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SWAPAN KUMAR CHOUDHARY AND ORS.

v.

TAPAS CHAKRAVORTY

MAY 12, 1995

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[P.B. SAWANT AND B.L. HANSARIA, JJ.]

Factories Act, 1948: Sections 8 and 9.

C *West Bengal Factories Service—Classification of Inspectors—Creation of separate cadre of Inspectors of Factories (Chemical) and Medical Inspector of Factories—Claim for parity of pay scale and promotional avenues—Direction by High Court for one common gradation list of all Inspectors and availability of higher posts for promotion held not valid—Held section 8 empowers State Government to have different types of Inspectors—Direction to State Government to consider availability of higher pay scales to all types of Inspectors.*

E *The West Bengal Factories Service consists of three types of Inspectors viz. Inspector of Factories, Inspector of Boiler and Electrical Inspector. Subsequent to the recommendation of State Pay Commission in 1980 the pay scale of these Inspectors was fixed at Rs. 1100-1900. In the wake of Bhopal Gas Tragedy a separate cadre of Inspector of Factories (Chemicals) and Medical Inspector of Factories was created in the pay scale of Rs. 660-1600. This cadre has its own recruitment rules under which the only promotional post made available was that of Deputy Chief Inspector of Factories (Chemicals). The State Government vide Labour Department's Memo No. 932-GE dated 7.4.1989 decided to change the nomenclature of Inspectors of Factories (Chemical) and Medical Inspectors of Factories as 'Inspectors of Factories'. Subsequently, the Labour Department issued a letter dated 25.9.1990 to the Chief Inspector of Factories In-charge stating that as advised by Finance (Law Cell) Department, order dated 7.4.1989 regarding change of nomenclature should not be implemented. On the basis of the Government's order dated 7.4.1989 some of the Inspectors of the Chemicals wing approached Calcutta High Court seeking a direction to the State to make and publish a common gradation list in respect of all the three categories of Inspectors and to provide equal opportunity of promotion. The prayer was allowed by a*

single Judge and the appeal preferred by the State was dismissed by the Letters Patent Bench, State of West Bengal as well as some of the private individuals who had been recruited to the original posts of Inspectors of Factories filed appeals before this Court. A

It was contended for the respondent that (i) section 8 of the Factories Act provides for only one category of Inspector of Factories; (ii) the State Government itself having resolved to change the nomenclature vide its order dated 7.4.1989, the subsequent letter dated 25.4.1990 cannot take away the legal force of the first order; and (iii) the pay scale of both the types of Inspectors having been made as Rs. 1100-1900 by the letter of Chief Inspector of Factories, no distinction is merited between the two wings of the Inspectors. B

Allowing the appeals, this Court

HELD : 1. The High Court exceeded its jurisdiction in giving the directions in question. By giving the directions, the High Court almost revised the recruitment rules which was not within its competence. By directing the State to make available the higher post to Deputy Chief Inspector of Factories (Chemical), a legal error was committed, as the same amounted to laying down conditions of service of Government employees, which either the State Legislature in exercise of its power under Article 309 of the Constitution, or the State Government in exercise of the power under the proviso to that article, can do. However, on being satisfied that a strong case for forming a common cadre for all exists it is required that the State Government may apply its mind to this aspect of the matter and, so too, to make available the same pay scale to all types of Inspectors of Factories. [482-C-E, 483-A] C

2. Section 8 of the Factories Act does not advance the case of the respondents inasmuch as the same shows that even a District Magistrate is an ex-officio Inspector of his district, as mentioned in sub-section (4). This apart, sub-section (2B) states that every Additional Chief Inspector, Joint Chief Inspector, Deputy chief Inspector and every other officer appointed under sub-section (2A) shall exercise the powers of an Inspector throughout the State. The need for this exists because of what has been stated in section 9 relating to powers of Inspector. So, unless one is an Inspector, he cannot exercise those powers. It cannot, therefore, be said that section 8 contemplates only one category of Inspector of Factories. It D

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A would permit the State Government to have different types of Inspectors by assigning different functions to them. [479-E-F]

3. The mere fact that the first order dated 7.4.1989 had been addressed to some other persons apart from Chief Inspector of Factories and is stated to have been issued at the order of the Governor, whereas the second is only to the Chief Inspector of Factory Incharge and does not mention about issuance at the direction of the Governor, cannot take away its weight. Even if some concession is made in this regard, the mere fact of one nomenclature has no material bearing, unless there is satisfaction about the justification or legality of granting of same pay scale to both the wings and/or the duties and function of both being same. It is difficult to accept the submission that the communication of Chief Inspector of Factories by which the pay scale of Rs. 1100-1900 was made available even to an Inspector of Factories (Chemical) shows clinchingly that the pay scale of both the wings is same. It would not be justified to concede the pay scale of Rs. 1100-1900 to the Inspectors of Factories (Chemical) merely on the strength of the letter of Chief Inspector of Factories, as it was principally founded on the G.O. of 6.8.88, which had no connection with the pay scale of chemical wing. [479-H, 480-A, C-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5627 of 1995.

From the Judgment and Order dated 29.4.94 of the Calcutta High Court in F.M.A.T.No. 3280 of 1993.

D.P. Gupta, Solicitor General, Tapas Ray, A. Bhattacharjee and F Goodwill Indeavar for the Appellants.

Satish Chandra, R.K. Gupta, I.K. Mishra and Rajesh for the Respondents.

The Judgment of the Court was delivered by

G HANSARIA, J. The West Bengal Factories Service (hereinafter 'the Service') presently has three types of Inspectors of Factories. Such Inspectors are needed by the State Governments to carry out the functions assigned to the former by section 9 of the Factories Act, 1948. Section 8 of this Act has empowered the State Governments to appoint such persons H as possess the prescribed qualification to be Inspectors and the Govern-

ment may assign to them such local limits as it may think fit.

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2. The Service as constituted in 1959 had 27 posts of Inspector of Factories in the pay scale of Rs. 660-1600. It had its own promotional channel. The post higher to the Inspector being that of Deputy Inspector, then Joint Chief Inspector and finally Chief Inspector.

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3. The matter relating to pay scale of the aforesaid Inspector came to be agitated by West Bengal Factories Service Association in the wake of State Pay Commission's recommendations of 1980. As per the recommendations of that Pay Commission, scale No. 18 (Rs. 1100-1900) was to be given to Inspector of Factories, Inspector of Boiler and Electrical Inspector. The Government, however, did not accept the recommendation qua Inspector of Factories. This led the aforesaid Association to approach the Calcutta High Court in Writ Petition no. 7257/83 with the prayer that scale No. 18 should be made available to Inspector of Factories also. A learned single Judge allowed the prayer making the scale effective from 1972 for some and 1975 for others. The State's appeal was dismissed by the Letters Patent Bench of the High Court which, however, made the scale available to all with effect from 1.4.1981. On this Court being approached in Civil Appeal No. 392 of 1987 by the State, by order dated January 28, 1988, the appeal was dismissed by stating that having regard to the special features of the case no ground for interference was found. The State Government thereafter issued G.O. dated 6.8.1988 with the concurrence of Finance (Law Cell) Department U.O.No. G.L. 678/88 dated 28.7.1988. By that G.O., the scale of pay of Inspector of Factories was made Rs. 1100-1900 with effect from 1.4.1981.

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4. In the wake of the Bhopal gas tragedy, a need was felt by the State to have a Chemical Wing, and so, a separate cadre of Inspector of Factories (Chemical) was created by Notification dated 26.6.1986 with its own recruitment rules framed in exercise of the power conferred by the proviso to Article 309 of the Constitution. These rules laid down the method of recruitment, qualifications for direct recruitment and the only promotional post made available was that of Deputy Chief Inspector of Factories (Chemical). It may also be stated that by Notification dated 10.8.1987 recruitment rules were framed in exercise of aforesaid power for filling up the posts of Medical Inspector of Factories in the Service. Thus, the Service came to consist of not only the Inspector of Factories, *stricto sensu*, but

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A Inspector of Factories (Chemical) and Medical Inspector of Factories. In the present appeals, though we are concerned with the service conditions of Inspector of Factories (Chemicals), there is no dispute that our decision shall apply equally to the Medical Inspector of Factories.

B 5. One of the disputes raised by Inspector of Factories (Chemical) relates to their pay scales. According to these Inspectors, though while constituting their cadre and giving appointments to them the scale mentioned was Rs. 660-1600, they are also entitled to scale no. 18, because, according to them, after the State Government had taken a decision to change the nomenclature of Inspector of Factories (Chemical) and Medical Inspectors of Factories as 'Inspectors of Factories', vide Labour Department's Memo No. 932-GE dated 7.4.1989, no distinction in the condition of service in the three cadres is permissible. After this decision of the Government, the Chief Inspector of Factories issued an order dated 12.5.1989 fixing the pay of Shri Tapas Chakravorty, one of the Inspectors of Factories (earlier in the Chemical wing) as Rs. 1100. A perusal of this order shows that this fixation had been done in terms of Labour Department's aforesaid order of 6.8.1988. To complete the necessary facts, it may be stated that the Government in the Labour Department issued letter dated 25.9.1990 to the Chief Inspector of Factories In-charge stating that as advised by Finance (Law Cell) Department, it is requested not to implement the Department's order of 7.4.1989 regarding change of nomenclature.

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F 6. On the strength of the Government's order of 7.4.1989, some of the Inspectors of the Chemical wing approached Calcutta High Court seeking a direction to the State to make and publish a common gradation list in respect of all the three categories of Inspectors and to provide equal opportunity of promotion. A learned single Judge allowed the prayer. On appeal being preferred by the State, the Letters Patent Bench dismissed the appeal. This Court has been approached by special leave by the State of West Bengal in SLP(C) No. 15170 of 1994 and by some of the private individuals in SLP(C) No. 14894 of 1994 who had been recruited to the original posts of Inspectors of Factories.

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H 7. The point for determination is whether the three aforesaid posts of Inspectors of Factories can be regarded to belong to one cadre meriting one gradation list for all and making available the posts of Joint Chief

Inspector and Chief Inspector to all the three types of Inspectors. Shri A Satish Chandra, appearing for the respondents has advanced four submissions to support the impugned judgment. He first contends that section 8 of the Factories Act knows of one post of Inspector of Factories and there cannot be any sub-classification of that post. The learned counsel's second submission is that the State Government itself having resolved to change the nomenclature, vide its order of 7.4.1989, the subsequent letter of the Department dated 25.4.1990 desiring non-implementation of that order cannot take away the legal force of the first order for two reasons : (1) The first was addressed to even Pay and Accounts Officer and Finance (A) Department, whereas the second was a communication only to Chief Inspector of Factories In-charge. (2) The first was at the direction of the Governor as stated therein, about which the second order is silent. The third contention is that the pay scale of both the types of Inspectors having been made as Rs. 1100-1900 by the aforesaid letter of Chief Inspector of Factories, no distinction is merited between the two wings of the Inspectors. It is finally urged that as the duties and functions of both the wings of the Inspectors are same, even otherwise, same pay scale has to be made available to the Inspectors of both the wings on the principle of 'equal pay for equal works'. B C D

8. As to the reliance on section 8 of the Factories Act, we would observe that the same does not advance the case of the respondents inasmuch as a perusal of the same shows that even a District Magistrate is an ex-officio Inspector of his district, as mentioned in sub-section (4). This apart, sub-section (2B) states that every Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointed under sub-section (2A) shall exercise the powers of an Inspector throughout the State. The need for this exists because of what has been stated in section 9 relating to powers of Inspector. So, unless one is an Inspector, he cannot exercise those powers. It cannot, therefore, be said that section 8 contemplates only one category of Inspector of Factories. According to us, it would permit the State Government to have different types of Inspectors by assigning different functions to them. E F G

9. The second submission is based on form only. The mere fact that the first order dated 7.4.1989 had been addressed to some other persons apart from Chief Inspector of Factories and is stated to have been issued at the order of the Governor, whereas the second is only to the Chief H

A Inspector of Factories In-charge and does not mention about issuance at the direction of the Governor, cannot take away its weight. Even if some concession is made in this regard, the mere fact of one nomenclature has no material bearing, unless we are satisfied about the justification or legality of granting of same pay scale to both the wings and/or the duties and functions of both being same.

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10. Shri Satish Chandra has taken pains to contend that the aforesaid communication of Chief Inspector of Factories by which the pay scale of Rs. 1100-1900 was made available even to an Inspector of Factories (Chemical), shows clinchingly that the pay scale of both the wings has to

C be accepted as same. We have found it difficult to accept this submission because the G.O. of the Labour Department, which has been mentioned in the communication of Chief Inspector of Factories, had been issued after this Court's order of 28.1.1988 which was connected with the Writ Petition filed in the High Court in 1983, by which year the Chemical Wing was not even born. Learned counsel agrees to this, but contends that the common

D nomenclature had come to be accepted by the Government in April, 1989 after the Factories Service Association had moved a contempt petition in the High Court, when the pay scale of Rs. 1100-1900 was not available to the Inspectors of Factories (Chemical), and the Government realised that this wing could not be treated differently. This may be the background of

E the Government's decision to change the nomenclature, but we would not be justified in conceding the pay scale of Rs. 1100-1900 to the Inspectors of Factories (Chemical) merely on the strength of the aforesaid letter of Chief Inspector of Factories, as it was principally founded on the G.O. of 6.8.88, which had no connection with the pay scale of chemical wing. It

F would be a different matter if the duties and functions of both the wings were to be same or similar, they would be required to be paid same pay, on the principle of 'equal pay for equal work'.

G 11. This takes us to the last contention of Shri Satish Chandra which is that both the wings of Inspectors discharge same or similar functions. In this connection, it is first mentioned that the local limit of both the type of Inspectors is same. This, however, does not advance the matter, because a local limit has to be prescribed, in view of what has been stated about the powers of an Inspector in section 9 of the Factories Act. What would be clinching in this regard is the actual duties and functions to be discharged by each of the two wings. On this aspect of the matter, the submission

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of the learned Solicitor General, who has appeared for the State, is that the duties and functions of the two wings, or for that matter the three wings, are not same or similar. To bring home this contention, our attention is invited by the learned Solicitor to Annexure-P.2, which is a part of the additional affidavit filed in SLP(C) No. 15170/94, pursuant to the direction of this Court given on 24.3.1995. This Annexure is a tabulation relating to various matters touching recruitment, duties and functions and avenues of promotion of three wings. A perusal of that part of the Annexure which deals with 'duties and functions' shows that the principal duty of the Chemical wing is confined to preparation of the list of hazardous industries and measures to be adopted for avoiding major accidents and hazards relating to chemical processes and chemical industries situate within the local limits of the concerned Chemical Inspector. Duties and functions of Inspectors of Factories cover wider field.

12. Shri Satish Chandra would not agree with the aforesaid analysis of the duties and functions of the two wings. According to him, though the Chemical Inspectors primarily do work connected with the checking of hazards in chemical industries, they also perform some of the functions of the main wing of Inspector of Factories. He submits that really both the types of Inspectors perform the same duties. To bring home this, we have been referred to Advertisement No. 34/86 which had appeared in the Ananda Bazar Patrika mentioning about four temporary vacancies in the posts of Inspector of Factories (Chemical) mentioning their duties as "To inspect factories, organise and administer the provision of Factories Act and Rules relating to safety, health, welfare, etc. and other labour laws". Our attention is then invited to the advertisement as appearing in the Statesman of 28th March, 1987 relating to ten vacancies of Inspector of Factories about whose duties it was mentioned: "To inspect Factories with a view to administer (a) provision of the Factories Act & Rules relating to Safety and Health, Welfare, etc. and (b) provisions of other Labour Laws".

13. After the appeals had been heard in part on 5.5.1995, a 'Compilation of Additional Documents' was filed on 8th May on behalf of the appellants, in which one of the documents is about the duties of the officers in the chemical cell. We have perused the same. We have also gone through the work done by the "Chemical Cell" as mentioned in the publications of the Department of Labour, Government of West Bengal, titled "Labour in West Bengal" which are for the years 1991 and 1995. A cursory glance of

A the work of this Cell as detailed in these publications has convinced us that this cell had done good amount of work; of course, relatable to different aspects connected with Major Accident Hazards.

14. Thus, there is much force in the contention of Shri Satish Chandra that as in the main wing of Inspectors of Factories there are electrical experts, mechanical experts and civil experts, in the chemical wing there are chemical experts. According to us, the learned single Judge of the High Court was right in stating that if electrical, mechanical and civil engineers could form part of one cadre, so could, chemical engineers. Even so, we would agree with the learned Solicitor General that by giving the

C directions, in question, the High Court almost revised the recruitment rules which was not within its competence. We also agree that by directing the State to make available the higher post to Deputy Chief Inspector of Factories (Chemical), a legal error was committed, as the same amounted to laying down conditions of service of Government employees, which

D either the State Legislature in exercise of its powers under Article 309 of the Constitution, or the State Government in exercise of the power under the proviso to that article, can do. However, on being satisfied that a strong case for forming a common cadre for all exists, we require the State Government to apply its mind to this aspect of the matter and, so too, to make available the same pay scale to all types of Inspectors of Factories.

E The distinction which has been repeatedly highlighted by the learned Solicitor General in the working of different wings is, according to us, a distinction without a difference. This submission of the learned State counsel has, therefore, not impressed us.

F 15. Before closing, we may deal with the additional submission advanced by the counsel of the appellants in the appeal arising out of SLP (C) No. 14894/94. The same is that if higher posts are made available to the Deputy Chief Inspector of Factories (Chemical), the promotional chances of the main wing of Inspector of Factories would be jeopardized. This submission is misconceived inasmuch as if a common cadre is formed, instead of nine posts of Deputy Chief Inspector which were earlier available to the Inspector of Factories in the main wing, ten posts would become available. This apart, those Deputy Chief Inspectors of Factories in the main wing who had come to be appointed prior to the Deputy Chief Inspector of Factories (Chemical), would remain senior and would have

H higher claim to the promotional post of Joint Chief Inspector and, as such,

no harm would really be caused to them because of the formation of a A common cadre.

16. While, therefore, allowing the appeals on the ground that the High Court exceeded its jurisdiction in giving the directions in question, we require the State Government itself to apply its mind to what has been stated above and to take the necessary decisions within a reasonable period keeping in view the aforesaid observations. In the facts and circumstances of the case, we leave the parties to bear their own costs throughout. B

T.N.A.

Appeals allowed.