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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.813 of 2008

V.Segar

... Appellant/Plaintiff

Vs.

1.Anglo French Textiles Ltd.,
(A Unit of Puducherry Textile
Corporation Ltd.,)
Represented by its Managing
Director.

2.Manager (Personnel)
Anglo French Textiles Ltd,

3.Pondicherry Textiles Corporation,
Rep. by its Chairman,
Pondicherry.

... Respondents/Defendants

Prayer: The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 28.02.2008 passed in A.S.No.28 of 2006 on the file of the Additional Subordinate Court, Puducherry, confirming the judgment and decree dated 21.02.2005 passed in O.S.No.468 of 2000 on the file of the Principal District Munsif Court, Pondicherry.

For Appellant : Mr.D.Rajagopal
For Respondents : Ms.N.Mala

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.02.2008 passed in A.S.No.28 of 2006 on the file of the Additional Subordinate Court, Puducherry, confirming the judgment and decree dated 21.02.2005 passed in O.S.No.468 of 2000 on the file of the Principal District Munsif Court, Pondicherry.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The plaintiff in O.S.No.468 of 2000 is the appellant in the second appeal.



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4.The plaintiff has laid the suit to declare that he is entitled to get the promotion to the post of Assistant Manager, Grade II and shift in charge with effect from 26.11.1992 and to direct the respondents to consider and promote him to the post of Assistant Manager, Grade II, and shift in charge with effect from 26.11.1992.

5.According to the plaintiff, he has been appointed as a Supervisor in the defendants' Textile on 07.06.1986 and further though he was appointed as Assistant Manager, Grade II on 26.11.1992, however, he was paid only the wages for Supervisor during the medical leave availed by the Assistant Manager, Grade II and on the demise of the Assistant Manager, Grade II and therefore, according to the plaintiff, since he had been working as Assistant Manager, Grade II, for a long period, the defendants should have considered him fit for promotion with effect from 26.11.1992 and as the defendants failed to give promotion, according to the plaintiff, he has been necessitated to lay the suit for necessary reliefs.

6.The defendants resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and denied that the plaintiff was appointed as Assistant Manager, Grade II on 26.11.1992 and also denied that he has been engaged against a regular vacancy and the plaintiff has been working only as a Supervisor and not as Assistant Manager, Grade II as put forth by him and considering the staff position of the defendants' Textile, the Mill is highly over staffed and the defendants are endeavoring to reduce the excess staff and officers before considering the question of promotion and existing vacancies and further put forth that the writ petitions are pending in the High Court and therefore, at such a stage, the plaintiff is not entitled to seek for promotion and further, according to the defendants, only after taking into consideration the various factors, promotion would be given to any employee and when it is not the case of the plaintiff that he has been overlooked and his juniors have been promoted, according to the defendants, the plaintiff's suit is misconceived and liable to be dismissed.

7.In support of the plaintiff's case, PWs1 to 3 were examined and Exs.A1 to A9 were marked. On the side of the defendants, DWs 1 to 3 were examined and Exs.B1 to B8 were marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been laid.



10. From the pleas and the submissions put forth by the plaintiff's counsel, it is evident that the plaintiff is seeking the claim of promotion as Assistant Manager, Grade II and shift in charge with effect from 26.11.1992 on the footing that he had been already discharging the duties of the abovesaid post with effect from 26.11.1992. The abovesaid claim of the plaintiff has been seriously controverted by the defendants. According to the defendants, the plaintiff has never been promoted as Assistant Manager, Grade II and he is only serving as the Supervisor.

12. It is the main grievance of the plaintiff that since the defendants have utilised the services of the plaintiff in the cadre of Assistant Manager, Grade II from the year 1992, he should be granted the promotion to the said post normally and further, according to the plaintiff, he has been discharging the duties sincerely and without any complaints. It is not the case of the plaintiff that his promotion had been overlooked by the defendants. It is also not the case of the plaintiff that as if the regular promotional opportunity had been denied to him. Therefore, as rightly contended by the defendants, merely because, the plaintiff had been discharging the duties of a higher post due to certain exigencies, that alone would not be a



ground to consider him to be eligible for promotion. Unless and until his promotion has been considered by the employer in the normal course, the plaintiff cannot claim the promotion to the said post, as a matter of right. No doubt, the plaintiff would contend that considering the discharge of his duties rendered by him as Assistant Manager, Grade II, the plaintiff's promotion should be considered by the defendants. However, the Courts below also, after considering the abovesaid pleas put forth by the plaintiff, held that merely because, the plaintiff had been discharging the duties of Assistant Manager, Grade II, for over a period, that alone by itself would not entitle him to seek for promotion to the said post, particularly, when the plaintiff has not been appointed to that particular post and when it is noted that the plaintiff had been permitted to discharge the duties of the Higher post only due to certain exigencies. All put together, the Courts below are found to be justified in not accepting the abovesaid plea of the plaintiff.

13.It is also not the case of the plaintiff that the individual case of the plaintiff had been not considered by the defendants for promotion. When the defendants have come forward with the case that granting of promotion is a managerial function, in my considered opinion, the plaintiff cannot be allowed to question the wisdom of the defendants, particularly, when he has not pleaded that he had been overlooked and his Juniors have been considered for promotion. Furthermore, it is not the case of the plaintiff that he alone is aggrieved by not granting the promotion. When according to the plaintiff, the defendants have not overlooked the seniority, in such view of the matter, the claim of the plaintiff that he is entitled to seek for promotion, as a matter of right, merely on the footing that he has discharged the duties of the higher post for a certain period, as such, cannot be countenanced.

14.The Courts below have also taken into consideration the fact that the defendants are highly staffed and therefore, right in not considering the promotion to any one and no motive as such could be attributed against the defendants with reference to the same.

15.Considering the reasons of the Courts below in negating the reliefs sought by the plaintiff, they being found to be based on the proper appreciation of the materials available on record in the proper perspective and when they are not shown to be perverse, illogical and irrational in any manner, in such view of the matter, I do not find any valid reason warranting interference with the same. Inasmuch as the second appeal has not been admitted till date, the petition laid by the plaintiff subsequent to laying of the second appeal



during the year 2018 seeking for reception of the additional evidence, as such, is not entitled for acceptance.

In the light of the abovesaid factors, the judgment and decree dated 28.02.2008 passed in A.S.No.28 of 2006 on the file of the Additional Subordinate Court, Puducherry, confirming the judgment and decree dated 21.02.2005 passed in O.S.No.468 of 2000 on the file of the Principal District Munsif Court, Pondicherry, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

sms

Copy to

- 1.The Additional Subordinate Court,
Puducherry.
- 2.The Principal District Munsif Court,
Pondicherry.

Copy To

The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.D.Rajagopal, Advocate, S.R.No.8777
+1cc to Mr.N.Mala, Advocate, S.R.No. 8652

S.A.No.813 of 2008

AJS (CO)
GN(25/08/2021)