

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6068 OF 2008

General Manager, Model Mills
and Another

Appellant(s)

Versus

Ashok Khubchand Vaswani

Respondent(s)

O R D E R

The respondent was working as an Assistant Engineer in the Model Mills, Nagpur. After the nationalization of the Mills, the National Textile Corporation (for short 'the Corporation') came into being.

As is evident, on 30th April, 1990, the Senior Personnel Officer of the Corporation had passed the following order:

"Shri A.K. Vaswani, Asstt. Engineer is promoted in the N.T.C. Pay Scale of Rs.700-40-900 -KB-40-1000-50-1300 at basic pay of Rs.700/- (Rupees Seven Thousand only) per month w.e.f.01.01.1990 and is designated as Dy. engineer subject to following conditions.

1. While in the service of this Corporation, he is liable for transfer anywhere in India at the discretion of Management, and to the Holding Co., viz, N.T.C. Ltd. New Delhi or any of its subsidiaries or Mill units.

2. He shall be governed by the Rules and Regulations of the Corporation in

supersession of earlier Awards/Agreements under BIFR Act.

He shall be on probation for one year as per Rules. He shall draw next Annual Increment on completion of probation as per Rules."

After the said order came into existence, the competent authority of the Corporation on 14th May, 1991, communicated the following order to the appellant:

"This has reference to office order No.PERS/AKV/901226 dated 30th April, 1990, promoting you as Dy. Engineer in the Corporation Pay Scale of Rs.2200-75-2800-EB-100-4000 (revised) w.e.f. 01.01.1990 with a probation period of one year as per rules.

This is to inform you that you are confirmed in the promoted post w.e.f.01.01.1991."

It is noticed that the Corporation has a set of rules, namely, National Textile Corporation (M.N.) Limited Recruitment and Promotion Rules, 1985, (for short 'the Rules'). Rule 11.3 of the Rules deals with the fixation of pay in the promotional cadre. The said Rule is as follows:

"11.3 Where an employee is promoted to a higher post/grade, his initial pay in new scale shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of lower post by one increment. However, if this does not fit with stage in promoted scale of pay, it will be fixed at immediate next higher stage in the promoted scale of pay. In case this happens to be lower than the minimum of the scale, the pay shall be fixed minimum of the

scale, the pay shall be fixed at the minimum of the scale."

The respondent was aggrieved as the Corporation fixed the pay scale after the issuance of the aforesaid letters at Rs.700-1300. A writ petition was filed in the year 1991. The High Court took note of two aspects, namely, that the appellant was promoted to the higher post and hence, he would be governed by Rule 11.3 of the Rules. The Corporation filed its counter affidavit some time in 2005 stating, *inter alia*, that the respondent was never promoted and there was typographical error in the communications. Various other pleas were taken as regards fixation of the pay scale in the promotional post.

In our considered opinion, both the submissions are sans substance.

Ms. B. Sunita Rao, learned counsel appearing for the Corporation, would criticize the order passed by the High Court by contending that there was no post-wise pay scale and the respondent was never promoted.

As is perceived, the respondent was promoted to the post of Deputy Engineer. The said aspect is clearly reflectible from the order that we have reproduced herein-above. It is submitted by Mr. Manish Pitale, learned counsel appearing for the respondent, that the respondent was getting basic pay of Rs.1060/- while he was holding the post of Assistant Engineer. The submission of Mr. Pitale is

that his pay scale should have been fixed at Rs.1060/- + Rs.50/- i.e. Rs.1110/-, which would have been his basic pay, but since his basic pay was Rs.1060/-, it could not have been fixed at a lower pay scale. It is not in dispute that as per the Rules, the pay of the respondent should have been fixed in higher scale of pay and that is Rs.1100-1600.

Therefore, we do not find any flaw in the eventual conclusion of the High Court and, resultantly, the appeal has to pave the dismissal and we so direct. Since the controversy has been continuing for number of years, the Corporation is directed to compute the arrears and pay the same to the respondent within a period of three months. There shall be no order as to costs.

.....J.
(Dipak Misra)

.....J.
(Uday Umesh Lalit)

New Delhi;
November 20, 2014.

ITEM NO.109

COURT NO.6

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.6068/2008

G.M., THE MODEL MILLS & ANR.

Appellant(s)

VERSUS

ASHOK KHUBCHAND VASVANI

Respondent(s)

(With appln. (s) for permission to file additional documents and office report)

Date : 20/11/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s)

Mrs. B. Sunita Rao, AOR

For Respondent(s)

Mr. Manish Pitale, Adv.
Mr. Wasi Haider, Adv.
Mr. Chander Shekhar Ashri, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)