

restricted the area of operation, its action cannot be dubbed as arbitrary and unfair. The limitations of the vehicle being well known, the competent authority could well decide that the work of transporting goods should be mainly left with the trucks and not with the owners of tractor-trolleys. Reasons of economy, unfair competition, speed of the vehicle, its roadworthiness and other considerations which have weighed with the authorities being relevant to the decision, its decision on a policy matter cannot be set aside by this Court in the purported exercise of its jurisdiction under Article 226 of the Constitution.

(7) I thus find no merit in these petitions, which are hereby dismissed. The State shall also be entitled to its costs, which are assessed at Rs. 1,000 per case.

R.N.R.

Before : *Jawahar Lal Gupta, J.*

S. JASWANT SINGH TEJ,—*Petitioner.*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 4760 of 1982.*

5th June, 1991

*Constitution of India, 1950—Art. 226—State Government granting premature increment to non-gazetted employees who did not participate in the strike on February 8, 1978—Petitioner denied benefits on the plea that department in which he worked was declared 'A' Class and it was proposed to confer Gazetted status to his post of Superintendent in the office of Director Animal Husbandry—On the facts found that Government treating petitioner as non-gazetted employee—Benefit of premature increment cannot be denied to him.*

*Held, that whatever be the position of the post of Superintendent today or on any future date, it was a non-gazetted post on the crucial date viz. February 8, 1978. The petitioner was a non-gazetted employee on that date. There is no order on the record declaring the post and the petitioner to be gazetted with effect from February 8, 1978. The premature increment was to be given to the non-gazetted employees, who did not participate in the strike on February 8, 1978. The circular of the Government is absolutely*

clear on this point. That being so, there is no justification for the action of the respondents in declining the premature increment to the petitioner.

(Para 4)

*Held further*, that strikes by employees affect the day to day functioning of the departments of the Government. A majority of the employees yield to the pressure of the union leaders. Those who are bold and pick up the courage to withstand the pressure and defy the mandate of their colleagues are subjected to humiliation. They suffer this humiliation either on account of the dictates of their conscious or out of a sense of discipline. The action of the Government in rewarding such employees is commendable. However, if the promised incentive is not given, not only the confidence of the employees in the promise of the higher authorities is likely to be shaken, but even the purpose which the incentive is likely to serve is bound to be defeated. Thus, the authorities would do well to keep their promise so that the diminishing number of disciplined employees does not dwindle. The promise which deserved to be kept in the present case has broken for no justifiable cause.

(Para 6)

*Petition under Article 226/227 of the Constitution of India, praying that this Hon'ble Court may be pleased to summon the record of the case and after a perusal of the same may be pleased to issue :—*

- (i) *a writ in the nature of certiorari quashing the Annexures P-8, P-9 and P-11.*
- (ii) *a writ in the nature of Mandamus directing the respondents to give one pre-mature increment to the petitioner from 8th February, 1978.*
- (iii) *service of advance notices of motion on the respondents may kindly be ordered to be dispensed with.*
- (iv) *Filing of certified copies of Annexures P-1 to P-13 may also be ordered to be dispensed with.*
- (v) *any other writ, order or direction that this Hon'ble Court deem fit under the circumstances of the case.*
- (vi) *The cost of the petition may be awarded to the petitioner.*

J. S. Khehar, Advocate, for the Petitioner.

T. S. Dhindsa, AAG Punjab, for the Respondents.

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**JUDGMENT**

*Jawahar Lal Gupta, J.*

The non-gazetted employees in the Punjab Government, who did not participate in the strike on February 8, 1978, were promised one pre-mature increment in the scale of pay in which they were working on that date besides a letter of appreciation. This increment was to be effective from February 8, 1978 itself and was not to disturb the date of normal increment admissible to an employee. The petitioner, who claims to be entitled to this increment has been denied the benefit on the ground that the office, in which he is working, has been declared 'A' class office and the department proposes to make the post held by the petitioner to be a gazetted post by amending the rules. Admittedly, the status of the post of Superintendent held by the petitioner was and continues to be non-gazetted, yet the benefit has been denied to the petitioner. He was given the letter of appreciation. However, his representations claiming the premature increment having failed, he has approached this Court through the present petition under Article 226 of the Constitution.

(2) The respondents have filed a written statement through the Director Animal Husbandry. It has been admitted that the petitioner had been issued a letter of appreciation for not taking part in the strike, but "he could not be given premature increment as the Department was declared 'A' class. The department proposes to make the post gazetted after the amendment of rules." It has been further added that "the post of Superintendent in the office of Director Animal Husbandry, Punjab having not been excluded from Class-III Rules and included in Class-II Rules, there was no charge in the appointing authority of the petitioner....." It has been further averred that "it is incorrect to allege that the petitioner by implication became gazetted ipso facto from February 23, 1977. The gazetted status could be given to the petitioner only when it was conferred through a notification."

(3) Mr. J. S. Khehar, learned counsel for the petitioner, has contended that the post of Superintendent was not a gazetted post on February 8, 1978. He has further stated that the post has not been declared to be gazetted even till today. That being so, he contends that the action of the respondents in denying the premature increment to the petitioner was absolutely arbitrary and has resulted in a recurring financial loss to the petitioner. Mr. T. S.

Dhindsa, appearing for the respondents, has contended that the status of the office in which the petitioner is working having been upgraded, the ministerial act of declaring the post gazetted is only consequential and only a technical formality remains to be complied with. He, thus, submits that the action of the Government in not releasing the increment to the petitioner was valid.

(4) Whatever be the position of the post of Superintendent today or on any future date, it was a non-gazetted post on the crucial date viz. February 8, 1978. The petitioner was a non-gazetted employee on that date. There is no order on the record declaring the post and the petitioner to be gazetted with effect from February 8, 1978. The premature increment was to be given to the non-gazetted employees, who did not participate in the strike on February 8, 1978. The circular of the Government (Annexure P3) is absolutely clear on this point. That being so, there is no justification for the action of the respondents in declining the premature increment to the petitioner.

(5) Another fact deserves specific notice. One Mr. Sohan Singh, who was senior to the petitioner, had applied for voluntary retirement and proceeded on long leave from December 23, 1976 to January 12, 1979. However, Mr. Sohan Singh reported for duty to the office on December 6, 1978. He was allowed to join the office and the petitioner was reverted by the Director Animal Husbandry. The petitioner challenged this order by way of a representation *inter alia* on the ground that the post of Superintendent being a gazetted post, the Director was not competent to revert him. This representation of the petitioner was rejected by the Government with the observation that "no notification conferring the gazetted status on Superintendents of the office of the Director, Animal Husbandry, has since been issued." When the respondents themselves are treating the petitioner as non-gazetted for all intents and purposes, there appears to be no justification at all for denying him the benefit of premature increment, which is due to him as a non-gazetted employee. The action is apparently arbitrary.

(6) Strikes by employees affect the day to day functioning of the departments of the Government. A majority of the employees yield to the pressure of the union leaders. Those, who are bold and pick up the courage to withstand the pressure and defy the mandate of their colleagues are subjected to humiliation. They suffer this humiliation either on account of the dictates of their conscious or out of a sense of discipline. The action of the Government in

rewarding such employees is commendable. However, if the promised incentive is not given, not only the confidence of the employees in the promise of the higher authorities is likely to be shaken, but even the purpose which the incentive is likely to serve is bound to be defeated. Thus, the authorities would do well to keep their promise so that the diminishing number of disciplined employees does not dwindle. The promise which deserved to be kept in the present case has been broken for no justifiable cause.

(7) The writ petition is accordingly allowed. The respondents are directed to release the increment to the petitioner with effect from February 8, 1978 without affecting the date of normal increment. His pay should be refixed in the original as also in the revised scale of pay. Consequential reliefs in the nature of arrears of salary alongwith interest at the rate of 12 per cent per annum shall also be given to the petitioner. The needful shall be done within a period of two months from today. The petitioner is also entitled to his costs, which are assessed at Rs. 3,000.

R.N.R.

Before : A. L. Bahri & H. S. Bedi, JJ.

B. P. GUPTA,—Appellant.

*versus*

THE STATE BANK OF INDIA, NEW DELHI, AND

OTHERS,—Respondents.

Company Appeal No. 8 of 1986.

4th September, 1991.

*Companies Act (1 of 1956)—Ss. 446 & 483—Pending suit transferred to High Court for disposal—Decree passed, against which company appeal maintainable.*

*Held*, that since in the present case in the matter of winding up of the Company the suit pending in the Delhi High Court was transferred for disposal, any order passed in that suit would be appealable under Section 483 of the Companies Act. The present appeal is, therefore, held to be maintained under Section 483 of the Companies Act.

(Paras 6 & 7)