A M.D., M/S. T. NADU MAGNESITE LTD.

v.

S. MANICKAM & ORS.

(Civil Appeal No. 2808 of 2010)

B MARCH 29, 2010

[B. SUDERSHAN REDDY AND SURINDER SINGH NIJJAR, JJ.]

Service law – Re-absorption/re-transfer – Selection/ C *appointment of employees by Government Company – State Government implementing a project in joint venture with K company – Government Company transferred its permanent employees to joint venture company without any monetary loss and alteration of service conditions – Subsequent closure* D *of JVC – Employees seeking reversion back to Government Company – Dismissal of writ petition – Direction by Division Bench of High Court to Government Company to absorb the employees with continuity of service on basis of promissory estoppel – Correctness of – Held: Division Bench erred in* E *issuing such direction – Claim of employees not covered by the principle of promissory/equitable estoppel – No finding recorded by Division Bench as to infringement of legal or fundamental right of employees – After permanent transfer, fresh letter of appointment was served upon the employees* F *– Services of employees having been terminated, their lien in Government Company also stood terminated – Hence, order of Division Bench set aside – Service Rules of the Tamil Nadu Magnesite Limited.*

Doctrines – Doctrine of promissory equitable estoppel – G *Applicability of.*

The appellant-company 'TANMAG' fully owned by the State Government, selected and appointed the respondents to various posts. The State Government

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implemented a Project in joint venture with K Company. The appellant transferred the respondents to the Joint Venture Company-JVC, without any monetary loss and alteration of service conditions with seniority and other benefits. After 7 years, the Government decided to close JVC. The respondents sought reversion back to the appellant-Company but the same was rejected. Aggrieved, respondents filed writ petition. The Single Judge of High Court dismissed the same. The Division Bench of High Court on basis of the doctrine of promissory estoppel, directed the appellant to absorb the respondents with continuity of service and other benefits without back wages. Hence, the present appeals.

Allowing the appeals, the Court

HELD: 1.1. The request of the respondents to be sent on deputation was not accepted by the appellants. By letter dated 11.5.1991, the respondents were informed that it is not possible to depute them to JVC as per Clause 2.17 of the Service Rules of the Tamil Nadu Magnesite Limited. The respondents were permanently transferred to the JVC by letter dated 20.6.1991. They were also informed that the date of joining in service in TANMAG shall be deemed to be the date of joining at the JVC for reckoning the length of service for all purposes including the payment of gratuity. Therefore, it becomes quite evident that the appellant as well as the respondents were well aware about the nature of terms and conditions which were protected. After the permanent transfer fresh letter of appointment dated 25.7.1991 was served upon the respondents. Therefore, it is clear that the services of the respondents having been terminated, their lien in TANMAG, also stood terminated. [Para 16] [1115-E-H; 1116-A-C]

1.2. There was no representation made to respondent no. 1 that he would be ensured employment till the age of superannuation with the JVC. The other two

A respondents have also not referred to any document which would indicate that any promise of future continuous employment was held out to them by TANMAG. In fact they had been earlier categorically informed that their services were liable to be terminated
B as they had become surplus. They were offered an alternative to be transferred to the JVC. Therefore, with their eyes open, the respondents had accepted the job in JVC. Their request for deputation, as provided under Clause 2.17 of the Service Rules, had been specifically
C rejected. They were in danger of losing their jobs under Clause 2.14 which enables the company to terminate services of the employees by giving three months' notice or salary in lieu thereof. They, therefore, accepted the alternative of a job with JVC. A job in JVC was better than
D no job at all. The Division Bench noticed that the respondents had accepted the loss of their lien in TANMAG. They were seeking re-absorption on the closure of the JVC. There was no assurance that there will be no closure of the JVC under any circumstances. The Division Bench in its anxiety to help the respondents,
E who were in danger of losing their jobs at the age of 50 years and above, seems to have stretched the principle of promissory estoppel beyond the tolerable limits. Undoubtedly, while exercising the extraordinary original jurisdiction under Article 226/227 of the Constitution of
F India, the High Court ought to come to the rescue of those who are victims of injustice, but not at the cost of well established legal principles. [Para 18] [1117-B-G]

State of Orissa vs. Ram Chandra Dev AIR 1964 SC 685; *State of W.B. vs. Calcutta Hardware Stores* (1986) 2 SCC 203,
G referred to.

1.3. There is no finding recorded by the Division Bench as to which legal or fundamental right of the respondents has been infringed. The relief is granted only
H on the basis of the doctrine of promissory estoppel. In

these circumstances, it was the duty of the High Court to analyze the facts to ensure that the principles of estoppel could appropriately be invoked in the instant case to help the respondents. The High Court erred in not performing this cautionary exercise. In view of the factual situation, it cannot be accepted that the respondents were put to disadvantage acting upon any unequivocal promise made by the appellants. On the basis of facts on record in the instant case, the claim of the respondents would not be covered by the said principles. In view of the facts, the Division Bench clearly committed an error of law in concluding that there has been a breach of principles of promissory/equitable estoppel. Therefore, the High Court erred in issuing the direction/writ in the nature of mandamus directing the appellants to re-absorb the respondents in the service of TANMAG. [Para 18, 19] [1118-G-H; 1119-A-H]

Kaniska Trading vs. Union of India **(1995) 1 SCC 274, referred to.**

Case Law Reference:

AIR 1964 SC 685	**Referred to.**	**Para 18**
(1986) 2 SCC 203	**Referred to.**	**Para 18**
(1995) 1 SCC 274	**Referred to.**	**Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2808 of 2010.

From the Judgment & Order dated 13.3.2007 of the High Court of Madras in W.A. No. 3943 of 2004.

WITH

C.A. Nos. 2809 and 2810 of 2010.

A T. Harish Kumar, Prasanth P. and V. Vasudevan for the Appellant.

K.K. Mani and Ankit Swarup for the Respondents.

B The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. Leave granted.

2. By this judgment, we shall dispose of the above three appeals as the facts and the legal issues involved in all the C appeals are common. The writ petitioners before the High Court have been impleaded as respondent No.1 before this Court.

3. The appellant herein, TANMAG, is a company fully owned by the Government of Tamil Nadu. By G.O.Ms.No.41 D Industries Department, dated 10.1.1979, it was decided to implement the policy decision taken by the Government of Tamil Nadu to reserve the mineral prone areas of magnesite for State exploitation. TANMAG was accordingly formed for implementing the policy. It is the common case of the parties E that the respondents were duly selected and appointed, on the respective posts, in the aforesaid company. They were appointed as Assistant Project Engineer (Mechanical), Junior Foreman (Mechanical) and Deputy Manager (Mechanical) respectively by orders dated 12.9.1983, 23.11.1988 and F 18.8.1989. At the time of joining, the respondents executed bonds to serve in TANMAG for a minimum period of three years. The TANMAG confirmed the services of the respondents through its proceedings dated 25.10.1985, 30.4.1991 and 24.8.1989 respectively. The respondents were paid the revised G pay by the TANMAG as per the Pay Commission's recommendations made by the Government of Tamil Nadu.

4. In the year 1990, through G.O.Ms.No.855 Industries (MME.II) Department, dated 16.8.1990 the Government of Tamil H Nadu decided to implement the Chemical Beneficiation Project

in joint venture with M/s. Kaitan Supermag Limited. The share holding pattern of the joint venture was as follows:

TANMAG:	26%
M/s. Kaitan Supermag Ltd.:	25%
General public:	49%

Therefore, TANMAG had control over JVC.

5. The appellant through letter dated 18.3.1991 conveyed to the respondents that they are in excess of the cadre strength in TANMAG and called upon them to express their willingness to work in the Joint Venture Company with the then existing pay and other facilities without any disadvantage. It was also mentioned in the said communication that if no option is given, the appellant will have no option but to terminate their services under Clause 2.14 of the Service Rules of the Tamil Nadu Magnesite Limited (hereinafter referred to as the Service Rules). The respondents were reluctant to leave the service of TANMAG. However, after prolonged correspondence, the appellant transferred the respondents to the JVC, without any monetary loss and alteration of service conditions with seniority and other benefits; by orders dated 20.06.1991 and 31.07.1991 respectively.

6. On 21.6.1996 respondent No.1 S. Manickam, petitioner in Writ Petition No.3707/2001, represented that since his transfer to JVC he had been working in the same cadre. Had he continued in TANMAG he would have become eligible for promotion. Even though under the transfer order it was provided that there would be no change in terms and conditions of employment, apart from other facilities he was monetarily losing more than Rs.2,000/- a month. It was also pointed that since JVC had not been able to take up any work on chemical beneficiation project, he was apprehensive about his future employment prospects. Since there was uncertainty in the

A implementation of the project and originally his employment was for Rotary Kiln Plant, he be reverted back to TANMAG. It appears that no decision was taken on the representation.

7. By G.O.Ms No 140 dated 11.5.98 it was decided to close the JVC. A joint request was made by six employees in the letter dated 31.10.1998 including the three respondents herein seeking reversion back to TANMAG. By letter dated 26.11.98 the respondents and the other employees were informed that they were permanently transferred to the JVC, namely, M/s. India Magnesia Products Limited (hereinafter referred to as IMPL). Accordingly, they were relieved from the service of the company from the afternoon of 31.7.1991. As such they have no lien in TANMAG and no right to claim a reversion of their services from M/s. IMPL to TANMAG. Thus their request was rejected.

8. The order dated 26.11.1998 was challenged by the respondents in the respective writ petitions contending that the respondents were recruited by TANMAG and were transferred with all service benefits, pay protection, etc., to M/s. IMPL (the JVC) when it was formed. When it was closed all its assets were transferred back to TANMAG. The employees transferred from TANMAG to the JVC should also be automatically reverted back to TANMAG. The action of TANMAG in not re-transferring the respondents to its service is erroneous. They, therefore, prayed for quashing the said order dated 26.11.1998 with a consequential direction to TANMAG to re-transfer/absorb the respondents in the service of TANMAG with all benefits such as seniority on par with their immediate juniors, arrears of pay and allowances with service benefits that would have been accrued in favour of the respondents if they had continued in the service of TANMAG.

9. The TANMAG resisted the writ petitions by filing counter affidavit by contending that TANMAG is a separate entity and no writ is maintainable against it. It was pleaded that even H though the Board of Directors are named by the Government,

the Company is managed by the Managing Director under the control and superintendence of the Board of Directors. It is also stated in the counter affidavit that the respondents were recruited for the project as per the advertisement. Thereafter the respondents were transferred to the JVC on the basis of the advance notice dated 18.3.1991. It was made clear that their services were permanently transferred and they were relieved from TANMAG from 31.7.1991. It is accepted that their service conditions were protected at the time of transfer to the JVC. After the transfer the respondents have lost their lien. They became the employees of the JVC. Therefore they have no right to demand reversion to TANMAG merely because the JVC had been closed. It is also stated in the counter affidavit that the respondents having opted and given their willingness to be absorbed in the JVC, it was not open to them to claim that they should be re-transferred to TANMAG on the closure of the JVC.

10. The learned single Judge after considering the rival submissions held that the respondents have lost the lien in TANMAG due to their transfer to the JVC. On transfer, they became the staff of the JVC. The claim of the respondents for being sent on deputation, under Clause 2.17 of the Service Rules having been rejected they cannot claim that they should be reverted back to TANMAG. Consequently the writ petitions were dismissed.

11. Being aggrieved by the aforesaid judgment of the learned single judge respondents filed the three writ appeals. On behalf of the respondents it was submitted before the Division Bench that TANMAG was a shareholder of JVC. It had transferred the land and machinery to the aforesaid company. The services of the respondents had been transferred to the JVC as the appellant had an interest in JVC. In such circumstances the company was not justified in claiming that the respondents had lost their lien in TANMAG on being transferred to JVC. They are, therefore, entitled to be reverted back to TANMAG. It was emphasised that none of the

A respondents was willing to join the joint venture company. They were literally compelled to join in view of the agreement that had been signed by them at the time when they initially joined the services of TANMAG.

B 12. On the other hand, it was submitted by the appellant that on the permanent absorption of the respondents in the JVC, they had lost their lien. The closure of the JVC cannot revive the lien in TANMAG.

13. The Division Bench upon consideration of the C submissions of the parties concluded that the respondents are entitled to be taken back by TANMAG in terms of the earlier transfer order, which protects the service conditions of the respondents. It was further held that TANMAG is not justified in contending that appellants having lost their lien in TANMAG D cannot be retransferred. The assurance given in the letter dated 11.5.1991 clearly states that the transfer of service is without any disadvantage. It was, therefore, held that the stand taken by TANMAG is contrary to the assurance given to the respondents when they were compulsorily transferred to the E JVC. It is noticed that all the assets of JVC on its closure have been taken over by TANMAG. There is no justification in denying absorption of the respondents who are unable to seek any other employment at this age of above 50 years. It is held that TANMAG is bound by the assurance given to the F respondents while seeking their consent for transfer to JVC. This is particularly so, as it was stated that the terms and conditions of employment enjoyed by them in TANMAG are protected. It is further held that since JVC was closed at the instance of TANMAG, the appellant has put the respondents G in a disadvantageous position. Therefore, TANMAG is estopped from contending that the respondents will not be absorbed. With these observations the judgment of the learned Single judge has been set aside. The appellant has been directed to absorb the respondents with continuity of service and other attendant benefits without back wages.

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14. We have heard the learned counsel for the parties. Mr. P.P. Rao, learned Senior Advocate, appearing for the appellant submitted that the Division Bench has erred in applying the principle of estoppel. The only promise made to the respondents was that during their services with the JVC their terms and conditions and employment will be protected. No assurance was given that JVC will not be closed down in the future at any time. There was also no promise held out that in case the company is closed down they would be reabsorbed in the appellant. In any event learned senior counsel submitted that the writ petition did not even claim the relief on the basis of the promissory estoppel. There are no pleadings to lay the foundation to claim any relief on the basis of the doctrine of promissory estoppel.

15. Learned counsel for the respondents, however, submitted that initially 16 persons had been transferred to the JVC. Subsequently most of these persons joined some other concerns. They are, therefore, not claiming re-absorption. At present, there are only three respondents who need to be accommodated by the appellant.

16. We have considered the submissions made by the learned counsel for the parties. A perusal of the correspondence would show that initially the respondents were reluctant to leave the services of the appellant. However, they were aware that their services were liable to be terminated due to non-availability of work for which they were qualified. On 2.5.91 respondents addressed a letter to the appellants that they would like to continue the services in TANMAG, otherwise as per Clause 2.17 of the Service Rules they were wiling to work in the JVC. Rule 2.17 of the Service Rules provides as under:

> "The Management reserves the Right to depute any staff member/officer of the company to any other organization, on terms not inferior to those enjoyed by him in the company."

A The request of the respondents to be sent on deputation was not accepted by the appellants. By letter dated 11.5.1991 the respondents were informed that it is not possible to depute them to JVC as per Clause 2.17. The respondents were permanently transferred to the JVC by letter dated 20.6.1991. B They were also informed that the date of joining in service in TANMAG shall be deemed to be the date of joining at the JVC for reckoning the length of service for all purposes including the payment of gratuity. Therefore, it becomes quite evident that the appellant as well as the respondents were well aware about C the nature of terms and conditions which were protected. After the permanent transfer fresh letter of appointment dated 25.7.1991 was served upon the respondents. Therefore, it is clear that the services of the Respondents having been terminated, their lien in TANMAG, also stood terminated.

D 17. It was only when the respondent No.1 S. Manickam, petitioner in Writ Petition No.3707/2001 became apprehensive about the closure of the unit, he submitted a representation on 21.6.1996 to the respondents seeking re-absorption in TANMAG. In this letter, the respondent narrated the entire E history of his services with TANMAG. It is emphasized that his services were transferred to the JVC under compelling circumstances. At that time, he had been assured that there will not be any change in the terms and conditions of employment as stipulated in TANMAG. It is stated that he had accepted the F transfer under compelling circumstances and joined JVC on the clear understanding that all privileges, perquisites and other facilities enjoyed by him in TANMAG shall be protected. His grievance was that since his transfer to JVC, he has been working in the same cadre in which he had joined TANMAG in G 1983. Had he remained in TANMAG, he would have become eligible for promotion. He also emphasized that there was a loss of more than Rs.2000/- per month in his remuneration. Finally, he stated that it has not been possible for the JVC to take up the work on Chemical Beneficiation Project. Many of H the officers whose services had been transferred to JVC along

with him have left the service. He was therefore apprehensive of his future employment career. Hence, he sought his reversion back to the respondents.

18. A perusal of the aforesaid letter makes it abundantly clear that there was no representation made to this respondent that he would be ensured employment till the age of superannuation with the JVC. The other two respondents have also not referred to any document which would indicate that any promise of future continuous employment was held out to them by TANMAG. In fact they had been earlier categorically informed that their services were liable to be terminated as they had become surplus. They were offered an alternative to be transferred to the JVC. Therefore, with their eyes open, the respondents had accepted the job in JVC. Their request for deputation, as provided under Clause 2.17 of the Service Rules, had been specifically rejected. They were in danger of losing their jobs under Clause 2.14 which enables the company to terminate services of the employees by giving three months' notice or salary in lieu thereof. They, therefore, accepted the alternative of a job with JVC. This was clearly, so to speak, "lesser of the two evils". A job in JVC was better than no job at all. The Division Bench noticed that the respondents had accepted the loss of their lien in TANMAG. They were seeking re-absorption on the closure of the JVC. There was no assurance that there will be no closure of the JVC under any circumstances. The Division Bench in its anxiety to help the respondents, who were in danger of losing their jobs at the age of 50 years and above, seems to have stretched the principle of promissory estoppel beyond the tolerable limits. Undoubtedly, while exercising the extraordinary original jurisdiction under Article 226/227 of The Constitution of India the High Court ought to come to the rescue of those who are victims of injustice, but not at the cost of well established legal principles. The circumstances in which a High Court could issue an appropriate writ under these articles was delineated by a constitution bench of this Court in the case of *State of Orissa*

A *Vs. Ram Chandra Dev,* AIR 1964 SC 685 wherein Gajendragadkar, J. speaking for the court observed as follows:

> "Under Article 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226."

The aforesaid settled position was reiterated in the case of *State of W.B. Vs. Calcutta Hardware Stores,* (1986) 2 SCC 203 in the following words:

> "Although the powers of the High Court under Article 226 of the Constitution are far and wide and the Judges must ever be vigilant to protect the citizens against arbitrary executive action, nonetheless, the Judges have a constructive role and therefore there is always the need to use such extensive powers with due circumspection. There has to be in the larger public interest an element of self-ordained restraint."

In this case, there is no finding recorded by the Division Bench as to which legal or fundamental right of the respondents has been infringed. The relief in this case is granted only on the basis of the doctrine of promissory estoppel. In these circumstances it was the duty of the High Court to analyze the facts to ensure that the principles of estoppels could appropriately be invoked in this case to help the respondents.

In our opinion, the High Court erred in not performing this cautionary exercise. In view of the factual situation, as noted above, we are unable to accept that the respondents were put to disadvantage acting upon any unequivocal promise made by the appellants.

19. The doctrine of promissory estoppel as developed in the administrative law of this country has been eloquently explained in *Kaniska Trading Vs. Union of India* (1995) 1 SCC 274 by Dr. A.S. Anand, J, in the following words :

> *"11.* The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between the parties."

In our opinion, on the basis of facts on record in this case, the claim of the respondents would not be covered by the principles enunciated above. In view of the facts narrated above, the Division Bench clearly committed an error of law in concluding that there has been a breach of principles of promissory/ equitable estoppel. Therefore, the High Court erred in issuing the direction/writ in the nature of mandamus directing the appellants to reabsorb the appellants in the service of TANMAG.

A 20. Before we part with the judgment, it would be appropriate to notice that during the hearing of these appeals, the respondents had been permitted to make the representation to the appellants for reconsideration of their request. The respondents had, therefore, submitted a B representation on 15.2.2010. Learned counsel for the appellant, however, stated that it was not possible for the appellant to accommodate the respondents, however, in case in future any vacancy arises, the request of the respondents may be considered.

C 21. In view of the above, the appeals are allowed. The impugned judgment of the Division Bench under appeal is set aside. There will be no order as to costs.

N.J. Appeals allowed.