

SAYYED FAKHRUL ISLAM

A

v.

MAHARASHTRA STATE ROAD TRANSPORT CORPN. AND ORS.

APRIL 26, 2002

[SYED SHAH MOHAMMED QUADRI AND S.N. VARIAVA, JJ.]

B

Service Law :

Employee—Temporary promotion—Reversion Order—Validity of—Employee temporarily promoted against direct sector vacancies—Condition that on availability of candidates from direct sector he would be reverted to original post—Employee considered by Departmental Promotion Committee—Found unfit for promotion—Reversion order held valid—Not violative of Standing Order 32 of Maharashtra State Road Transport Corporation.

C

The appellant a Senior Foreman in the respondent-Transport Corporation was temporarily promoted as Depot Manager 'A' and subsequently reverted to his original post. His order of promotion specifically provided that his promotion was against the direct sector vacancies and on availability of candidates from direct sector he would be reverted to his original post. He unsuccessfully assailed the validity of the reversion order before High Court of Bombay.

D

E

In appeal to this Court it was contended on behalf of the appellant that as the post of Depot Manager 'A' was not filled up on regular basis the appellant was entitled to continue temporarily on the said post under Standing Order 32 of Maharashtra State Road Transport Corporation. In its counter affidavit the respondent-Corporation averred that the appellant was considered by the Departmental Promotion Committee but he was not found fit for promotion. Therefore, he was reverted to his original post.

F

Dismissing the appeal, the Court

G

HELD : 1. There is no illegality in the impugned order of the High Court. The right conferred under Standing Order 32 of Maharashtra State Road Transport Corporation on a candidate appointed temporarily, is that if no direct recruit is available even after making a fresh attempt, he must be considered for substantive promotion. The appellant was in fact considered

H

A for regular promotion but he was not found fit; therefore, the reversion cannot be said to be in breach of Standing Order 32(a). However, this order does not preclude the authorities from considering his case for promotion to the said post in future in accordance with law. [466-G-H; 467-A]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2937 of 2002.

From the Judgment and Order dated 6.4.2000 of the Mumbai High Court in W.P. No. 3216 of 1998.

C A.K. Sanghi for the Appellant.

Altaf Ahmed, Additional Solicitor General, R.S. Hegde, S. Sharma, Prashant Jain and P.P. Singh for the Respondents.

The Judgment of the Court was delivered by

D **SYED SHAH MOHAMMED QUADRI, J.** Leave is granted.

The order of the Division Bench of the High Court of Judicature at Bombay, Bench at Nagpur, in Writ Petition No.3216 of 1998 dated April 6, 2000 is brought under challenge by the appellant. By the said order the High Court dismissed the Writ Petition filed by the appellant.

E The facts giving rise to the petition may be briefly noted to appreciate the grievance of the appellant. On July 4, 1975, the appellant was initially appointed as Clerk by the first respondent and thereafter as Assistant Works Superintendent from direct sector in the month of June 1979. He passed promotional examination and became eligible for consideration for promotion to the post of Depot Manager 'A'/Assistant Mechanical Engineer in July 1985. On September 5, 1994, he was temporarily promoted as Depot Manager 'A' Junior(M)/Assistant Mechanical Engineer in Class II Junior Grade. On August 28, 1998, he was, however, reverted to his original post of Senior Foreman. He assailed the validity of the said order in the aforementioned writ petition before the High Court. By the impugned order the said writ petition was dismissed.

F Mr. A.K. Sanghi, the learned counsel appearing for the appellant, contended that as the post of Depot Manager 'A' was not filled up on regular basis the appellant was entitled to continue temporarily on the said post

G

H having regard to the terms of his promotion.

A against the direct sector vacancies and on availability of candidates from direct sector he would be reverted to his original post.

The bone of contention is that under Standing Order 32 M.S.R.T. Corporation the appellant is entitled to continue till there is a direct recruitment to the said post. Standing Order 32(a) is in the following terms

B

“32(a). When a suitable candidate is not available for direct recruitment to a post reserved for direct recruitment, a suitable departmental candidate may be given a purely temporary promotion lasting up to such time as a suitable direct recruitment is available for appointment.

C

A fresh attempt shall be made to get a suitable direct recruit by re-advertising the post. If after one year from the date of the temporary appointments of the departmental candidate and even after making a fresh attempt no suitable direct recruitment is available, the competent authority may consider the question of making the appointment of the departmental candidate substantive.”

D

A perusal of the Standing Order, extracted above, makes it clear that it deals with a situation when a vacancy reserved for direct recruitment arises and postulates that : (i) a suitable candidate is not available for direct recruitment; (ii) till such time a suitable direct recruitment is available for appointment, a suitable departmental candidate may be promoted temporarily;

E

(iii) such temporary promotion will last till such time as a suitable direct recruitment is available; (iv) the authorities are under an obligation to make fresh attempt to get a suitable direct recruit by re-advertising the post; and (v) if after one year from the date of the temporary appointments of the departmental candidate and even after making a fresh attempt no suitable direct recruitment is available, the competent authority may consider the question of making the appointment of the departmental candidate substantive.

F

A perusal of the counter of the respondents discloses that the appellant was considered by the Departmental Promotion Committee in September 1985, December 23, 1986, February 1, 1989 and December 31, 1992 but he was not found fit for promotion. In view of this position, the appellant was

G

reverted to his original post. The right conferred, under the aforementioned Standing Order, on a candidate appointed temporarily, is that if no direct recruit is available even after making a fresh attempt, he must be considered for substantive promotion. The appellant was in fact considered for regular promotion but he was not found fit; therefore, the reversion cannot be said

H

to be in breach of Standing Order 32(a). However, we make it clear that this

order does not preclude the authorities from considering his case for promotion to the said post in future in accordance with law. A

In this view of the matter we do not find any illegality in the impugned order of the High Court. The appeal is devoid of merit and it is accordingly dismissed. In the facts and circumstances of the case we make no order as to costs. B

T.N.A

Appeal dismissed.