

OD-3

WPO/859/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DEBASISH GHOSH

-VERSUS-

ANDREW YULE AND COMPANY LIMITED
AND ORS.

BEFORE

The Hon'ble Justice RAJA BASU CHOWDHURY

Date: 10th October, 2023

APPEARANCE

Mr. Mukul Lahiri, Sr. Adv.

Mr. Prasenjit Barman, Adv.

Mr. Soumyajit Mondal, Adv.

Mr. Swapnesh Mallik, Adv.

...for the petitioner.

Mr. Gautam Chakravarty, Adv.

Mr. Kartik Kumar Roy, Adv.

...for the respondents.

The court:

1. The present writ application has been filed, inter alia, praying for a declaration that the change of service conditions of the petitioner is illegal and arbitrary and is violative of the provisions of Section 9A of the Industrial Disputes Act, 1947 read with the Fourth Schedule of the said Act.

2. The petitioner claims to be an employee of the respondent no.1 (hereinafter referred to as the 'company'). According to the petitioner, he had joined the company in 1992 as '*Farash*' in the head office on the basis of a letter of appointment dated 27th January, 1992. As per the said appointment letter, the petitioner was provisionally appointed for a period of six months from the date of his appointment. The petitioner having successfully completed the probation period, his service was made permanent as *farash* in subordinate staff Grade-I with effect from 3rd August, 1992.
3. In course of his employment with the said company, the petitioner successfully completed his graduation in Commerce (B.Com) from the University of Calcutta in the year 1997. It is the petitioner's contention that since, the petitioner had completed his graduation, the General Manager of the said company not only congratulated him in writing by letter dated 6th November, 1997, but later, in course of his service tenure, had upgraded the petitioner in terms of the memorandum of settlement dated 16th January, 2018 to Grade-III with effect from 1st April, 2018 on the terms and conditions appearing in the letter dated 21st May, 2018.

4. The petitioner says that in course of his employment he was subsequently transferred to the Kalyani unit with effect from 14th March, 2022 vide transfer order dated 9th March, 2022 issued by the respondent no.4. According to the petitioner, the aforesaid transfer order has the effect of changing his service conditions.
5. By referring to the said transfer order, while identifying the changes in his service condition, the petitioner by a communication in writing dated 10th November, 2022 had requested the respondent nos.2, 3 and 4 to take necessary consequential steps as early as possible so as to, *inter alia*, eradicate the disparity in his pay and allowance which he was enjoying during his posting at the head office, with that he was getting at Kalyani on his transfer. As would appear from the aforesaid communication the petitioner was mainly aggrieved by the following:
- i) Opening of a new provident fund account in his name without closing the existing one and without transferring the credits lying in the erstwhile provident fund account to the new account;

- ii) Discontinuing the servicing of the petitioner's life insurance policies maintained with the Life Insurance Corporation of India (LICI);
- iii) Reduction of the medical benefits;
- iv) Reduction of leave encashment benefit;
- v) Splitting of Dearness Allowance (DA) of the petitioner;

6. Since the petitioner's grievances were not redressed, the petitioner has filed the present writ application.

7. In course of hearing of the present writ application, Mr. Lahiri, learned senior advocate representing the petitioner has drawn the attention of this Court to the statements made in paragraph 11 of the application and submits that while the petitioner was working at the head office, the petitioner on the basis of the settlement of 2018, was receiving Rs.26,150/- as basic pay in addition to his Dearness Allowance of Rs.7,688/- which got reduced when the petitioner was transferred to the factory at Kalyani. By drawing attention of this Court to the pay slip appearing at page 32 of the writ application, the petitioner submits that on his transfer the dearness allowance was adjusted and combined with his basic pay, and he started receiving a sum of Rs.27,177/- and, as such, the aforesaid, amounts to

change in service condition of the petitioner and/or reduction of pay scale of the petitioner. It is further submitted that the designation of the petitioner, which was upgraded to Grade-III consequent upon his transfer has been downgraded to Grade-II. He submits that the aforesaid also tantamounts to change in service condition of the petitioner and this Court should restore not only the basic pay of the petitioner but also direct the respondent to restore the designation of the petitioner.

8. Mr. Chakraborty, learned Advocate, on the other hand, submits that transfer is an incident of service. The memorandum of settlement between the parties permits transfer of any employee from the head office to the factory and vice versa. By referring to Annexure-II to the memorandum of settlement dated 16th January, 2018, he submits that the said Annexure only provides for gradation of the scale of pay of the employees. According to Mr. Chakraborty, the petitioner is now getting a better pay.

9. By placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of *Ramnagar Cane and Sugar Co. Ltd. vs. Jatin Chakravorty and Ors.* reported in AIR 1960 SC 1012, it is submitted that an industrial settlement is not only binding on the parties, but an

industrial settlement is also binding on the categories of persons referred to in Section 18(3) of the said Act. According to Mr. Chakraborty, the elevation of the petitioner to Grade-III is not promotion nor a selection. Notwithstanding the aforesaid elevation of the petitioner to Grade-III, the petitioner remained a multitasking subordinate staff. In this context, by placing reliance in the case of ***Bharat Sanchar Nigam Limited v. R. Santhakumari Velusamy and Ors.*** reported in (2011) 9 SCC 510, it is submitted that upgradation merely confers certain financial benefits, by raising the scale of pay without movement from lower to higher position. According to him, the petitioner has accepted the transfer as such, he has accepted the changes in service condition as well. In course of hearing, in response to a query from this Court and on the basis of instructions obtained from his client, he has indicated that although, the petitioner is shown to be in Grade-II, the grade of the petitioner would be restored to Grade-III with effect from the date of his transfer. Mr. Chakraborty submits that no case for interference has been made out by the petitioner and the present writ application deserves to be dismissed with costs.

10. Having heard the submissions made by the learned advocates for the respective parties and considering the materials available on record, admittedly, it would appear that the writ petitioner was upgraded to Grade-III as a Multi-Tasking Subordinate Staff. It is noticed that on the basis of the memorandum of settlement dated 16th January, 2018, particularly Annexure-II thereof, provides for upgradation of the multi-tasking subordinate staff. As would appear from the said Annexure, the same provides for four several grades of staffs; Grade-I, Grade-II, Grade-III and Grade-IV. The aforesaid grades are distinguished from one and other by the scale of pay. As such, once the respondents have agreed to restore the petitioner to Grade-III from the date of transfer, it naturally follows that the petitioner shall be entitled to scale of pay of such grade.

11. Although, Mr. Lahiri, learned senior advocate representing the petitioner by placing reliance on the memorandum of settlement which is applicable in respect of the head office has, inter alia, contended that the petitioner should be paid the scale of pay as provided in respect of the head office, I am not in agreement with the same. I find that the employees employed at the factory of

the said company as also of the head office of the said company, by reasons of collective bargaining, have entered into two separate settlements; one applicable in respect of the factory and the other applicable in respect of the head office. Both such settlements are settlements which are binding on the parties since, such settlements are settlements within the meaning of Section 2(p) read with Section 18(3) of the said Act of 1947. Having regard to the aforesaid, there cannot be any dispute in applying the memorandum of settlement which has been reached in respect of the factory, for making payment of pay and allowance to the petitioner. Since the petitioner, at present, is employed at the factory, the petitioner shall be entitled to the scale and/or grade of pay as applicable in terms of the memorandum of settlement dated 15th May, 2018 which is applicable to the employees employed at the factory of the said company in Grade-III.

12. Further, if the request for pay protection as made by Mr. Lahiri, learned senior advocate for the petitioner is acceded to, the same would create an anomalous situation and would create two class of persons/employees in a particular class, which would be violative of constitutional provisions.

13. Having regard to the aforesaid, I am of the view that the respondents should restore the petitioner in Grade-III with all benefits as may be payable to the petitioner on the basis of the memorandum of settlement dated 15th May, 2018 with effect from the date of his transfer. With the aforesaid direction, the writ application (WPO/859/2023) is, thus, disposed of.

14. There shall, however, be no order as to costs.

15. Urgent Photostat certified copy of this order if applied for we made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

A/s.