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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.19820 of 2010

S.Dharmaraj

.. Petitioner

Versus

1. The Tamil Nadu Textile Corporation
Rep. by it's Chairman,
(Director of Handloom & Textiles),
Kuralagam, II Floor, Chennai - 600 108.

2. The Managing Director,
The Tamil Nadu Textile Corporation Ltd.,
III Floor, Corporation Shopping Complex,
Dr.Nanjappa Road,
Coimbatore - 18.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent relating to his proceedings No.Ref.IA/1/1/08-09, dated 05.01.2009 and quash the same as illegal and without jurisdiction and consequently, to direct the respondents to pay the arrears of difference in scale of pay to the petitioner in the post of Senior Assistant with effect from 01.04.1992.

For Petitioner : Mr.K.Sasindran

For Respondents : M/s.K.Siddharth

ORDER

This Writ Petition has been filed by the petitioner, aggrieved by the order, dated 05.01.2009, whereby, the petitioner's request for grant of arrears of difference in scale of pay to the petitioner in the post of Senior Assistant with effect from 01.04.1992, in which he was illegally and arbitrarily denied the promotion, was not granted.



2. The petitioner was working as Assistant in the respondent Corporation. While so, in the year 1992, without properly fixing the inter se seniority list between the employees working in two wings of the respondent Corporation, the petitioner's juniors were granted promotion as Senior Assistants in the year 1992. Therefore, the petitioner made representation. Since the same was not considered, the petitioner approached this Court in W.P.No.15769 of 1996, along with similarly situated persons in W.P.Nos.15770 to 15772 of 1996. It is useful to extract the relief prayed for in the said Writ Petition:-

"Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of mandamus directing the respondents 1 and 2 herein to promote the petitioners to the post of Senior Assistant with effect from 1.4.1992, the date on which his immediate juniors, respondents 3 to 5 were promoted as Senior Assistants with all monetary and attendant benefits."

3. Pending the Writ Petition, in the year 2001, inter se seniority was also fixed in which the petitioner name was shown as senior. Therefore, this Court passed the following order in the said Writ Petition:-

"For all the foregoing reasons, the first and second respondents are directed to follow the rules and inter-se seniority with regard to promotion of the Assistants under respondents 1 and 2. If the petitioners are seniors as per inter-se seniority list and if there are no disciplinary action are pending against them, they are entitled to claim their promotion and the same must be considered by the respondents 1 and 2. The respondents 1 and 2 are also directed to maintain inter-se seniority list and for any reason if the respondents 3 to 5 are given promotion ignoring the legitimate expectation of other senior employees and by adopting illegal and arbitrary method, their seniority is to be refixed. Therefore, the board of the first respondent is directed to consider all this matters and issue necessary orders."

4. Pursuant to which, the petitioner was granted notional promotion from the date of promotion of his juniors by an order,



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dated 21.11.2007 passed by the second respondent. However, in respect of the pay fixation and arrears, the said order reads as follows:-

"As regards the pay fixation for Tvl.S.Dharmaraj and A.Sakthivel the pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of their junior, provided they have drawn the same rate of pay as that of their junior in the lower post from time to time. If they have not drawn the same rate of pay as their junior in the lower post, the pay of the individual shall be fixed on the date of assumption of charge at the stage at which they would have drawn pay on that date had they been promoted to the higher post along with their juniors. They are eligible to draw the arrears to pay w.e.f the date of assumption of charge as Senior Assistant."

5. Pursuant to the said order, by another order, dated 22.01.2008, the petitioner's pay was refixed in the pay admissible to the post of Senior Assistant with effect from 01.04.1992 and accordingly, his salary was refixed notionally till 22.11.2007 on which the petitioner was actually granted promotion and assumed the office. However, for the interregnum long period of 15 years, the petitioner is denied the arrears and therefore, the petitioner made a representation, dated 21.02.2008 and since, there was no positive response, he again approached this Court by way of W.P.No.21762 of 2008 and by an order, dated 27.11.2008, the representation of the petitioner was ordered to be disposed off in accordance with law. Pursuant thereto, an order, dated 05.01.2009 was passed rejecting the claim made by the petitioner and aggrieved by the said order, present Writ Petition is filed.

6. The respondents resisted the Writ Petition by filing a counter affidavit supporting the impugned order. It is submitted that by virtue of an administrative lapse since the petitioner and others who filed the Writ Petition and the juniors who were actually promoted were working in two different streams, the petitioners were overlooked for promotion. The said promotion was granted with effect from 01.04.1992. However, the petitioner challenged the same only in the year 1996 and once the judgment was granted in their favour, in the year 2007, it was immediately implemented. Therefore, while implementation, care was taken to fix the petitioner properly as per FR.27 Rule 17, thereby, notionally granting pay admissible to the post of the Senior Assistant from the date of notional promotion and accordingly, his increments have been re-



worked and only arrears of pay have been restricted from the date of assumption of the charge.

7. Heard Mr.K.Sasindran, learned Counsel for the petitioner and Mr.K.Siddharth, learned Counsel for the respondents.

8. Mr.K.Sasindran, learned Counsel for the petitioner would submit that this is a case for no fault of the petitioner and when no disciplinary proceeding whatsoever was pending, for the lapse on the part of the respondents, the petitioner was overlooked for promotion. Immediately, after the promotion was granted to the petitioner's juniors, the petitioner approached this Court in the year 1996 itself and pending the Writ Petition, the respondents themselves refixed the seniority and even thereafter, they did not grant promotion and only after the judgment of the Court in the year 2006, belatedly, the promotion was given in the year 2007 and therefore, the petitioner was entitled to the arrears of pay. He would submit that the Fundamental Rule 27 Rule 17 is relating to the manner of fixation to the pay and has got nothing to do with regard to the payment of arrears. Therefore, the impugned order did not even consider whether the refusal to grant of arrears to the petitioner was justifiable or not and therefore, he would submit that this is a case for interference and it was the legitimate right of the petitioner to be granted the arrears, once it is found that his right has been violated by the respondents.

9. Per contra, the learned Counsel appearing on behalf of the respondent Corporation would submit that it is not the deliberate or arbitrary exercise of power by which the petitioner was denied the promotion. On the other hand, confusion arose because of two streams existing in the respondent Corporation and the mistake was duly rectified and the petitioner was granted promotion from the date of promotion of his juniors with all service and monetary benefits. But, however, only the arrears alone were not granted taking into account the facts and circumstances of the case. He would submit that even in the earlier Writ Petition, a specific prayer was made with regard to monetary benefits, but, however, the Court did not expressly grant the same, but, directed the respondents to consider the entire aspect and pass necessary orders and therefore, the respondents, considering all the aspects, including fixation of pay under FR.27 R 17, had correctly fixed the pay and granted all the benefits, but restricted the arrears.



10. I have considered the rival submissions made on behalf of both the sides and perused the material records in this case. It is the normal rule that when the person's promotion is overlooked or refused on the fault of the respondents, grant of arrears is the normal and refusal should only be the exception. In this case, therefore, the question is whether the facts and circumstances of this case would come within the permissible exceptions and whether the actual arrears can be denied until the date of rectification of the mistake. Upon consideration of the entire records in toto, first, it is seen that the anomaly in the matter of fixation of inter se seniority in the cadre of Assistants arose on account of the individuals working in different powerloom complexes and due to the error that had crept in while fixation of the scale of pay. Second, the petitioners had specifically prayed for allowing their Writ Petition with all monetary benefits in the earlier Writ Petition, but, however, the same was not specifically granted. Third, vide order, dated 21.11.2007, while implementing the judgment of this Court, actually arrears are restricted from the date of assumption of charge meaning thereby no arrears will be paid and the said order is not expressly under challenge. However, only a representation was subsequently made and the order rejecting the representation is being challenged in the Writ Petition. Considering all the above circumstances in totality, I find that in this case, the respondents are justified in refusing the actual arrears and therefore, I hold that this is not a case which would require interference by this Court to direct the grant of actual arrears of pay.

11. Therefore, the Writ Petition fails and is dismissed. There shall be no order as to costs. Consequently, M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

grs

To

1. The Chairman
Tamil Nadu Textile Corporation,
(Director of Handloom & Textiles),
Kuralagam, II Floor, Chennai - 600 108.



2. The Managing Director,
The Tamil Nadu Textile Corporation Ltd.,
III Floor, Corporation Shopping Complex,
Dr.Nanjappa Road,
Coimbatore - 18.

+1cc to M/s.K.Sasindran, Advocate, S.R.No.28125

+2ccs to Mr.K.Siddharth, Advocate, S.R.No.29014

W.P.No.19820 of 2010

RK(CO)
SU(13/05/2022)