

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.29573 of 2011

Tucas Employees Association
No.452/CBE, Thudiyalur
Coimbatore
Rep. by its Secretary
Mr.A.Aruchamy
Petitioner

Vs

1.The Labour Court
Coimbatore
2.The Management of Thudiyalur
Cooperative Agricultural Service
Society Limited,
Coimbatore,
Rep. by its Managing Director : Respondents

Prayer :- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus calling for the entire records pursuant to the Award in I.D.No.101 of 2008 dated 24.09.2009 on the file of the Labour Court, Coimbatore, quash the same and consequently direct the respondents to extend the due promotion as senior clerk from 20.07.1980 to Mr.V.P.Thirumoorthy and from 05.08.1980 to Mr.K.Balasubramanian and order consequent promotions and monetary benefits from their actual date of promotions with due increases till their date of retirement as per the calculations in the Annexure.

For Petitioner : Mr.G.B.Saravanabhavan

For Respondents : Mr.P.Muthukrishnan for R2.
R1-Court.

ORDER

The Petitioner herein is Tucas Employees Association, Thudiyalur, Coimbatore, and is represented by its Secretary viz., A.Aruchamy. It is averred in the Writ Petition that as per the resolution passed by the 2nd respondent Society, the

employees viz., Mr.V.P.Thirumoorthy and Mr.K.Balasubramanian are to be conferred with selection grade and special grade on their due completion of 7 years of service on par with persons who were benefited by such resolution.

2. The Petitioner union raised an Industrial Dispute before the Labour Court, Coimbatore. The Labour Court, after elaborately discussing the allegations of the Petitioner Union and the counter affidavit filed by the Management, and also on analysis of oral and documentary evidence produced by both sides, by Award dated 24th September, 2009, in I.D.No.101 of 2008, held that the employees K.B.Balasubramanian and V.P.Thirumoorthy are not entitled for promotion as senior clerk immediately on the next day of completion of 7 years of their service in the post of clerk and further they are not entitled for subsequent benefits of selection grade and special grade as claimed by them in the reference. It is further held that they are entitled for Special Grade benefits, only from 11.06.2004, if otherwise, they are eligible for the said benefits as admitted by the 2nd respondent/Management in the counter statement.

3. Aggrieved over the award of the Labour court, Coimbatore, the aforesaid Writ Petition is filed. Before this court, it is contended by the learned counsel for the Petitioner Union that the employees concerned in the case on hand worked as Manager Incharge; they were not paid with additional benefits for the period from 12.07.2000 to 31.01.2006.

4. Per contra, in the counter affidavit filed by the 2nd respondent, it is submitted that it is incorrect to state that resolution passed by the society confers the right on the employees for promotion from clerk to senior clerk once they complete the period of 7 years of service. Period of service is only a minimum qualification and 6 persons mentioned by the Petitioner Union were not given promotion on completion of 7 years of service as clerk, but promoted after 9 years and 24 years respectively.

5. In the counter affidavit, it is also stated by the 2nd respondent Management that based on the application received for promotion, the pay committee in its resolution No.4 dated 07.02.1984 considered to promote Thirumurthy and Balasubramanian as senior clerks from 01.06.1984 and order was also issued in Rc.No.84/2001 dated 28.05.1984. Similarly as per Wage Agreement with the Union, selection cadre was allowed on 07.01.1993 for completion of 10 years in the same post from 01.06.1984. The special grade pay was paid with retrospective effect from 01.06.2004 to V.P.Thirumurthy vide RC No.88/2000/01 dated 12.03.2010 and K.Balasubramanian from 02.06.2004 as per Rc.No.300/2000/01 dated 20.06.2007. The arrears of pay and

retirement benefits have been paid to the above said employees at the time of retirement only on Special Grade Pay basis.

6. The 2nd respondent submitted that as regards the allegation that K.Balasubramanian was working as Cashier in K.K.Pudur Branch and also was Incharge of other duty, it is stated that he was only working as Incharge of Post of Cashier and the employees who raised Industrial Dispute were paid due revision and increment and Dearness Allowance and not out of turn. It is also reiterated by the 2nd respondent management that promotion depends not upon mere seniority alone, but also depends upon merit and performance.

7. On going through the entire facts narrated by the Petitioner Union, it is seen that the promotion was stated to be due as on 05.08.1980 and the employees sent letters seeking the same to the Management by letters dated 10.08.1998, 18.11.1998 and 12.01.2000. Further Claim Statement has been filed only on 24.05.2002 and with a huge delay, Proof Affidavit was filed by the Petitioner Union on 01.06.2006. There is no explanation for the delay of more than 20 years in filing Claim Statement before the Labour court for claiming the benefit of promotions due for the year 1980. The Labour court itself rejected the contentions of the Petitioner Union and pointed out that the claim for subsequent promotions based on the assumption that they are entitled for promotion as a matter of right immediately on the next day, after completion of seven years of service in the post of Junior Grade Clerk is unsustainable and so the subsequent promotions, pay benefits claimed by the said employees are also unsustainable.

8. In the light of the aforesaid stand taken by the 2nd respondent Management in their counter affidavit filed before this court and also the categoric finding given by the Labour Court, this Court is of the considered view that the the Petitioner approached the Labour court, with a delay of nearly 18 years. Hence, on the ground of laches, this court is not inclined to grant any relief as sought for in the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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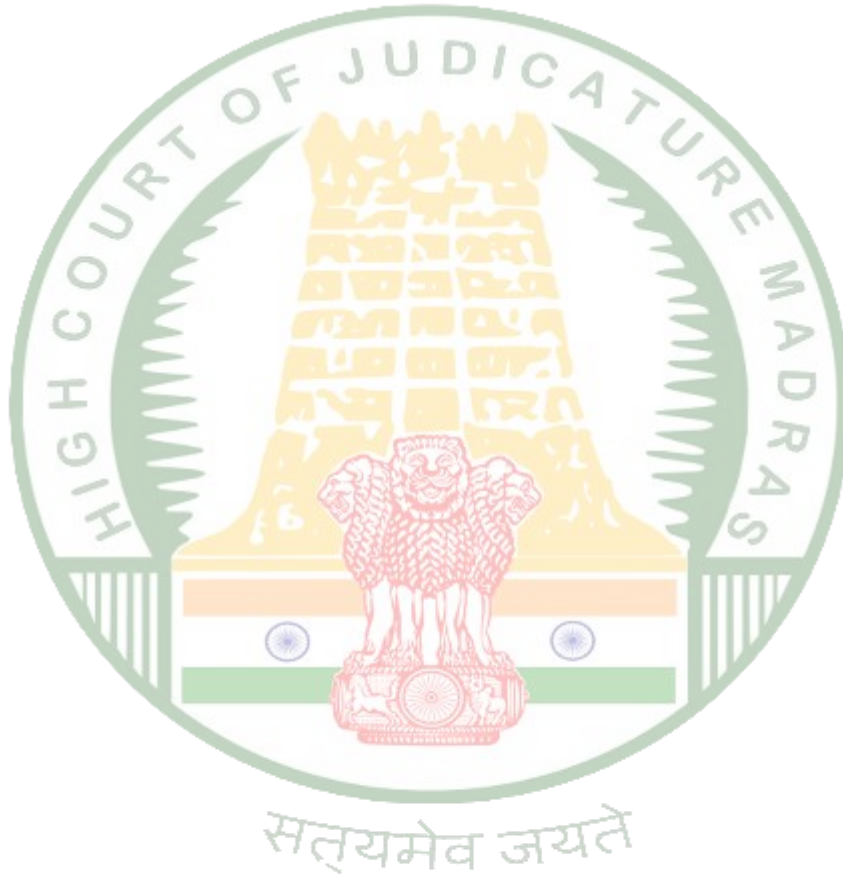
1.The Labour Court
Coimbatore

+1 cc to The Government Pleader, Sr.No. 9148

+1 cc to Mr.S.Pasupatheeswaran, Advocate, Sr.No. 8455

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CSL/19.06.2019



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