

S.P. Shivprasad Pipal vs Union Of India & Ors on 15 April, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1882, 1998 (4) SCC 598, 1998 AIR SCW 1689, 1998 LAB. I. C. 1873, (1998) 3 SERV LJ 108, (1998) 3 JT 216 (SC), 1998 (2) SCALE 736, 1998 (3) ADSC 596, (1998) 2 SCALE 736, 1998 SCC (L&S) 1263, (1998) 3 LAB LN 41, (1998) 3 PAT LJR 18, (1998) 2 SCT 376, (1998) 2 SCJ 425, (1998) 2 SERV LR 781, (1998) 4 SUPREME 104, (1998) 2 ESC 1119, (1998) 1 CURLR 1153

Author: Sujata V. Manohar

Bench: Sujata V. Manohar, D.P. Wadhwa

PETITIONER:
S.P. SHIVPRASAD PIPAL

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 15/04/1998

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Mrs. Sujata V. Manohar, J.

This appeal arises from a judgment and order of the central Administrative Tribunal at new Delhi dismissing the application filed by the appellant who was at the material time, labour Commissioner working in the Ministry of labour. The appellant has challenged the constitution of a Central Labour Service under the Central Labour Service Rules, 1987, issued by the President in the exercise of powers conferred on him under the proviso to Article 309 of the constitution. The Central Labour

Service Rules, 1987 were brought into force by a notification dated 3.2.1987.

Under the notification of 3.2.1987 a Central Labour Service was created by merging the following three cadres:-

1. Central Industrial Relations Machinery consisting of Assistant Labour Commissioner (central), Regional Labour Commissioner (Central), Deputy Chief Labour Commissioner (Central, Joint Chief Labour Commissioner (Central) and Chief Labour Commissioner (Central).
2. Labour officers (Central pool) consisting of Labour Officers and senior labour Officers.
3. Labour Welfare Commissioners' cadre consisting of Assistant Welfare Commissioner and Welfare Commissioner.

According to the appellant the three cadres which were so merged were having different statutory functions, different qualifications and different duties and powers. By merging the three cadres unequals have been treated as equals. The appellant and similarly placed officers belonging to the Central Industrial Relations machinery have thereby been placed in a position much worse than the positions they occupied in their origin cadres. By reason of the merger, his chances of promotion have been substantially diminished. He has, therefore, challenged the exercise of power under Article 309 of the constitution to formulate Central labour Service Rules, 1987. He has also challenged the merger of the three cadres on the ground that this is done in violation of Articles 14 and 16 of the Constitution.

Under Article 309 of the Constitution Legislature is empowered to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. The proviso to Article 309, however, empowers the President, in the case of services and posts in connection with the affairs of the Union, to make Rules regulating the recruitment and conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature. The power to regulate recruitment and conditions of service is wide and would include the power to constitute a new cadre by merging certain existing cadres.

However, when different cadres are merged certain principles have to be borne in mind. These principles were enunciated in the case of State of Maharashtra and Anr. V. Chandrakant Anant Kulkarni & Ors. (1982 1 SCR 665 at page

678) while considering the question of integration of government servants allotted to the services of the new States when the different States of India were reorganised. This Court cited with approval the principles which had been formulated for effecting integration of services of different States. These principles are: In the matter of equation of posts, (1) where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis

but (2) where there were no such similar cadres, the following factors will be taken into consideration in determining the equation of posts:-

- (a) Nature and duties of a post;
- (b) Powers exercised by the officers holding a post the extent of territorial or other charge held or responsibilities discharged;
- (c) The minimum qualifications, if any, prescribed for recruitment to the post and;
- (d) the salary of the post.

This court further observed that it is not open to the court to consider whether the equation of posts made by the central Government is right or wrong. This was a matter exclusively within the province of the Central Government. Perhaps the only question the Court can enquire into is whether the four principles cited above had been properly taken into account. This is the narrow and limited field within which the supervisory jurisdiction of the Court can operate.

This decision has been relied upon in a subsequent decision of this court in Union of India and ors. V. S.L. Dutta and Anr. (1991 [1] SCC 505).

In the light of the principles laid down in State of Maharashtra V. Chandrakant Anant Kulkarni (supra), we have to examine whether the cadres which have been merged by the notification of 3.2.1987 were comparable carrying similar qualifications and comparable duties and salary. Respondent no.5 in his affidavit has stated that prior to the merger of the three cadres the cadre Review Committee which had been appointed for cadre review had recommended the merging of these three cadres/services operating under the Ministry of labour. The Cadre Review Committee was headed by cabinet Secretary and had members of various other ministries such as Secretary Labour, Finance, Department of Personnel, Law and Defence. The recommendations of the committee were approved by the cabinet. Thereafter Rules were framed and these Rules were sent for approval first to the Department of Personnel and thereafter to the Law Ministry and the Union Public Service Commission. After considering the observations of all these department/agencies appropriate Rules were framed and notified by the Government. The respondents have stated that a detailed exercise in this connection was done to ensure that no injustice takes place to any of the merging cadres. In the affidavit it is further stated that the question of merging of different cadres under the Ministry of Labour had been considered thrice in the past. Every time the desirability of merging the cadres was invariably recommended. But the merger could not be done due to disparity in the pay structures of the three cadres then existing. This disparity, however, was subsequently removed. By 1987 the salary structure was similar in the three cadres. Qualification contents were also almost the same in respect of all the three merging cadres. The three cadres though operating separately, were operating in the field of Industrial Relations and Labour Welfare; and, therefore, in 1987 it became possible to merge the three cadres as per the recommendations of the cadre Review Committee and the discussions held thereon. The respondents have also stated that in merging the three services the Government's intention was to provide for avenues whereby the officers of the

three merging cadres could get enriched by the experience of different posts. The interchangeability brought out by the creation of a new service enables, for example, the Assistant labour Commissioners to get the experience of work in an industry. Similarly, Labour officers and senior officers can get exposure to some of the quasi-judicial functions connected with the posts of Assistant and Regional Labour Commissioners. It was, therefore, felt that the constitution of a unified cadre was in public interest. Hence the merger took place. Since this is essentially a matter of policy, the scope of review by the court is limited. We can, however, examine the grievance of the appellant relating to unequals being treated as equals and the grievance relating to losing promotional avenues.

The Central Industrial Relations Machinery has been in existence since 1945. It was entrusted with the task of prevention and settlement of industrial disputes, enforcement of labour laws and promotion of welfare among industrial labour. In 1987, at the time of the merger, the cadre had five posts in Grade A starting with Assistant Labour commissioner in the pay scale of Rs. 700-1300, the next promotional post of Regional Labour Commissioner in the pay scale of Rs. 1100-1600, the next promotional post of Deputy Chief labour Commissioner, then joint Chief labour Commissioner and finally at the top, the chief labour commissioner. At the material time there also existed in the Labour Ministry another set of officers known as Labour officers (Central pool) and senior labour officers whose main duty was to maintain harmonious relations between management of an undertaking and its workers to bring the grievances of the workers to the notice of the management and to encourage provision of amenities to workers by the management. There was also a third set of officers at the material time under the welfare Wing of the Ministry of labour headed by the Director General, labour Welfare who was ex-official Joint Secretary to the Government of India. He was assisted by a Welfare Commissioner with a supporting staff consisting of nine Welfare commissioners and five Assistant Welfare Commissioners. The salary scale of Assistant Welfare Commissioners as also of the Labour Officers in the Central Pool was the same as the salary scale of Assistant Labour commissioners, namely, Rs. 700- 1300. While the salary scale of senior labour Officers (Central pool), Welfare commissioners and Regional Labour Commissioners was in the same scale of Rs. 1100-1600. The cadres which have been merged thus carried the same pay scales, though different duties in the area of Industrial Relations and Labour Welfare.

The qualifications in respect of Assistant labour Commissioners, Labour officers in the Central Pool and Assistant Welfare commissioners were also comparable though not identical. An Assistant labour commissioner was required to have a Bachelor's degree with economics and social science, a degree in law or a Master's degree in economics or any other social science, diploma in Labour Welfare or Labour laws and five years' experience in dealing with labour problems. The prescribed qualifications for a Labour Officer were a Bachelor's degree in Arts with economics, commerce or sociology, a post-graduate degree or diploma in social work, labour welfare or industrial relations or personnel management or other qualification. Degree in law or training in social work or other allied courses were desirable.

For Assistant Welfare commissioners the qualifications prescribed was a degree of a recognised university with economics, commerce, social work or sociology, a post- graduate degree or diploma in social work, industrial relations, personnel management or allied subject and five year's

experience of labour welfare, industrial relations or personnel management. A degree in law was a desirable qualification. Thus the qualifications for the three posts are comparable.

Coming to duties; the duties of an Assistant labour commissioner (central pool) have been described as prevention and settlement of industrial disputes in the central undertakings, holding conciliation meetings by calling the trade union and the employer so as to avoid strikes, lock-out, unfair practices etc., verification of membership of central trade unions and so on. The Assistant labour commissioner also performed other statutory duties under the Industrial Disputes Act such as ascertaining membership of trade union, or granting recognition of protected workmen. Other statutory duties included acting as a controlling authority under the Payment of Gratuity Act, acting as a registering officer under Contract labour Regulation and Abolition Act, duties under the Payment of Bonus Act, Maternity Benefits Act and some other labour legislation.

Labour officers were posted in different undertakings. Their duty was to maintain harmonious relations between the management of the undertaking and the workers. For this purpose they were required to advise the management and the trade unions. It was also their duty to bring to the notice of the management the grievances of the workers, to advise and concerned department of the undertaking or the statutory obligations under the Factories Act, 1948 to encourage the provision of amenities such as Canteen, creches, providing drinking water and so on. The main role was to advise the management in various labour related issues. A Labour officer was prohibited from appearing in any disciplinary proceedings against the worker or in conciliation proceeding.

The Assistant Welfare commissioner was required to assist the employer in formulating proposals for grant-in-aid under various welfare schemes such as housing and water supply, health, education and recreation of workers. They were required to supervise the utilisation of grants sanctioned by the Ministry of Labour. They could also formulate proposals for opening dispensaries hospitals, recreational activities in the mining areas for disbursement of scholarships to the school-going children of workers in mines and so on.

The cadre Review Committee after examining the kinds of duties discharged by these officers decided that since they all worked in the area of labour welfare, it would be desirable that they could widen their experience. This would be possible if the cadres were integrated and the posts were made interchangeable so that the members of the cadre could get a more varied experience in different areas of labour welfare, thus making for a better equipped cadre. Therefore, although the exact nature of work done by the three cadres was different, it would be difficult to say that one cadre was superior or inferior to the other cadre or service.

A decision to merge such cadres is essentially a matter of policy. Since the three cadres carried the same pay scale at the relevant time, merging of the three cadres cannot be said to have caused any prejudice to the members of any of the cadres. The total number of posts were also increased proportionately when the merger took place so that the percentage of posts available on promotion was not in any manner adversely affected by the merger of the cadres.

The appellant, however, contends that as a result of the merger his promotional chances have been very adversely affected because his position in the seniority list has gone down. Rule 9 of the Central labour Service Rules, 1987 under which the merger is effected, lays down the Rules of seniority. It provides that the inter se seniority of the officers appointed to the various grades mentioned in schedule I at the initial constitution stage of the service shall be determined according to the length of regular continuous service in the grade subject to maintenance in the respective grade of inter se seniority of officers recruited in their respective original cadres. The proviso to this Rule prescribes that although Assistant labour Commissioner (Central), Labour officer an Assistant Welfare Commissioner shall be equated, all Assistant Labour Commissioners (Central) holding such posts on or before 31st of December, 1972 shall be en block senior to labour Officers and (2) senior labour officers and Regional Labour Commissioners shall be equated. But all Regional labour Commissioners holding such posts on or before the 2nd of March 1980 shall be en block senior to the senior labour officers.

Explaining the proviso the respondents have said that before 31st of December, 1972 Assistant labour commissioners were in a higher pay scale than labour officers. The parity between their pay scales came about only from January 1973. That is why to preserve their inter se position, Assistant labour Commissioners appointed prior to 31st of December, 1972 have been placed above Labour officers. Similarly, Regional Labour commissioners drew a higher pay scales than senior labour officers prior to 1980. The parity has come about in 1980 and hence Regional labour Commissioners holding such posts on or before 2nd of March, 1980 have been placed above senior labour officers.

The seniority Rules have thus been carefully framed taking all relevant factors into consideration. The respondents have also pointed out that as a matter of fact, by reason of the merger, the appellant has not, in fact, suffered any prejudice and he has also received promotions.

However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This court in *Union of India v. S.L. Dutta* (supra) examined this contention. In *S.L. Dutta's case* (supra) a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chance of promotion were reduced. Relying upon the decision in the *State of Maharashtra v. Chandrakant Anant Kulkarni* (supra) this court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service.

In the premises, we do not find that there is any adequate ground for setting aside the Central Labour Service Rules, 1987. The appeal is, therefore, dismissed. Under the circumstance there will, however, be on order as to costs.