

## **The Hindustan Lever Ltd. vs The Workmen on 12 October, 1973**

**Equivalent citations: AIR1974SC17, [1973(27)FLR398], 1974LABLC128, (1974)ILLJ94SC, (1974)3SCC510, 1973(5)UJ850(SC)**

**Bench: P. Jaganmohan Reddy, S.N. Dwivedi**

### **JUDGMENT**

Dwivedi, J.

1. The appellant is the Hindustan Lever Ltd., Ghaziabad. One P.P. Jude was employed as Incharge of the Animal Feeding Stuff Department in the factory at Ghaziabad. On April 10, 1967 he was transferred as incharge to the Engineering Store Section, There are four grades of technical employees in the factory. The grades are called as Grade T 1, Grade T 2, Grade T 3, and Grade T 4, When P.P. Jude was working as Incharge of the Animal Feeding Stuff Department, he was in grade T. 3. He was claiming to be placed in grade T 4, a higher grade. So there were two disputes in regard to his employment : (1) about his transfer from the Animal Feeding Stuff Department to the Engineering Store Section; and (2) about his being given Grade T. 4. These disputes were referred by the State Government for adjudication to Labour Court, Meerut, on December 30, 1967.

2. Labour Court framed five issues. One of them is: whether P.P. Jude not placed in Grade T4 because of his trade union activities. It is not necessary to mention the other issues. Labour Court found that there was no evidence to show that he was victimized for his trade union activities. On merits, labour Court seems to have taken the view that the work performed by the Incharge of the Animal Feeding Stuff Department was of the nature of work which is performed by an employee in Grade T. 4. As P.P. Jude was Incharge of the said Department, his case was really one of fitment in, and not promotion to grade T. 4 Accordingly Labour Court held that his transfer from that department to the Engineering Store Section is not legal and justified and that he is entitled to be reposted as the Incharge of the former Department. It also held that he is entitled to be fitted in Grade T. 4 with effect from December 30, 1967 the date of the reference of dispute of adjudication. Labour Court gave its award on August 20, 1968 in favour of the workmen.

8. Counsel for the appellant has made five submissions (1) as no demand was made on the appellant by the workmen on behalf of P.P. Jude, no industrial dispute can be said to have existed at the time of reference; (2) there was no proper espousal by an appropriate Union of the workmen or a substantial number of workmen of the appellant and the dispute with respect to P.P. Jude was an individual dispute, not an industrial dispute;

(3) Labour Court wrongly rejected the appellant's application dated June 4, 1968 for the production of the documents of the Hindustan Lever Mazdoor Sabha, Ghaziabad in order to prove that the said

Union had not espoused the cause P.P. Jude; (4) P.P. Jude was not a workman within the meaning of that expression in the U.P. Industrial Disputes Act; and (5) Labour Court has acted in excess of its jurisdiction in virtually promoting P.P. Jude to Grade T 4 despite its finding that the workmen have failed to prove malafide or victimization of the workmen.

4. After hearing counsel for the parties, we are of opinion that there is force in the last argument. It is not necessary for us to express any opinion on the first four submissions made by counsel for the appellant we proceed to discuss the last submission only.

5. As already said, Labour Court has held that the appellant's refusal to place P.P. Jude in Grade T 4 was not due to victimization on account of trade union activities of P.P. Jude. This finding has not been challenged before us on behalf of the workmen. So the finding stands. Nevertheless, counsel for the workmen has submitted that the award really fits P.P. Jude in Grade T. 4. According to him, Labour Court has not promoted P.P. Jude to Grade T. 4. It is not disputed that ordinarily promotion is a management function. It is true that if the case is one of fitment of P.P. Jude in Grade T. 4, the award cannot be successfully attacked by the appellant. If, on the other hand, evidence on record shows that P.P. Jude has in effect been promoted to Grade T. 4, the award will be defective and will have to be set aside. The answer to these questions will turn on the view whether the work of the Incharge of Animal Feeding Stuff Department was of the nature of the work performed by an employee of Grade T. 4.

6. Evidence shows that there are four technical grades in the factory, Grade T 1, Grade T 2, Grade T 3, and Grade T. 4. There is further evidence to show that there are six stores in the factory. They are vanaspati Store, Dehydrated Vegetable Store, Animal Feeding Stuff Department, two Oil Receiving Sections and Engineering Store. The employees of the Engineering Store, Oil receiving sections and Dehydrated Vegetable Store are in Grade T 4. The employees incharge of the other stores are not entitled to be in grade T. 4. According to R.D. Rehna, Personnel Manager of the appellant, there "is no T 4 job in A.F.S. Department." If his statement is true, the workmen will fail to sustain their submission that the work performed by P.P. Jude as Incharge of the Animal Feeding stuff Department was of the nature of the work performed by an employee of Grade T. 4. It may be observed that R.D. Rehna was not at all cross-examined on his statement that there "is no T. 4 job in A.F.S. Department." This statement of his should therefore be accepted. The workmen have produced no evidence to prove that P.P. Jude was performing the work of an employee in Grade T 4. Accordingly we are of opinion that Labour Court is manifestly wrong in its view that it was a case of fitment in grade T4. and not of promotion to that grade. In our view, it is really a case of promotion from grade T3 to Grade T4, and promotion is ordinarily a management function. In the absence of the finding of mala fide or victimization of P.P. Jude for trade union activities or any unfair labour practice, Labour Court could not arrogate to itself the promotional function of the management. Labour Court's order directing the appellant to place P.P. Jude in Grade T4 is accordingly bad and should be set aside.

7. We have earlier stated that on April 10, 1967, P.P. Jude was transferred from the Animal Feeding Stuff Department to the Engineering Store. Labour Court has directed the appellant to repost him in the former department. This order of Labour Court is also plainly wrong. Standing Order VIII

framed under the Industrial Employment (standing) Orders Act, 1946 is attracted to the facts of this case. It provides that the transfer of an employee from one Department to another is at the discretion of the Manager provided that the terms and conditions of his service are not adversely affected. It was under this order that P.P. Jude was transferred from the Animal Feeding Stuff Department to the Engineering Store Section. The transfer was prima facie valid. Burden lay on the workmen, to show that it was in fact invalid. In view of Labour Court's finding, it cannot be urged by the workmen that P.P. Jude was transferred from the former to the latter section as a measure of victimization for trade union activities. There is no adverse finding against the appellant's good faith in ordering his transfer; nor is there any finding that the transfer of P.P. Jude was an act of unfair labour practice. There is also no finding that the transfer has affected adversely the terms and conditions of service of P.P. Jude. R.D. Rehna has deposed that there were unaccountable losses in 1966 in the Animal Feeding stuff Department. Responsibility for the losses could not be fixed on any one working in that Department. The management thought that the Department should be placed under the charge of another employee so that he could handle the operations with a fresh approach. P.P. Jude was accordingly transferred to the Engineering Store Section. There is no reason to disbelieve this part of R.D. Rehna's statement. There appears to be no oblique motive behind the transfer of P.P. Jude from the Animal Feeding Stuff Department to the Engineering Store Section. In our view, on the evidence on record Labour Court is not justified in directing the appellant to repost P.P. Jude in the Animal Feeding Stuff Department.

8. We allow the appeal and set aside the award of Labour Court. In the circumstances of this case there shall be no order as to costs.