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W.A.No.2656/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 13-12-2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WRIT APPEAL No.2656 of 2022

B.Ramesh

...

Appellant

-VS-

1.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai,
Chennai-600 002.

2.The Chief Engineer/ Personnel,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai,
Chennai-600 002.

3.The Superintending Engineer,
Chennai Electricity Distribution Circle,
Valluvar Kottam, 110/33 KVA, SS Complex,
Chennai-600 034.

...

Respondents

Writ Appeal under Clause 15 of the Letters Patent against the order, dated
26.08.2022, passed in W.P.No.32015 of 2014 on the file of this Court.



For Appellant : Mr.R.Muralikrishnan,

For Respondents : Mr.K.Rajkumar

JUDGMENT

This appeal has been preferred against the order of the learned single Judge, dated 26.08.2022, passed in W.P.No.32015 of 2014, in and by which the order of reversion passed by the third respondent against the appellant has been confirmed.

2. The case of the appellant is that he joined the service of the respondent-Electricity Board as a Contract Labourer in the year 1991 and his services were regularised vide the Board's order, dated 30.01.2008. He completed the probation of six months and, thereafter, was appointed as Assessor, Grade-II, in College Road Section. There were disputes with regard to contract labourers and there was a settlement under Section 12 (3) of the Industrial Disputes Act, 1947, dated 10.08.2007, which reads as under :

"TERMS OF SETTLEMENT

a) The contract labourers with S.S.L.C. and higher academic qualification will be appointed as Assessor Gr.II in the Helper time scale of Pay of Rs.3050-4590, who will do the Meter Reading and Assessment works for full month.



b) The Contract Labourers with I.T.I. qualification in the Trade specified in the Service Regulation of the Board and those with Diploma qualification will be appointed as Helper-cum-Meter Reader in the time scale of pay of Helpers. They will do the field work and also according to need they will do the Meter Reading and Assessment work.

c) The contract labourers with other qualification or nil qualification will be appointed a Mazdoor in the Time scale of Pay of Rs.2570-3950."

3. In terms of the Settlement, vide B.P.No.44, dated 06.09.2007, Superintending Engineers were instructed to issue appointment orders and, accordingly, the appellant was given the post of Assessor, Grade-II, and he has been discharging work without any blemish.

4. That being so, to the shock of the appellant, a show cause notice, dated 01.04.2014, was issued to him, stating that he suppressed the educational qualification and that he completed only 8th Standard and, thereafter, he studied B.A. Economics in Open University and that without completing 10+2+3, he would not be entitled to be considered for having sufficient qualification for any post, except Mazdoor.

5. According to the appellant, he, having been appointed as Assessor, Grade-II, cannot be reverted to the lower post for the reason of not having requisite



qualification, and, hence, the reversion made by the respondent-Electricity Board is bad in law.

6. Conversely, learned counsel for the respondent-Electricity Board would contend that even though the facts submitted by the appellant are not in dispute, the factum that he did not have the necessary qualification to be appointed as Assessor, Grade-II, and he was only of eighth standard and the qualification acquired by him through Open University cannot be considered for the purpose of appointment to the higher post. He would further submit that for the services rendered in higher post, it has been decided not to recover the amount paid to the appellant, but, as the appellant is eligible to the post of Mazdoor in terms of the Settlement, he has been reversed to the post of Mazdoor.

7. Through the word "reversion", the respondent-Electricity Board wanted to rectify the mistake of appointment of the appellant in the post of Assessor, Grade-II, to that of Mazdoor in terms of the Settlement. The contention of the appellant that he is having pre-foundation course acquired through Open University without undergoing regular pattern of education i.e., 10+2+3 cannot, in any way, give right to the appellant to appoint him to the post of Assessor, Grade-II.

8. The learned single Judge has taken note of the above aspects and come to the conclusion that this Court has no power to grant relaxation to consider his case to be accommodated in the post of Assessor, Grade-II, and for further promotion, as long



as the pre-foundation course acquired through Open University is invalid and the same cannot be used for public appointments or promotion.

9. Since the appellant is, admittedly, a Contract Labourer, working under the respondent-Electricity Board, and, pursuant to the Settlement, he needs to be provided a job, though the terminology used by the respondent-Electricity Board is one of reversion, it is nothing but an appointment of Mazdoor. A wrong posting given due to lack of qualification can be rectified at any stage, as, with the appointment to a higher post without requisite qualification, a person cannot be allowed to march over others. In case the appellant completes the qualification of 10+2+3 depending upon or in relaxation of the rules as may be available and applicable at that relevant point of time, the case of the appellant may be considered by the respondents for appointment to the post of Assessor, Grade-II.

10. We are of the considered view that the learned single Judge was right in protecting the employment of the appellant as Mazdoor in terms of the Settlement under Section 12 (3) of the Industrial Disputes Act, 1947.

11. The decision reported in *Nyadar Singh v. Union of India*, 1988 SCC (4) 170, is not applicable to this case. In that case, the employee was rightly appointed in a higher post, but sought to be reverted to a lower post by way of punishment. In that situation, the Apex Court held that a person cannot be reverted to a lower post than in which he or she was appointed. In the case on hand, it is not a case of punishment, but a



way of correction in the appointment, as the appellant did not possess the requisite qualification to be appointed as Assessor, Grade-II.

12. Writ Appeal is, accordingly, dismissed. No costs. Consequently, the connected C.M.P.No.21331 of 2022 also stands dismissed.

Index : Yes/No

(S.V.N.,J.)

(M.S.Q.,J.)

Internet : Yes/No

13-12-2022

Speaking / Non-speaking Order

dixit

To

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