only one sanctioned post, which was available of Street Light Inspector, and since it was already occupied by an incumbent hence, the petitioner, since was not working against a sanctioned post, he would not be entitled for the scale of Street Light Inspector; for which a reference was made to the Labour Court and since according to the case of the employer before the Labour Court, that there was only one post in the Nagar Palika, he could not be granted with the name of the said post of Street Light Inspector, as in the absence of creation of any cadre or increase of the cadre strength of the said post, no such designation of Street Light Inspector could be assigned to the respondent no.2/workman.

7. If the pleadings of written statement, which has already been dealt with by the Labour Court, are taken into consideration and then the case what has been argued by the counsel for the petitioner today, in fact, if their pleading is taken into consideration, it was only confined from the prospective that there was only one sanctioned post of Street Light Inspector, which was at that time already occupied by an incumbent Mohan Chand Pandey and hence, the petitioner would not have any right to get the benefit of payment of scale admissible to the post of Street Light Inspector and consequently, he would not be entitled for the post too. What is to be considered from the pleadings raised by the petitioner before the Labour Court, is that it had never been the case of the employer/petitioner, that the after grant of promotion to the petitioner on 18.10.2014, in aforesaid scale, already referred above, the petitioner was not having a qualification to hold the post of Street Light Inspector, the scale of which was claimed by the respondent no.2/workman by seeking a reference under Section 4 K of

U.P.I.D. Act, on the ground that since 19.10.2001, he was admittedly working in the said capacity and since he was discharging the responsibility of a post of Street Light Inspector; which is superior to the post of Gang Man (Street), the post on which he was promoted and that the services, which was rendered by him, which carried more responsibility, then he would be entitled for the salary of post carrying higher responsibility, but the fact of the respondent no.2/workman, being not qualified to hold the post was not a case which was ever argued by the petitioner/employer, before the Labour Court and hence no finding as such, to the contrary has been recorded by the Labour Court too while dealing with the reference made by the State. No finding on the aspect of qualification of workman was either pleaded, argued or proved, before the Labour Court, hence it cannot be gone into, in the writ petition for the first time, by permitting to develop a case which was never pressed before the Labour Court.

8. The Labour Court during course of proceedings had recorded the statement of DW1 Dunger Singh, who recorded the statement on behalf of the present petitioner/employer, who was then working as an Executive Officer of the Nagar Palika, and apart from narrating all the facts, which has already been referred to above, he too in his statement recorded has taken a limited ground of challenge to the reference, it was limited on account of non availability on the post and the cadre strength itself was not sanctioned. On the contrary, the respondent no.2/workman has produced himself before the Labour Court and recorded his statement and supported his case by oral and documentary evidences, that since he was working on a superior post and was discharging the services of Street Light Inspector, he

would be entitled for the scale at least which is admissible to the post of Street Light Inspector i.e. the Pay Band of Rs.5200-20200 carrying a grade pay of Rs. 1900/-.

9. The Labour Court after considering the facts on records and an admitted position too that the respondent no.2/workman, was working on the post of Street Light Inspector and which also stood established and proved by the respondent no.2/workman, by placing on record the communications, which were made by him after passing of the order of 19.10.2001, wherein all the correspondences, which has been made by him, with regards to discharging his official responsibilities, in the capacity of being a Street Light Inspector, the inference, which has been drawn by the respondent no.2/workman and the findings recorded, would be that it was a tacit admission by the petitioner/employer, that the respondent no.2/workman, did discharge the work on the post of Street Light Inspector and this very fact would be sufficient enough to grant him the scale of Street Light Inspector; to the respondent no.2; for the reason being and for the justification behind it that the employer since being in an advantageous position over the workman cannot be permitted to exploit the Labour Court, by asking them to discharge the services on the post of a higher cadre and responsibility and remunerating them with a scale of a lower post because that concept itself runs contrary to the provisions contained under Article 14 to be read with Article 39(1)(d) of Constitution of India, besides would also amount to be an unfair labour practice.

10. The challenge to the finding recorded of the Labour Court in relation to the authority reported in **2005 (104) SLR (7)-413 UPSCD Vijay Shankar Tripathi vs. Project Officer and another,** is concerned viz. the Labour Court, has derived that it would be justifying for the grant of the higher pay scale on the post on which the person has worked it is by the petitioner that since it was dealing with the situation and was also in control of affairs of also considering the qualification, which an employee working on a superior post was entitled to have though it is not a circumstances, which is prevailing in the present case. Hence, since admitted possession, which has emerged, as per the records and also as per the arguments, which has been extended by the counsel for the parties, the admitted fact, which is established from records, is that respondent no.2, did work on the post of Street Light Inspector, which carried a superior scale, as referred above, and he had worked so till rendering of the award of 27.11.2013; which is the case argued by the counsel for the petitioner, I do not find that there is any apparent illegality committed by the Labour Court, to call for an interference in the exercise of my supervisory jurisdiction under Article 227 of the Constitution of India and it also does not entail to answer the question which is being raised by the petitioner with regards to the qualification possessed by respondent no.2; particularly when that was not a question raised nor was adjudicated by the employer before the Labour Court. Since, the Labour Laws being a beneficiary legislation, it has to be liberally construed and the employer cannot be permitted to exploit the manpower by taking a work of a higher post and not remunerating the employee with the scale, as admissible to the said post.

11. Accordingly, the writ petition lacks merit and hence it is dismissed. The award passed by the Labour Court is affirmed subject to a slight modification to the extent that since respondent no.2 has worked, he would be entitled for the higher scale of Street Light Inspector, but as far as the post is concerned, he will not be entitled for the post because that has not being a post created in the cadre of the Nagar Nigam.

12. Accordingly, subject to the above, the writ petition stands dismissed.

(Sharad Kumar Sharma, J.)
18.12.2020

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