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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2375 of 2013

R.Gurunathan

... Appellant

vs.

1. Tamil Nadu Cements Corporation Limited,
rep. by its Chairman and Managing Director,
Corporate Office, "LLA Building",
735, Anna Salai,
Chennai 600 002.
2. Tamil Nadu Cements Corporation Limited,
rep. by its Manager - Personnel & Administration,
Corporate Office, "LLA Building",
735, Anna Salai,
Chennai 600 002.
3. Tamil Nadu Cements Corporation Limited,
rep. by its Deputy General Manager,
Alangulam Cement Works,
Tamil Nadu Cements Post,
Virudhunagar District.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 05.04.2013 passed by this Court in W.P.No.28919 of 2003.

Prayer in W.P.No.28919 of 2003:Writ Petitions are filed under Article 226 of the Constitution of India to issuance of a writ of certiorari to call for the records relating to the proceedings of the 2nd Respondent in RC.No.7521 / A1 / 2002-2003-03 dated 19.03.2003 and quash the same. To call for the records relating to the proceedings in RC.No.7521 / A1 / 2002-2003-03 dated 19.03.2003 of the 2nd Respondent and the consequential communication in Ref.No.16711 / PL-1 / 94 dated 28.08.2003 of the 3rd Respondent and quash the same.



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For Appellant : M/s.A.P.Srinivas
For Respondents : Mr.A.Sivaji

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN, J.)

Present Appeal has been preferred by the Writ Petitioner, questioning the common order dated 05.04.2013 passed by the learned Single Judge, dismissing the Writ Petition in W.P.No.28919 of 2003

2. The Appellant/Writ Petitioner joined the services of the Respondents/TANCEM as a Steno-cum-Typist on 16.03.1981 and after holding various posts, on selection, he was appointed as Marketing Executive on 31.08.1994 and then promoted as Assistant Manager (Marketing) on 03.02.1999. By a common impugned order dated 19.03.2003 passed by the 2nd Respondent, the Writ Petitioner was reverted after a period of four years from the promoted post, without any prior notice. It is seen that, one P.Ramu, who was working as an Assistant Manager (Marketing) was terminated from service and that, he filed a Writ Petition in W.P.No.14010 of 2003 and by an order dated 30.01.2003, he was directed to be reinstated into service and in order to accommodate him, the reversion order was passed.

3. Challenging the impugned order of reversion, the Writ Petitioner filed W.P.No.28919 of 2003 and the learned Single Judge, by a common order dated 05.04.2013, dismissed the Writ Petition, by holding as under:

"16. A perusal of the records would go to show that, out of 15 posts, only 12 posts are available as on date. Further, in order to accommodate one Ramu, who has obtained orders from this Court for reinstatement, the present Petitioners have been reverted. Further, it appears that, Petitioner Paulraj has retired on 31.03.2011 on attaining the age of superannuation as Superintendent (Marketing) and he was never disturbed and the Petitioner Gurunathan is going to retire during the year 2014. Therefore, prima facie, I find no malafide intention on the part of the 2nd Respondent.



17. In view of all the above, the Writ Petition deserves only to be dismissed and the same is accordingly dismissed. No costs. ..."

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4. Learned counsel for the Appellant/Writ Petitioner contended that, as per the Service Rules of TANCEM, the 1st Respondent is not empowered to upgrade or downgrade a post and that, the reason stated by the Respondents that, promotions were given pursuant to the Settlement arrived under Section 12(3) of the Industrial Disputes Act, is highly illogical. According to him, when no sanctioned post is available, the question of promotion or appointment on any ground, does not arise.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. Learned counsel for the Appellant/Writ Petitioner contended that, in order to accommodate one Ramu, the post held by the Appellant/Writ Petitioner ought not to have been downgraded and he ought not to have been placed in the lower scale of pay.

7. It is seen from the records that, during the pendency of the Writ Petition, the Appellant/Writ Petitioner obtained interim order from this Court. Subsequently, he was reverted to the post of Marketing Executive. On 02.02.2007, he was promoted as Assistant Manager (Marketing) in the sanctioned post and that, he retired from service on 31.05.2014.

8. Learned counsel for the Appellant/Petitioner contended that, the Appellant/Writ Petitioner has not been paid the terminal benefits.

9. In view of the aforesaid discussion, as the Appellant/Writ Petitioner has retired from service, the only issue that requires consideration in this Writ Appeal is, payment of terminal benefits due to the Appellant/Writ Petitioner. However, the action of the employer in downgrading the Writ Petitioner to a lower post in order to accommodate one Ramu, is illegal. Respondents ought to have created a supernumerary post to accommodate the said Ramu and ought not to have downgraded the Appellant/Writ Petitioner to a lower post to accommodate Ramu in the higher post. Even if Respondents have powers to downgrade an employee to a lower post, pay protection should be given to the employee. Benefits already granted to an employee cannot be withdrawn by means of an administrative decision to accommodate another employee.



10. Hence, we interfere with the order passed by the learned Single Judge and thereby, the impugned order of reversion dated 19.03.2003 passed by the 2nd Respondent, is set aside only for the purpose of payment of enhanced terminal benefits to the Appellant/Writ Petitioner.

11. We direct the Respondents herein to pay all the terminal benefits due to the Appellant/Writ Petitioner within a period of four months from the date of receipt of a copy of this judgment, with interest at 10% per annum from the date of his retirement till the date of actual payment.

The Writ Appeal is allowed on the above terms. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Chairman and Managing Director,
Tamil Nadu Cements Corporation Limited,
Corporate Office, "LLA Building",
735, Anna Salai, Chennai 600 002.
2. The Manager - Personnel & Administration,
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3. The Deputy General Manager,
Tamil Nadu Cements Corporation Limited,
Alangulam Cement Works,
Tamil Nadu Cements Post,
Virudhunagar District.

+1cc to M/s.A.P.Srinivas, Advocate, S.R.No.16993

W.A.No.2375 of 2013

PMK[co]
NSK 29/03/2022