

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.29109 of 2010 and
M.P.No.1 of 2011

Tamil Nadu State Apex Co-operative
Employees Union,
Rep. By its General Secretary,
Reg.no.2484, No.4, NSC Bose Road,
Chennai - 600 001

... Petitioner

Vs.

1.The Presiding Officer,
I Additional Labour Court,
High Court Campus,
Chennai

2.The Management
Tamilnadu State Apex Co-operative
Bank Ltd.,
No.233, NSC Bose Road,
Chennai - 600 001

... Respondents

Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus after calling for the concerned records from the 1st respondent quash the award passed by the 1st respondent dated 20.09.2010 in I.D.No.420 of 2007 and consequently, direct the 2nd respondent to promote C.Ramalingam to the post of Electrical Supervisor with effect from 05.12.1996 along with all monetary benefits, arrears of wages, etc., and pass such other orders.

For Petitioner : Mr.Balan Haridas

For Respondents: Mr.M.R.Ragavan for R2

O R D E R

Present Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to quash the Award passed by the 1st respondent in I.D.No.420 of 2007 dated 20.09.2010 and consequently, direct the 2nd respondent to promote Shri.Ramalingam to the post of Electrical Supervisor with effect from 05.12.1996 with all monetary benefits, arrears of wages etc.,

2. The Employees Union of Tamilnadu State Apex Co-operative has filed this Writ Petition canvassing for the Member of Union, namely, C.Ramalingam, who according to the Union, is working in the 2nd respondent-Bank as 'Electrical Assistant'. He was appointed as Electrical Assistant by an order dated 25.08.1987 and had joined duty on 05.10.1987, whose employment was subsequently confirmed on 05.04.1988.

3. The said workman, viz., C.Ramalingam, who is the Diploma Holder in Electrical Engineering, who had 5 years of experience working by working in Chennai Corporation and other firms prior to joining of 2nd respondent. It is the case of Union that despite having put in over 23 years of service as electrical assistant, the said member of the Union has not been given any specific promotion till the date of filing the Writ Petition in the year 2010.

4. It is the further case of the Union that one T.Rangasamy was working as Electrical Supervisor (Assistant Cadre) from 02.01.1974, which post finds place in Category II(E) of the Special Bylaw's of the respondent- Bank. The said T.Rangasamy, who was Electrical Supervisor, on 02.03.1983, was promoted to Assistant Manager cadre. The salary was fixed in the pay scale of Assistant Manager and thereafter, ever since 1985, the post of Electrical Supervisor is lying vacant.

5. It is the further case of the Union that the qualification prescribed under the Special Bylaw to which the said workman, viz., Ramalingam was qualified and despite being qualified was not offered any promotion, inspite of repeated representation. It is further stated that as per the Special Bylaw of the 2nd respondent, any one, viz., Assistant, Steno-Typist or Typist, who has worked 10 years, are eligible to be promoted as Assistant Manager provided, they should work for as Assistant not less than for 5 years. The post of Electrical Assistant is the equivalent cadre of post of Assistant. Since the workman, Ramalingam had requested through the petitioner's union, was not accepted by the 2nd respondent bank, the Union had passed a resolution on 18.12.2006 reserving its right to raise Industrial Dispute regarding the non-granting of promotion for

the concerned workman.

6. Thereafter, on 12.04.2007, the Union raised a dispute before the Conciliation Officer and upon a failure report by the conciliation officer, the Industrial Dispute No.420 of 2009 was preferred by the Union, on behalf of the concerned workman, Ramalingam. However, the Labour Court by an order dated 20.09.2010 passed an award dismissing the Industrial Dispute on the ground that the post held by T.Rangasamy, who was promoted as Assistant Manager Cadre from Electrical Supervisor and on the ground that the concerned workman is seeking promotion, which post is not in existence and the Rule of Promotion is, as applicable to the Government Organisation, will not be applicable to the Co-operative societies. Challenging the said award, the present Writ Petition has been filed.

7. Mr.Balan Haridoss, learned counsel appearing for the petitioner / Union would vehemently contend that the By-law provides for the post of Electrical Supervisor and when the concerned workman is fully qualified, the 2nd respondent-Management, ought to have promoted the concerned workman to the said post. He also contended that there is no need for settlement and the promotion should have been granted to the concerned workman, as a matter of right, on the basis of Special Bylaw.

8. The learned counsel for the petitioner also would contend that the post of Electrical Supervisor finds place in Category II (E) of the Special ByLaw, which is produced as Exhibit before the Labour court and the said Court failed to appreciate it in a proper perspective and the dismissal of the Industrial dispute raised by the Petitioner / Union has caused a gross injustice to the concerned workman.

9. It is represented by the learned counsel for the petitioner that the Labour Court is not correct in holding that the Petitioner-Union should make request to the 2nd respondent-Management for amending the said Special Bylaw to provide promotional avenues, ignoring the fact that the said bye-law already provides for the post of Electrical Supervisors.

10. In support of his arguments, the learned counsel for the petitioner relied upon the (i) Judgments of the Hon'ble Supreme Court reported in AIR 1989 Supreme Court 1972 [Council of Scientific and Industrial Research and Another V. K.G.S.Bhatt and Another] (ii) 1950 SCR 459 [Bharat Bank Ltd., Delhi V. Employees of the Bharat Bank Ltd., Delhi and another] (iii) Judgment of this Court reported in 2017 - 1 Writ Law Reporter 59 [S.Jacob Rajan Babu V. Government of Tamilnadu rep. By its Principal Secretary, Municipal Administration and Water Supply

Department, Fort St. George, Chennai and Another, to canvass in support of the Writ petition and prayed to set aside the order passed by the Labour Court.

11. On the other hand, Mr.M.R.Ragavan, learned counsel appearing for the 2nd respondent-Management filed his counter and vehemently contended that there is no Bylaw or Special Bylaw, which enable the employee to seek for promotion to the higher post, the concerned workman was on the same post for a long period, considering his service in same post, he was given two additional increments (special pay), as applicable to the employees, who do not have any promotional avenue or option.

12. The counsel appearing for the 2nd respondent would also contend that since Electrical Assistant is not a feeder category to the promotional post of Electrical Supervisor, the concerned workman was not promoted to the post of electrical supervisor.

13. Mr.Ragavan, learned counsel for the 2nd respondent would further submit that the said post of Electrical Supervisor was abolished as early as in the year 2005 and the Union has raised a Industrial Dispute subsequent to the abolition of such posts and rightly the Labour Court has dismissed the Industrial Dispute raised on the ground that when the dispute was raised, the said post of Electrical Supervisor was not in existence, as such, the dispute itself is not maintainable in law.

14. Heard the learned counsel appearing for the petitioner and the learned counsel for the 2nd respondent and perused the available materials on record.

15. The Hon'ble Supreme Court in several cases has held that promotion is not a matter of right, whereas, the petitioner, who is a Union, has been canvassing before this Court for right of promotion to the workman, who are the members of the Union. On a perusal of the Special Bylaw, no doubt, the post of electrical supervisor has found place in the III Category, which includes among Assistants, Stenotypists, Typists, Telephone Operator. However, this Court does not find place the post of electrical assistant as claimed by the petitioner's Union and by the concerned workman, who was working under the 2nd respondent-Management. It is also clear from the By-law that there is no promotional avenues for the post of Electrical Assistant to the post of Electrical Supervisor. When the By-Law does not prescribe any promotional avenues to the post of electrical assistant, merely because the said workman has put in more number of years of service, cannot seek promotion, as a matter of right, when the by-law does not provide so for the said promotion.

16. It is also brought to the knowledge of this Court that since the post of electrical assistant is not the post for further promotion, two additional increments were paid to the concerned workman, when that being the case, the Union cannot canvass for the promotion of the concerned workman, who is the member of the Union, when the by-law does not prescribe any such promotion. What is not prescribed under the By-law cannot be canvassed by the Union and more so it is brought to the knowledge of this Court by filing the Counter that the said post 'electrical supervisor', which find place in the by-law was abolished as early as in the year 2005. But in the same time, the Industrial Dispute raised before the conciliation officer was only after the abolition of such post and the Industrial Dispute came be dismissed in the year 2008, while that being the case, the petitioner cannot agitate neither before the labour court or before this Court when the post was not in existence while raising the industrial dispute. The Judgments relied on by the petitioner's counsel are totally different to the facts and not applicable to the present case on hand.

17. Under these circumstances, this Court does not find any merit in the writ petition and the Writ petition deserves to be dismissed. Accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

ssd

To

1.The Presiding Officer,
I Additional Labour Court,
High Court Campus,
Chennai

2.Management
Tamilnadu State Apex Co-operative
Bank Ltd.,
No.233, NSC Bose Road,
Chennai - 600 001

+lcc to Mr.Balan Haridas Advocate, S.R.No.68515
+lcc to Mr.M.R.Ragavan Advocate, S.R.No.68611

RSV(CO)
CB(19/09/2019)

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