

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.21553 of 2014

and

M.P.No.2 of 2014

The Superintending Engineer
Thiruvannamalai Electricity Distribution Circle
TANGEDCO, Thiruvannamalai.Petitioner

vs.

- 1.The Presiding Officer
Industrial Tribunal,
Tamil Nadu, Chennai-600 104.
- 2.North Arcot District General Workers Federation
Reg.No.285/NAT, Ganapathy Nilayam, INTUC
5(18) Amirthalingasamy Sannathi Street,
Kosapettai, Vellore-632 001.Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in I.D.No.36/2010 dated 31.10.2012 on the file of the 1st respondent and quash same.

For Petitioner : Mr.Haroon
for M/s.T.S.Gopalan & Co.,
For Respondents : Mr.R.D.Ashok Kumar
for R2

O R D E R

This writ petition is filed by the Management challenging the award of the Labour Court dated 31.10.2012 made in I.D.No.36 of 2010.

2. The Labour Court passed the impugned award holding that the claim of the petitioner-Union therein viz., the second respondent herein that one Ramamoorthy is entitled to get promotion with effect from 03.11.2004, is justified. In other words, the Labour court awarded the promotional benefit to the said Ramamoorthy, who is the member of the second respondent-Union herein, with effect from 03.11.2004.

3. The learned counsel for the petitioner-Management submitted that during the relevant point of time, the said Ramamoorthy was undergoing a minor punishment of stoppage of three annual increments with cumulative effect and therefore, he was not considered for promotion between 01.10.2003 to 30.09.2006. He further submitted that once the period of such punishment is completed, the said Ramamoorthy was considered for promotion and accordingly, given the said benefit on 15.10.2007. In support of the contention that the employee is not entitled to get promotion during the currency period of punishment, whether it is minor or major, the learned counsel relied on a Full Bench decision of this Court in the case of Deputy Inspector General of Police, Thanjavur and another Vs. V.Rani, reported in 2011 (3) CTC 129.

4. On the other hand, the learned counsel for the second respondent submitted that the award passed by the Labour Court is just and proper and does not require any interference by this Court, while exercising its jurisdiction under Article 226 of the Constitution of India. He further submitted that the Board proceedings issued by the petitioner-Board in B.P.Ms.No.428 dated 12.08.1982 contemplates that the employee shall not be considered for promotion only when the definite charges have been framed for lapses connected with corruption, misappropriation, misconduct involving moral turpitude; when the criminal proceedings are pending before the Court and while under suspension. Therefore, he submitted that when the charges levelled against the employee was not similar to one referred to in the Board proceedings, the minor punishment imposed on the said Ramamoorthy during the relevant point of time cannot stand in the way of the petitioner-Management in granting promotion. He also relied on the decision of the Apex Court in the case of Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat, reported in 2010 5 SCC 497 and submitted that the point raised in this writ petition with regard to the non-entitlement of the employee for promotion during the currency period of minor punishment was not the issue raised before the Labour Court and therefore, the same cannot be raised herein.

5. Heard both sides and perused the materials placed before this Court.

6. There is no dispute to the fact that the said Ramamoorthy was undergoing minor punishment during the relevant point of time viz., from 01.10.2003 to 30.09.2006. The punishment imposed was the stoppage of annual increment for a period of three years without cumulative effect. It is also not in dispute that the said Ramamoorthy was subsequently, considered for promotion after the expiry of the said punishment period and accordingly, he was given promotion on 15.10.2007. It is true that the learned counsel for the second respondent sought to rely upon the Board proceedings dated 12.08.1982 to contend that if the charges are not in

relation to major misconduct, the Management is not entitled to deny the promotion. I do not think that the learned counsel is justified in relying on the said Board proceedings in preference to the Full Bench decision of this Court, which came to be delivered much later to such Board proceedings, in the case of Deputy Inspector General of Police, Thanjavur and another Vs. V.Rani, reported in 2011 (3) CTC 129, wherein it is categorically held that during the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category, merely, on the basis that he is otherwise fit for promotion. It is also observed therein that after completion of the currency period of punishment, the said person is entitled to be considered for promotion to the next post, if otherwise eligible. This is what happened in the present case. However, the Labour Court proceeded to pass the impugned award, which is not in accordance with the above law laid down by the Full Bench of this Court. Hence, it is liable to be set aside.

7. The learned counsel for the petitioner contended that the above issue was not raised before the Labour Court and therefore, it cannot be raised before this Court.

8. Needless to say that the ratio laid down by this Court is the law, which is not necessarily to be raised by way of pleadings as it is open to the parties to raise before this Court at any stage. In other words, a law laid down by the Court, even if not pleaded specifically, is the law which has to be applied depending upon the facts and circumstances of the case. Thus, I find that the above decision of the Apex Court relied on by the learned counsel for the second respondent is not helping the present case in any manner. Accordingly, I find that the award of the Labour Court cannot be sustained.

9. Thus, the Writ Petition is allowed and the impugned award is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer

Industrial Tribunal,

Tamil Nadu, Chennai-600 104.

2.The Superintending Engineer

Thiruvannamalai Electricity Distribution Circle

TANGEDCO, Thiruvannamalai.

+1cc to Mr.T.S.Gopalan and Co , Advocate SR.No. 13209

+1cc to Mr.S.N.Ravichandran , Advocate SR.No. 13203

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