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W.P. Nos. 4144 & 7614 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.4144 and 7614 of 2012

The Management of Melpadi
Vallimalai Primary Agricultural Co-Op. Bank
VLSI-134, Melpadi Vallimalai, Walajah Taluk
Vellore District, rep. By its Special Officer.

... Petitioner in both WPs

Vs.

1.The Labour Court
Vellore rep. By its Presiding Officer,
Vellore.

2.S.Panchatcharam
Rep. By General Secretary,
N.A. District General Workers Federation,
Regd.No.285/NAT, No.27, Reddiapa Mudali Street,
Kosapet, Vellore – 632 001.

...Respondents in both WPs

Prayer in W.P.No.4144 of 2012: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records relating to the Award dated 14.09.2009 in ID No.179/1995 passed by the 1st respondent Labour Court, Vellore, and quash the same.



W.P. Nos. 4144 & 7614 of 2012

Prayer in W.P.No.7614 of 2012: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records relating to the Award dated 14.03.2012 in E.P.No.3/2012 in ID/CP No.101/2010 passed by the 1st respondent Labour Court, Vellore, and quash the same.

For Petitioner : Mr.P.S.Sivashanmugasundaram

For Respondents : Mr.S.T.Varadarajalu

ORDER

The petitioner has filed these writ petitions aggrieved by the award dated 14.09.2009 in I.D.No.179 of 1995 passed by the Labour Court, Vellore, granting the benefit of promotion to the 2nd respondent as Assistant on par with his junior G.Pitchandi with effect from 20.12.1990 with pay and wages, continuity of service and attendant benefits, including deemed promotion with difference in back wages with effect from 20.12.1990 in the post of Assistant, as illegal and contrary.

2. The brief facts which are relevant for disposal of the writ petition are as under:

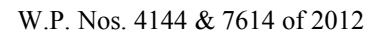


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The second respondent herein and one G.Pitchandi were appointed as Salesman in the petitioner/Bank, in the years 1978 and 1983 respectively.

While considering the case of the petitioner and said G.Pitchandi, the 2nd respondent, Bank have taken into consideration the policy of promotion being merit cum seniority, preferred the said G.Pitchandi to the respondent No.2 herein, by passing the resolution dated 31.12.1990. Aggrieved by the promotion of the said G.Pitchandi an industrial dispute was raised and the same was referred to conciliation. On failure of the efforts made for conciliation, the matter was referred to the labour Court through G.O.(D) No.845 dated 12.07.1995 and the same was allowed by an order dated 14.09.2009, granting benefits of promotion to the second respondent herein with effect from the date on which his junior namely, G.Pitchandi was promoted with all consequential benefits. Aggrieved by the said award dated 14.09.2009, the present writ petitions have been filed.

3. It is contended by the learned counsel for the petitioner that the policy of promotion being merit cum seniority, the petitioner bank in its discretion has felt that said G.Pitchandi was more meritorious than the



4. He also further contended that even the labour Court came to the conclusion that the petitioner bank is not right in promoting the junior of the respondent herein, the labour Court ought have remanded the matter to the petitioner for considering the matter afresh in accordance with law. He further contended that the respondent No.2 has not worked as cashier but has only given promotion on paper and he has not exclusively worked as cashier. Though, he is entitled, pursuant to the impugned award, for such promotion he is not entitled for payment of full back wages to the period



during which he was working as cashier.

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5. On the other hand, the learned counsel for the respondent no.2 mostly contended that the award is perfectly valid and the petitioner herein failed to furnish any reason or basis for concluding that the said G.Pitchandi is more meritorious than the respondent No.2 herein, nor the petitioner herein adduced any evidence before the Labour Court in support of the resolution dated 31.12.1990 and as such impugned award cannot be interfered with.

6. This Court has considered the submissions made on the either side and also perused the entire material on record.

7. No doubt, the policy of promotion is merit cum seniority. The employer will have a discretion to assess the said merit of all the persons who come within the zone of consideration for promotion. While exercising such discretion, the employer is expected to draw a comparison between the persons coming within the zone of consideration and arrive at a conclusion that one is meritorious than the other. But in the instant case, from the



perusal of the resolution dated 31.12.1990, it is noticed that there is no reason or any basis for passing such resolution to promote the said G.Pitchandi. It is also not seen from such resolution, as to whether any such exercise of comparison between the petitioner and his junior was ever done. Except saying that the said G.Pitchandi is considered for promotion and he is promoted as Assistant, there is nothing in the said resolution. Further, when the matter has gone before the labour Court, the management also has not taken any step to adduce any evidence to substantiate the decision as to how the junior of respondent No.2 herein was found more meritorious. In the absence of any such material being placed before the labour Court or atleast before this Court, this Court does not find any error or illegality in the conclusions arrived at by the learned labour Court.

8. Insofar as the findings recorded by the learned labour Court about not giving an opportunity to the respondent No.2 herein, before promoting his Junior are concerned, in the considered view of this Court, the same is neither relevant consideration nor it is necessary for the management to follow the principles of natural justice while considering the case for



promotion. The principles of natural justice cannot be read into the matter of promotion. Therefore, the findings of the labour Court in that regard are neither necessary nor relevant for the disposal of the industrial dispute which came up before it. Even, by ignoring such finding recorded by the labour Court, especially about not following the principles of natural justice, the rest of the finding recorded by the learned labour Court can be sustained as the petitioner/management failed to substantiate their stand as to how the said G.Pitchandi was found more meritorious than the respondent No.2.

9. Further, the scope of interference under Article 226 of the Constitution of India, that to while exercising certiorari jurisdiction is very limited. Unless and until the findings that are recorded by the learned labour Court are found to be erroneous on the face of it that shakes the conscience of the Court or the findings that are based on no evidence, this Court will not interfere. In the light of the above, this Court does not find any merit in the writ petition and same is accordingly dismissed.

10. Insofar as the submissions of the learned counsel for the



petitioner that the petitioner is not entitled for full wages as he never worked as Assistant is concerned, this Court is unable to agree with such contention as the respondent No.2 herein was deprived of his legitimate entitlement for promotion, while promoted his junior, without following due process of law. This Court does not find any merit in the submission as the impugned award is being upheld by this Court, the petitioner cannot be denied of the benefits that would flow from the award passed by the learned labour Court.

11. Insofar as W.P.No.7614 of 2012 is concerned the same is filed against the Award dated 14.03.2012 in E.P.No.3/2012 in ID/CP No.101/2010. As the W.P.No.4144 of 2012 is dismissed and consequently the W.P.No.7614 of 2012 is liable to be dismissed and accordingly the same is dismissed.

12. This Court, having entertained W.P.No.7614 of 2012, passed an interim order 26.03.2012 granting interim stay of the operation of the award on condition of depositing 50% before the labour Court and through order dated 29.10.2014, the petitioner was permitted to withdraw the said amount.



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Accordingly, the petitioner has already withdrawn the said amount and the balance 50% is not yet deposited by the respondent. As the petitioner was denied the benefit of executing the order for more than a decade, the respondent is directed to deposit the entire balance amount payable to the petitioner under Award, dated 14.09.2009 within a period of 6 weeks from the date of receipt of a copy of this order. On such deposit the petitioner is permitted to withdraw the same. The miscellaneous applications, if any, shall stand closed. No costs.

27.11.2023

Index : Yes/No
Speaking Order : Yes/No
dpa

To:

The Presiding Officer,
Labour Court
Vellore



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MUMMINENI SUDHEER KUMAR,J.

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