



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.04.2022

PRONOUNCED ON: 17.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.14356 of 2014

and

M.P. (MD)Nos.1 of 2014 and 1 of 2015 and

W.M.P. (MD)No.10307 of 2017

Tamil Nadu Civil Supplies Corporation Limited,
represented by its Regional Manager,
Trichy Region, Court Campus,
Trichirappalli.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court, Tiruchirappalli.

2.V. Ganesan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned Award, dated 31.01.2013, in I.D. No.01 of 2005 on the file of the 1st respondent herein and to quash the same.

For Petitioner	: Mr.G.Mohan Kumar
For R1	: Labour Court
For R2	: M/s.T.Banumathy

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned Award, dated 31.01.2013, in I.D. No.01 of 2005 on the file of the 1st respondent herein.

2. The brief facts of the case are that the second respondent, namely V.Ganeshan, was appointed as Seasonal Bill Clerk on consolidated pay of R.200/- per month on 18.02.1976 and later he was ousted from service from 05.03.1976. Later on, his name was sponsored by the employment exchange and he was appointed as Helper in the Direct Procurement Centre on consolidated pay of Rs.200/- per month on 10.08.1976. The prescribed qualification for the said post is SSLC pass. His services were regularized and he was given time scale of pay from 01.10.1977 and he was later promoted as Junior Assistant in the year 1983. He retired from service on 31.12.2005 on attaining superannuation. The second respondent claimed graduate allowance and produced his B.A. Degree certificate, dated 31.03.1979, wherein, it was certified that Ganesan has completed the course, vide the examinations held on September 1973. The same was



recorded in the service book on 01.09.1984 and he was paid the said graduate allowances from 1984 onwards. The second respondent submitted petition to the Regional Manager, TNCSE on 27.02.1989, claiming that he had higher qualification even before his appointment and seeking promotion on par with others who were appointed between 1975 to 1977 and who were given promotions as Junior Assistant in the year 1977 on the basis of higher educational qualification. The Regional Manager by his proceedings, dated 18.08.1989, rejected his claim on the ground that promotions were given to all on the basis of their seniority in the available vacancy and not on the basis of their higher educational qualification as alleged. Aggrieved over the same, petitioner has submitted a petition to the head office of TNCSC at Chennai in the year 1990 and the same was rejected on the ground that no promotions were given based on the educational qualifications. When the industrial dispute was raised by the Association on behalf of the second respondent, the negotiations failed. Thereafter, I.D.No.1 of 2005 was filed.

3.The management filed a detailed counter stating that the petition is not maintainable and the same is filed on erroneous ground seeking promotion. The corporation also submitted that no employee was granted promotion based on their higher education qualification. The employees were granted promotion based on the seniority. Moreover, the present dispute was raised belatedly and necessary parties were also not impleaded. However, the Labour Court has passed an order on 31.01.2013, allowing the industrial dispute and directed the Corporation to confer all the promotions based on the higher educational qualification and to disburse all monetary benefits. Aggrieved over the said order, the present Writ Petition is filed.

4. The second respondent submitted written arguments. The second respondent has submitted that the ground of laches will not arise, since the second respondent is fighting for his right from 1987 onwards and his mercy petition was on 27.02.1989, then he has raised an I.D. under Section 2A of the Industrial Dispute Act and continued to prosecute the case diligently. Therefore, there is no delay. The contention of the second respondent is that at the time of appointing in the post itself, the petitioner has the qualification on B.A. degree and it was entered in his service register. Later, on without any notice and without assigning any reason, the entry was cancelled by the management. The contention of the second respondent is that all the persons who were appointed from 1975 to 1977 were promoted as Junior Assistant and only the second respondent was omitted. When the second respondent claimed promotion to the post of Junior Assistant retrospectively, the petitioner management replied that he had passed department examination but it was cited before the petitioner management that rules says if a person is having degree the person shall be considered for promotion and it is not necessary to qualify the examination for promotion to the post of Junior



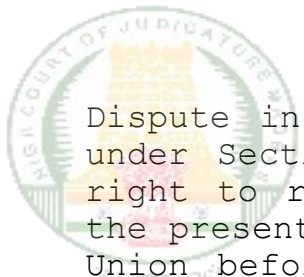
Assistant. The contention of the second respondent is that the second respondent produced provisional B.A. degree certificate and the same was entered in the service register stating that the petitioner has passed B.A. degree in the year 1979 itself. But the same was cancelled. Thereafter, the petitioner obtained the certificate from the College where he has completed B.A. degree. Based on the original certificate, an entry was made in the year 1984. Thereafter, the petitioner was granted inventive increment for the higher qualification, but the case was considered from 1984 onwards but the second respondent has claimed his name ought to have considered from the date of pass of the B.A. degree, i.e., from 1976 onwards.

5. Heard Mr.G.Mohan Kumar, learned Counsel appearing for the petitioner and M/s.T.Banumathy, learned Counsel appearing for the second respondent and perused the records.

6. It is seen from the records that the petitioner has passed B.A. degree. The petitioner has produced the certificate. It is seen from the certificate that the examination was held in September 1973 and the certificate was issued in March 31, 1979. The contention of the second respondent is that since the certificate was not issued by the University of Madras in the year 1973, the petitioner submitted an application to issue the certificate. Thereafter, the certificate was issued in the year 1979 itself. The contention of the petitioner corporation is that the second respondent had produced only the provisional certificate and hence, the certificate cannot be entered in the service register. Thereafter, the petitioner submitted the certificate in the year 1984 and appropriate steps were taken to register it in the year 1984. Thereafter, the increment for graduate degree was granted to the second respondent.

7. The claim of the second respondent is that his qualification ought to have been entered from 1976 onwards. The second respondent has raised the industrial dispute in the year 2005. It is seen from the records that the second respondent attained superannuation from service on 31.12.2005. The second respondent has belatedly preferred an industrial dispute, i.e., he has preferred on the verge of retirement. Therefore, this Court is of the considered opinion that the industrial dispute was preferred belatedly and it is hit by the principles of laches.

8. The petitioner corporation has raised the maintainability question also. The contention of the petitioner corporation is that initially, the industrial dispute was raised by the Trade Union before the Labour Officer and a failure report, dated 18.06.2004 was sent to the Government and thereafter, the dispute was referred to the Court in G.O.No.1416, dated 02.11.2004. In the present case, the Trade Union has not filed the petition before Labour Court but, the petitioner corporation workman has filed the petition raising Industrial

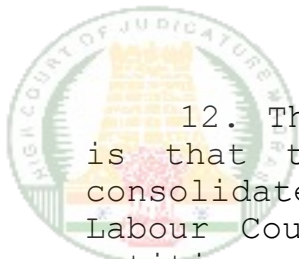


Dispute in the name of the Trade Union. If any dispute is raised under Section 2(k) of the Industrial Disputes Act, then Union has right to raise the industrial dispute. On perusing the records of the present case, it is seen that the issue was raised by the Labour Union before the Labour Officer. However, the industrial dispute was filed by the individual under Section 2(k) of the Industrial Disputes Act. Under Section 2(k), only Union has power to raise industrial dispute and not the individual. The individual has every right to file a petition under 2A. But the question of promotion cannot be raised under 2A. Hence this Court is of the considered opinion that the that the industrial dispute raised by the individual under Section 2k before the Labour Court is not maintainable.

9. The third issue that was raised by the petitioner management is that the second respondent has claimed promotion based on the higher qualification, i.e., B.A. degree and the said claim is not maintainable. The contention of the petitioner management is that **appointments** are based on educational qualification of a candidate. However, the **promotion** will be considered based on pass in the departmental examination and based on the seniority and vacancy. Higher qualification is not at all a criterion for granting any promotion. In the petitioner's Corporation no other employees were promoted based on the higher qualification. The persons mentioned by the second respondent were all seniors to the second respondent and they were promoted based on their seniority.

10. Therefore, this Court is of the considered opinion that the findings of the Labour Court are not sustainable in law. It is made clear that the higher qualification entitles an employee for incentive increment and not for promotion. The second respondent was given the incentive increment for higher qualification. This Court is of the considered opinion that the departmental test and seniority are the criteria for granting promotion. Moreover, the promotion ought to be granted based on the vacancy available and if there are vacancy, the seniority ought to be considered. Therefore, the higher qualification is not a criteria for granting the promotion.

11. The next contention raised by the petitioner corporation is that the Labour Court has granted promotion for the next higher level and time bound promotion based on the seniority and the petitioner corporation is aggrieved by the same. The contention of the petitioner Corporation is that the promotions are based on seniority and on available vacancy. Since the petitioner was appointed from 1976 onwards, the petitioner has not raised any issue during the service period. Therefore, the petitioner cannot claim any time bound promotion that too after attaining superannuation and retired from service. Since this Court has already held that the claim of the petitioner is hit by the principles of laches, the petition filed after retirement cannot be entertained and hence the writ petition is liable to be dismissed.



12. The next contention put forth by the petitioner management is that the second respondent was appointed on 10.08.1976, on consolidated pay and he was absorbed on 01.10.1977. Therefore, the Labour Court has granted promotion from 18.02.1976 onwards. The petitioner was not in service during that period at all. Therefore, the claim of the second respondent to grant promotion from 18.02.1976 is absolutely erroneous.

13. On perusal of the award it is seen that the Labour Court has come to the conclusion that the higher qualification is the only criteria for granting promotion. Since the petitioner has acquired higher qualification in the year 1976 itself, the Labour Court has granted promotion from the date of appointment. This Court is of the considered opinion that the promotion can be granted based on the available vacancy and based on the merits of the eligible candidates. If there are more number of candidates, seniority will be considered. Therefore, the Labour Court has erred in stating that since the second respondent has acquired higher qualification, the second respondent is entitled to promotion. Therefore, this Court is of the considered opinion that the higher qualification alone is not sufficient for considering the second respondent for promotion. The promotion is within the domain of the employer and in the present case, the second respondent has raised the industrial dispute belatedly and higher qualification alone is not qualification for granting promotion. Therefore, the second respondent has not made out any case. Hence, the Labour Court award is liable to be set aside and hence the Labour Court award is set aside.

14. Accordingly, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Admn.I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

Tmg

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Presiding Officer,
Labour Court, Tiruchirappalli.

WEB COPY

+1 CC to M/s.G.MOHAN KUMAR, Advocate (SR-26597[F] dated
17/06/2022)

W.P. (MD) No.14356 of 2014
17.06.2022

SS (27/06/2022) 6P 3C