

A JITEN KUMAR SAHOO & ORS.
v.
CHIEF GENERAL MANAGER MAHANADI COALFIELDS
LTD. & ORS.
(Civil Appeal No. 1043 of 2011)

B JANUARY 27, 2011

[AFTAB ALAM AND R.M. LODHA, JJ.]

C *Service Law – Appointment – Government undertaking*
– *Appointment of appellants who had undertaken*
apprenticeship with the undertaking – Writ petitions by
respondents seeking quashing of the appointments –
Direction by High Court to fill up the post from the merit list
prepared earlier without giving preference to those who had
D *undertaken apprenticeship with the government undertaking*
– *On appeal held: Appellants were impleaded as party*
respondents in the writ petitions for the first time after ten years
– *They were not initially impleaded though primary relief was*
sought against them – Appellants have got three promotions
E *and other candidates have been appointed to the post – Thus,*
writ petitions not entitled to any discretionary relief – Order
passed by the High Court set aside.

F 38 vacancies of Mazdoors, category-I (ITI) occurred
in MCL, a government undertaking. The candidates
sponsored by the employment exchange appeared for
the written test and the trade test. A merit list was
prepared on basis of the qualifying marks. Out of 38
vacancies, 24 vacancies were filled up. Subsequently, 84
fresh vacancies arose. MCL requested the employment
G exchange for their permission to fill up fresh vacancies
from amongst the candidates who had qualified in the
written test and the trade test which was conducted
earlier. There being no response from the employment
exchange, MCL filled up 51 vacancies out of 84 fresh

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vacancies by giving employment to the appellants- candidates who had already undergone the apprenticeship with MCL. The respondents filed writ petitions seeking quashing of the appointments given to 51 appointees; and that they be absorbed in the vacant posts. The High Court allowed the writ petitions. It directed MCL to fill up 51 newly sanctioned posts strictly in the order of merit as per the select list prepared earlier. Therefore, the appellants filed the instant appeals.

Allowing the appeals, the Court

HELD 1.1 The appellants were not initially impleaded as party respondents in the writ petitions although primary relief in the writ petitions was to quash their selection and appointments. The appellants were impleaded for the first time after ten years or so. By that time the appellants got promoted from Mazdoor Category-I to Mazdoor Category-II and then to Mazdoor Category-III and thereafter, to the posts of Fitter. In view of these circumstances, the writ petitioners were not entitled to any discretionary relief by the High Court in exercise of its extraordinary jurisdiction. [Para 8] [577-E-F]

1.2 The High Court failed to take into consideration the material aspects stated in the counter affidavit filed by the appellants that the writ petitioners impleaded the appellants after about 10 (ten) years of their appointment as well as selection to the post of Mazdoor Category-I; that the writ petitioners though had the knowledge of the appointment, posting, continuance in service and subsequent promotions of the appellants, they did not challenge the same for about 10 (Ten) years and acquiescenced their claim and waived their claim if any; and that the petitioners are estopped by acquiescence, waiver, conduct and by negligence to challenge the appointment of the appellants who are discharging their

A duties sincerely to the best satisfaction of the authority
 being selected and appointed to the post for about ten
 years. On promotion of the appellants to the higher
 posts, other candidates have been appointed to the posts
 of Mazdoor-Category I in place of the appellants. If the
 B order of the High Court is allowed to stand, it would not
 only affect the appellants who, during the continuation
 of their service, had got three promotions, but would also
 seriously affect the persons who were appointed in their
 place and were not impleaded before the High Court.
 C Thus, the order passed by the High Court is set aside.
 [Paras 9, 10 and 11] [577-G-H; 578-A-G]

*U.P. State Road Transport Corporation and Anr. v. U.P.
 ParivahanNigam Shishukhs Berozgar Sangh and Ors. (1995)
 2 SCC 1 – referred to.*

D **Case Law Reference:**

(1995) 2 SCC 1 Referred to Para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
 1043 of 2011.

E From the Judgment and Order dated 02.05.2008 of the
 High Court of Orissa at Cuttack in OJC No. 10722 of 1997.

WITH

F Civil Appeal No. 1044 of 2011.

P.N. Misra and K.N. Gupta, Abhishth Kumar, Pankaj
 Sharma, Archana Singh, Shovan Misra, K.K. Patra, Sunil Roy,
 Neeraj.K. Gupta, Sweta Kumari, P. Niroop, Brajesh Jha, Rajesh
 Kumar, Anip Sachthey, Mohit Paul and Shagun Matta for the
 G appearing parties.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Delay condoned in SLP (Civil) No.
 18031 of 2009. Leave granted in both petitions.

H 2. The appellants have preferred these two appeals, by

special leave, because consequent upon the judgment and order passed by the High Court of Orissa at Cuttack, they are likely to lose their job of more than 14 years with the Mahanadi Coalfields Limited (for short, 'MCL').

3. MCL is a Government of India undertaking. By the end of 1993, 38 vacancies of Mazdoors, Category-I (I.T.I.) had occurred in the MCL. MCL sent a requisition to the local employment exchange for sending a list of eligible candidates for filling up the said vacancies. The local employment exchange, in response to that requisition, sponsored 664 candidates. Out of these 664 candidates, 375 candidates submitted their biodata. After scrutiny of the biodata of these candidates, MCL called 316 candidates for the written test. Pursuant thereto, 289 candidates appeared for the same on October 29, 1995. They were also called for trade test in different batches during the period December 26, 1995 to January 5, 1996. Finally, 240 candidates secured qualifying marks. There is a dispute of fact about merit list as according to the contesting private respondents (writ petitioners before High Court), a merit list comprising 226 I.T.I. candidates was prepared by the MCL as they were found suitable in all respects, but MCL denies having prepared a merit list of 226 candidates for employment. However, it is an admitted position that, of the candidates who secured qualifying marks, 24 were given appointment as Mazdoor Category-I (I.T.I.). 14 vacancies

5. vacancies in the trade of Auto Electrician and 9 vacancies in Scheduled Caste/ Scheduled Tribe category – could not be filled up due to non-availability of the candidates. Subsequently, it appears that fresh 84 vacancies of Mazdoor Category-I (I.T.I.) occurred and MCL requested the local employment exchange for their permission to fill up fresh vacancies from amongst the candidates who had qualified in the written test and the trade test conducted as above. There was no response from the local employment exchange to that requisition and, accordingly, MCL filled up 51 vacancies out of

A 84 fresh vacancies by giving employment to those candidates who had already undergone the apprenticeship with them in the year 1991-92. The present appellants are amongst those candidates.

B 4. The private respondents herein and few others aggrieved by the appointment of the appellants and some others to the posts of Mazdoor – Category I (I.T.I.) having been given preference as they had undergone the apprenticeship with the MCL, filed various writ petitions before the High Court of Orissa. They prayed that appointments given to 51 such appointees be quashed. They also prayed for their (writ petitioners') absorption in the vacant posts without calling them to appear for fresh written test and/or interview.

D 5. MCL and its functionaries who were impleaded as respondents in the writ petition filed their counter affidavit and contested the writ petitions on diverse grounds. The defence of the MCL was that the preference was given to the apprentices who had undergone training with them in the interest of the company as coal mines use very specific and specialized high value heavy earth moving machines like dragline, shovel, dumpers, heavy duty dazers, drills and craines and those who have been extensively trained on these machines are of much use than the candidates who were trained in other industries not dealing with heavy earth moving machines. MCL justified their action on the basis of a decision of this Court in E *U.P. State Road Transport Corporation and Another v. U.P. Parivahan Nigam Shishukhs Berozgar Sangh and Others*¹. It was submitted by MCL that the preference to MCL apprentices was not influenced by any consideration other than the interest of the company.

G 6. It is pertinent to mention here that neither the appellants nor others whose appointments were challenged in the writ petitions were impleaded initially. It was after 10 years or so that the present appellants were impleaded as party

H 1. (1995) 2 SCC 1.

respondents in the writ petitions. On their impleadment and service of notice, the present appellants filed their counter affidavit in opposition to the writ petitions and denied the claim of the writ petitioners.

7. The High Court vide its judgment dated May 2, 2008, however, held that MCL ought to have filled up the newly sanctioned 51 posts of Mazdoor – Category I (I.T.I.) from the merit list prepared earlier strictly in the order of merit and no preference could have been given to those who had undertaken apprenticeship with MCL. The High Court, accordingly, directed MCL to fill up 51 posts strictly in the order of merit as per the select list prepared earlier. The High Court further directed that those who were likely to lose their job could be adjusted in suitable posts in the existing and future vacancies without asking them to face any recruitment test. It is this judgment and order of the High Court which is impugned in these two appeals.

8. In our judgment, these appeals have to be allowed. There is no dispute of fact that the appellants herein were not initially impleaded as party respondents in the writ petitions although primary relief in the writ petitions was to quash their selection and appointments. The appellants were impleaded for the first time after ten years or so. By that time the appellants got promoted from Mazdoor Category-I to Mazdoor Category-II and then to Mazdoor Category-III and thereafter to the posts of Fitter. In view of these circumstances, the writ petitioners were not entitled to any discretionary relief by the High Court in exercise of its extraordinary jurisdiction.

9. The appellants in their counter affidavit before the High Court set up the following specific grounds:

“5. That the petitioners have impleaded the present Opp. Parties after about 10 (ten) years of their appointment as well as selection to the post of Mazdoor Category-I (ITI). Therefore the writ application is liable to be dismissed as against the present Opp. Parties being grossly barred by

A limitation and on the ground of unexplained delay, laches and negligence of the petitioner.

B 6. That the petitioners though had the knowledge of the appointment, posting, continuance in service and subsequent promotions of the Opp. Parties had not challenged the same for about 10 (Ten) years and have acquiescence their claim and waived their claim if any. Therefore, this Hon'ble Court in exercise of its equitable jurisdiction may be pleased to dismiss the writ application.

C 7. That the petitioners are estopped by acquiescence, waiver, conduct and by negligence to challenge the appointment of the Opp. Parties who are discharging their duties sincerely to the best satisfaction of the authority being selected and appointed to the post for about ten years."

D 10. The High Court unfortunately has failed to take into consideration the material aspects stated in the counter affidavit filed by the appellants. As a matter of fact, on promotion of the appellants to the higher posts, other candidates have been appointed to the posts of Mazdoor – Category I in place of the appellants. If the order of the High Court is allowed to stand, it would not only affect the appellants who, during the continuation of their service, had got three promotions, but also will seriously affect the persons who have been appointed in their place and were not impleaded before the High Court.

F 11. For what we have discussed above, we do not think we need to deal with the merits of the issue as to whether the High Court was right in holding that MCL could not have preferred to give appointments to those who had undertaken training with them.

G 12. The appeals are, accordingly, allowed; the judgment and order dated May 2, 2008 passed by the High Court of Orissa, Cuttack is set aside. The parties shall bear their own costs.

H N.J.

Appeals allowed.