

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.8895 of 2003

S.K.Ramu

...

Petitioner

Vs

1.The General Manager (Administration)
T.N.C.S.C. Limited,
Head Office,
No.12, Thambusamy Road, Kilpauk,
Chennai - 600 010.

2.The Senior Regional Manager,
T.N.C.S.C. Limited,
Thanjavur.

3.The Sub-Regional Manager
T.N.C.S.C. Limited,
Kumbakonam.

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records pertaining to the order of the first respondent bearing Proceeding No.E2/154904/2002 dated 20.01.2003 culminating with the order of the 3rd respondent bearing Na.Ka.No.6221/2002 dated 26.07.2002 and quash the same and direct the respondents to give the petitioner, the promotional and other monetary benefits as per the award of the Labour Court dated 29.11.1989 in I.D.No.347/1986.

For petitioner : Ms.G.Devi

For respondents : M/s.C.Munusamy
for R1 & R2
represented by
Ms.M.Sudha

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O R D E R

According to the petitioner, he was appointed as Shop Assistant in the Tamil Nadu Civil Supplies Corporation Limited at Kumbakonam and was working there from 01.02.1979 to 05.08.1985. On 05.08.1985, he was removed from the services without any reason or enquiry. Challenging the same, he raised

industrial dispute and on failure of the conciliation proceedings, the matter was referred to the Labour Court in I.D.No.347 of 1986. The Labour Court passed an award on 29.11.1989 in I.D.No.347 of 1986 in which it is held as follows

12. In the result, the removal of the worker Thiru.K.Ramu from his service is not justified and the respondent corporation is directed to re-instate the petitioner with back wages and continuation of service with all privileges. No costs.

2. Challenging the Labour Court award, the Management filed W.P.No.6654 of 1990 which was dismissed by the learned Single Judge of this Court on 14.09.1998 and the Management filed W.A.No.1051 of 1999 which also came to be dismissed by the First Bench of this Court on 09.09.1999 thereby the award passed by the Labour Court reached finality. Though according to the petitioner he was working as Salesman, the Management had taken a stand that he worked as "Packer". Pursuant to the award, the petitioner was re-instated into service as Packer on 01.03.2000 and subsequently he was promoted as Junior Assistant. The petitioner sent representations to the respondents seeking service benefits pursuant to the award passed by the Labour Court. The first respondent, vide impugned order dated 20.01.2003 rejected the request of the petitioner challenging which the petitioner is before this court by way of this writ petition.

2. Heard Mrs.G.Devi, learned counsel appearing for the petitioner and Ms.M.Sudha, learned counsel appearing for the respondents.

3. The learned counsel appearing for the petitioner contended that the impugned order cannot be sustained in as much as the labour court award is crystal clear that the petitioner would be entitled to all the benefits which would include even the notional promotion. It is further submitted that during the pendency of this writ petition, the petitioner had retired from the services.

4. The respondents have filed their counter wherein in Para 10, it is stated as follows -

10. I respectfully submit that in compliance of the Labour Court award, posting was given to Thiru S.K.Ramu as Packer and he joined duty as Packer (Regular employee) on 03.03.2000 by the proceedings of Senior Regional Manager, Thanjavur in Rc.No.A4/1774/00 dt.01.03.2000 and subsequently his name was included in the panel for bill clerk as on

01.04.1990 above Thiru V.Kuppusamy and he was promoted as Junior Assistant. The petitioner joined on 11.01.2001 as Junior Assistant vide proceedings of Senior Regional Manager, Thanjavur Rc.No.A4/15246/01 dated 05.01.2001. The individual has accepted the seniority and joined duty as Junior Assistant without any objection. The pay and allowance are being paid to the petitioner as per corporation rules. A sum of Rs.56,050/- was paid to the individual towards backwages for the period during which he did not work in the corporation. The petitioner has received backwages. The order dated 26.7.2002 was passed after taking into consideration of the order of the Labour Court and the Hon'ble High Court, Madras.

5. From the reading of the above, it is seen that the petitioner was re-instated into service on 03.03.2000 as packer and he was given the backwages amounting to Rs.56,050/- for the period during which he was not in service. Subsequently, his name was included in the panel for bill clerk as on 01.04.1990, on par with his junior V.Kuppusamy and he was promoted as Junior Assistant in which post he joined on 11.01.2001, without any demur. The learned counsel for the petitioner would further submit that the petitioner should be given notional promotion from 01.04.1990 on par with V.Kuppusamy and the benefits of the salary for the promoted post should be paid.

6. In the considered opinion of this court, such relief cannot be granted in as much as a person will be given notional promotion only for the purpose of fixing the seniority and he cannot be paid the salary for the notionally promoted post without he having actually worked in that post. In other words, there cannot be a payment of salary to a person for a notionally promoted post in which he has not actual functioned. The concept of notional promotion is reckoned only for the purpose of fixing the seniority vis-a-vis the juniors. Hence, this court is of the opinion that the plea of the petitioner cannot be sustained and this petition is devoid of merits.

7. In the result, the writ petition is dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The General Manager (Administration)
T.N.C.S.C. Limited,
Head Office,
No.12, Thambusamy Road, Kilpauk,
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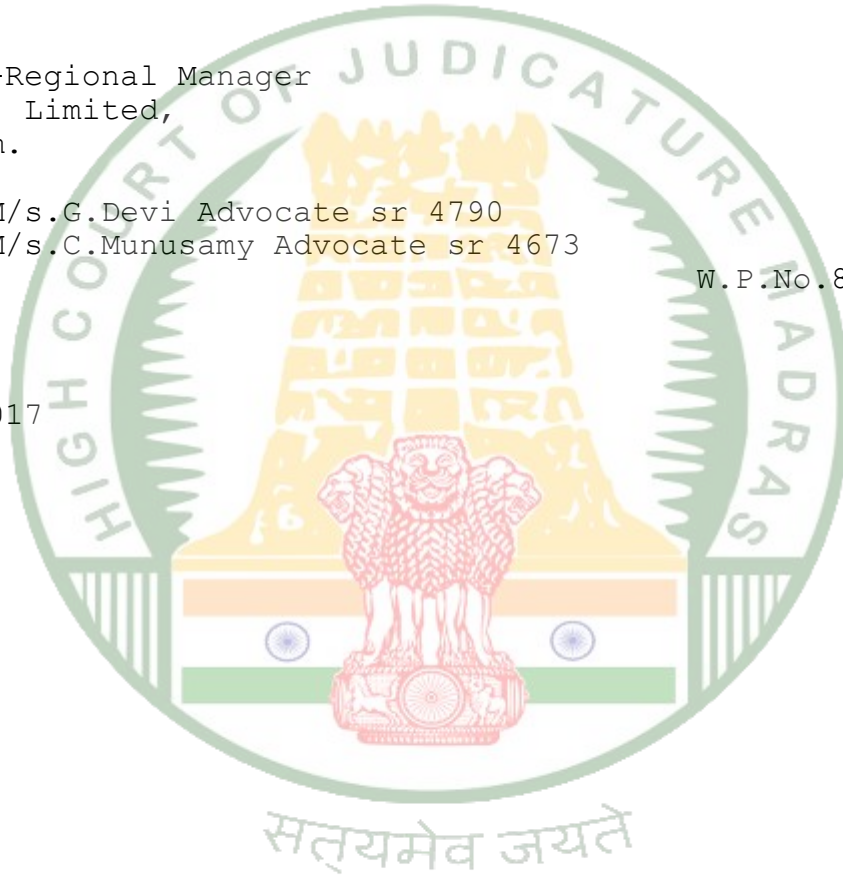
2.The Senior Regional Manager,
T.N.C.S.C. Limited,
Thanjavur.

3.The Sub-Regional Manager
T.N.C.S.C. Limited,
Kumbakonam.

+1 cc to M/s.G.Devi Advocate sr 4790
+1 cc to M/s.C.Munusamy Advocate sr 4673

W.P.No.8895 of 2003

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