



S.A.No.561 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :19.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.561 of 2024

Abdul Majid Visharam, Optometrist

.. Appellant

Vs.

1. The Management of Sankara Nethralaya
Rep. By its Chairman.

2. Ms.Madhumathi, Deputy Manager of Contact Lens Department
Sankara Nethralaya
Both at No.41, Old No.18, College Road,
Nungambakkam,
Chennai-600 006.

.. Respondents

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 29.04.2024 in A.S.No.85 of 2024 on the file of the learned I Additional Judge, City Civil Court, Chennai, confirming the fair and decreetal order dated 09.02.2024 passed in I.A.No.2 of 2023 in O.S.No.4545 of 2023 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

For Appellants : M/s.M.J.Jaseem Mohamed

For Respondent : Mr.R.Jayaprakash



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J U D G M E N T

The appellant has filed this appeal against the judgment and decree dated 29.04.2024 in A.S.No.85 of 2024 on the file of the learned I Additional Judge, City Civil Court, Chennai, confirming the fair and decretal order dated 09.02.2024 passed in I.A.No.2 of 2023 in O.S.No.4545 of 2023 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as they were ranked in the suit.

3. The appellant is the plaintiff, who was appointed as an Optometrist at Sankara Nethralaya, 1st respondent, on 05.04.2004 with a monthly salary. However, he was not promoted to the next higher post of Head of the Department, despite completing 19 years of unblemished service. According to seniority, the appellant claims he was entitled to the promotion, but instead, 2nd defendant, who is junior to him and joined the Contact Lens Department after him, was promoted. Despite the appellant's request and objections, the management did not address his concerns. Consequently, he filed a suit in O.S.No.4545 of 2023, seeking a declaration that the promotion given to 2nd



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defendant is null and void. He also sought a mandatory injunction directing 1st defendant to promote him to the position of Head of the Department of the Contact Lens Department of the defendants hospital, with consequential reliefs, including an extension of his service tenure by another four years until his superannuation in 2028.

4. Upon receiving notice, the 1st defendant filed I.A.No.1 of 2023 before the trial court under Order XII Rule 11, seeking to reject the plaint. The 1st defendant argued that the suit lacks merit and jurisdiction and is barred by Section 9 of the Civil Procedure Code, as the plaintiff is a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. They further argued that the relief sought by the plaintiff falls under the Industrial Disputes Act, 1947, and the Industrial Employment (Standing Orders) Act, 1946, read with the Tamil Nadu Industrial Employment (Standing Orders) Rules, 1947. Therefore, the Labour Courts and Industrial Tribunals created under these statutes have jurisdiction to adjudicate the issues raised by the plaintiff, thereby ousting the jurisdiction of Civil Courts by necessary implication. Accordingly, the suit is liable to be dismissed in limine.

5. The 1st defendant further submitted that they are a non-profit



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organization registered under the Tamil Nadu Societies Registration Act for charitable purposes. They run the well-known institution Sankara Nethralaya, which provides significant services in ophthalmology care, research, and treatment, catering to all sections of society, including the poor. The plaintiff was appointed as an optometrist on 05.04.2004 and is currently employed as a Senior Executive Optometrist. For promotion to the level of Head of the Department (HOD), seniority alone is not the criterion, it also requires relative skill, competency, merit, and the ability to handle the heavier responsibilities associated with the HOD position.

6. The 2nd defendant was promoted to Head of the Contact Lens Department due to her superior merits, including higher educational qualifications, professional experience, academic achievements, expertise in clinical trials, and competency in handling higher responsibilities. While both the plaintiff and the 2nd defendant hold B.Sc. Optometry degrees, the 2nd defendant completed additional qualifications such as a fellowship in contact lenses and IACLE membership. She also served as a co-investigator in six clinical trials, including three Federal Drug Administration (FDA)-approved trials conducted in India, and participated in various national and



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international conferences. Based on these merits, the 1st defendant determined that the 2nd defendant was more qualified for the HOD position and promoted her accordingly.

7. The 1st defendant argued that the subject matter of the suit constitutes an "Industrial Dispute" within the meaning of Section 2(k) of the Industrial Disputes Act, 1947, and thus, the appropriate remedy lies under that Act. Additionally, the issue of the plaintiff's superannuation age should be determined by the appropriate Labour Court, not the Civil Court. The defendant also pointed out that the plaintiff had sent a notice on 13.12.2021 indicating his intention to approach the Industrial Tribunal, which demonstrates his acknowledgment that his remedy lies under the Industrial Disputes Act and therefore, he prayed to reject the plaint, as the Civil Court has no jurisdiction.

8. The plaintiff objected to the defendant's application to reject the plaint, arguing that the 1st defendant had initially sought time to submit a written statement and was now attempting to delay the proceedings by filing this application. The plaintiff contended that his suit was well-framed and not



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barred by any law, as the cause of action was clearly disclosed in the plaint.

He also argued that the definition of "workman" does not include managers or supervisors, and as per his salary slip, he was designated as a Manager of Optometry. At the time of filing the suit, the plaintiff was serving as a Senior Executive Optometrist but had not been promoted to a managerial post despite his 19 years of unblemished service. He further argued that, at the age of 57, he was deliberately denied promotion, while the 2nd defendant was promoted to Deputy Manager in a discriminatory manner. The plaintiff asserted that the institution had not treated all employees equally and that, given the arbitrary nature of the promotion, he was entitled to file the suit. He maintained that he was not a workman or labourer as defined under the Act and, therefore, prayed for the dismissal of the 1st defendant's petition as it lacked merit.

9. Considering both side submissions, the learned trial Judge finally concluded that the plaintiff, being aggrieved by the promotion given to the 2nd defendant as Head of Department (HOD) in the Contact Lens Department, had filed the suit, which the 1st defendant assailed. The main dispute relates to promotion and allied service matters in a private institution.



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The plaintiff was originally appointed as an Optometrist and now holds the position of Senior Executive Optometry. The Court found that the plaintiff was not employed in a managerial or administrative capacity, rather, his work was technical and skilled, thus falling under the definition of "workman" as mentioned under Section 2(s) of the Industrial Dispute Act. The Court relied on authorities submitted by the 1st defendant/institution of the Hon'ble Apex Court, including those reported in *2006(5) SCC 153*, *2009(14) SCC 360*, *1991(3) SCC 54*, *2004(3) SCC 172*, and *2017 (III) CLR 72*.

10. Accordingly, the trial court concluded that the plaintiff, being an employee or workman in a private institution, could not insist on enforcing a contract of personal service before the Civil Court. Instead, the Labour Court or Industrial Tribunal had the jurisdiction to decide the dispute raised by the plaintiff. Therefore, the suit was barred under Section 14(b) of the Specific Relief Act. In support of this contention, the learned counsel for the plaintiff relied on judgments from the Hon'ble Apex Court in *Civil Appeal No.10802/17 (Sejal Glass Ltd. vs. Navilan Merchants Pvt. Ltd.)*, *Civil Appeal No.3027/07 (RSRTC & Ors. vs. Deen Dayal Sharma)*, *Civil Appeal No.3401/09 (State of Haryana vs. Rameshwar Daas)*, *SLP (Civil) No.35821*



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of 2013 (*ESIC Medical Officer's Association vs. ESIC & Anr.*), as well as

other judgments reported in 2006(5) SCC 153, 2004(3) SCC 172, and 2009

(14) SCC 360. *The Bombay union of Journalists and Vs. The Hindu,*

Bombay and another. Sushilaben Indravadan Gandhi vs. The New India

Assurance Company Limited on 15 April, 2020."

11. The authority relied upon by the 1st respondent / plaintiff was found not to be identical with the facts of the present case. Consequently, the trial court concluded that the Civil Court had no jurisdiction to decide the dispute relating to the plaintiff's service matters. The petition was accordingly allowed, and the plaint was rejected.

12. Challenging these findings, the plaintiff preferred an appeal in A.S.No.85 of 2024 before the learned I Additional Judge, City Civil Court, Chennai. The learned First Appellate Judge independently analyzed the pleadings in the plaint and the objections raised by the 1st defendant. The appeal was dismissed, and the findings of the trial Court were confirmed.

13. The findings of the courts below were challenged by the plaintiff on several grounds, more preciously on the following grounds:



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“i). The order of the Courts below is contrary to law, weight of evidence and probabilities of the case especially when this is an individual dispute and not industrial dispute, IDA, for the sake of brevity. Since Section 2A of IDA 1947 does not declare all individual disputes to be industrial disputes except where there is discharge, dismissal, retrenchment or termination of an employee. Since this is an individual dispute related to discrimination and injustice by promoting a 35 years old junior from another department over a 55 year old seniormost executive available in the same department, in the year 2021, to the vacant HOD post in the Contact Lens Department, this suit falls under the jurisdiction of Civil Court. Hence this suit is not barred u/s 9 of CPC and cannot be rejected u/o 7 rule 11 CPC.

ii). Since the 1st respondent organization is a “not for profit” & for the purpose of charity mission the present suit comes under Section 11 of Specific Relief Act, 1963.

iii) The Courts below did not assign any cogent and concrete reasons for dismissing the suit by observing in the last sentence at para (iv) of the order that the nature of the plaintiff work seems to be technical and skilled and hence falls under the definition of workman as per Section 2(s) of the Industrial Disputes Act. Before the suit was filed, plaintiff was designated as Manager-Optometrist but after that he was downgraded, degraded & re-designated as Senior Executive Optometrist as evident from the pay slip issued to him which is marked as Exhibit. The definition of workmen under Section 2(s) of IDA 1947 excludes such person who is employed mainly in a managerial or administrative capacity drawing morethan ten thousand



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rupees per month. Hence plaintiff does not fall under this category.

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iv). The Courts below proceeded on mere surmises & conjectures in opining at Para(iv) of the order that the salary slips issued by the 1st respondent clearly & categorically designated him as Manager & subsequent to the filling of the suit as Senior Executive Optometrist which is nothing but approbating and reprobating. The communication dated 31.01.2023 regarding 2nd respondent 2nd promotion which designates her as Deputy Manager – with Grade 9OP4) was given to the petitioner / plaintiff already in the year March 2015 itself designating him as Manager – Optometry (OP4). Hence the dichotomy.

v). The Courts below at para (iv) of the order failed to appreciated the dicta laid down by the Apex Court reported in a catena of decisions filed by the petitioner especially when Section 14(b) of the Specific Relief Act does not apply to the facts and circumstances of the present case.

vi). The Lower Court failed to note that the party, who comes to Court with a specific plea has to prove and establish their case and that in the instant case the plaintiffs have established their case whereas the respondent has not. Since the respondent's organization is a "not for profit" and for the purpose of charity mission the present suit comes under Section 11 of Specific Relief Act 1963. More so, when it receives income tax exemption for whatever money it receives.

vii). The order of the Courts below is cryptic and laconic as it was passed in haste without applying its judicious mind beyond reasonable doubt & without considering these ticklish & thorny issues in its proper



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perspective. As per the Industrial Relations Code 2020 a not for profit, charitable organization is excluded from the definition of Industry and hence Sankara Nethralaya cannot be considered as Industry.

Viii). The Courts below has failed to note the Supreme Court judgement delivered in 2013 in the case of ESIC Medical Officer's Association vs. ESIC & another has clearly and categorically drawn a distinction between "occupation and profession" and said "never can a professional be termed as a workman under any law" even a sportsman or a teacher. So Optometry is a primary eye care profession with a clinical approach to patient's consultations for a noble cause apart from involving academic and research areas. Therefore Optometrists are professionals and not workmen. Hence this suit is not barred u/s 9 of CPC and cannot be rejected u/o 7 rule 11 CPC."

14. The learned counsel for the appellant submitted that the following substantial questions of law arose for consideration:

"a) In light of the finding that the rights of the appellant survive as it is an individual dispute and not an industrial dispute as per Sections 2(s) & 2(k) of the Industrial Dispute Act, and also regarding illegal termination, were the Courts below justified in holding that the appellant's remedy still survives?

b) Were the Courts below correct and justified in not relying on Sections 11 & 34 of the Specific Relief Act, which clearly state that specific performance of personal contracts is not enforceable against a trust, as the



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1st respondent is a trust and not a society?"

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15. In response, the learned counsel for the respondents submitted that the plaintiff is a technically skilled person qualified as an Optometrist with a BSc in Optometry. He was not employed mainly in a managerial or administrative capacity, and at most, he qualifies as a "workman" under the Industrial Disputes Act. Therefore, the dispute between the workman and the employer falls within the purview of the Industrial Disputes Act, and the jurisdiction of the Civil Court is barred. The Courts below rightly appreciated these facts and laws, and the plaint was rightly rejected. No interference by this Court was required.

16. Considering both sides' submissions, it is an admitted fact that the plaintiff is an Optometrist with a BSc qualification in the Contact Lens Department. He challenged the promotion of the 2nd defendant, despite having 19 years of service and being senior to the 2nd defendant. However, he was overlooked for the HOD position in the Contact Lens Department.

17. The plaintiff's suit sought a declaration, mandatory injunction, and other consequential reliefs. The 1st defendant admitted that the plaintiff was employed as an optometrist in 2004 in the Contact Lens Department and also



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admitted that the 2nd defendant was promoted. However, their contention was that seniority alone is not a criterion for promotion, other merits, abilities, and additional qualifications were also considered. Therefore, the 2nd defendant was promoted.

18. The plaintiff contended that he was performing managerial services, not skilled labor, and thus, the jurisdiction of the Industrial Tribunal did not apply to his promotion dispute. Before filing the suit, the plaintiff issued a notice on 13.12.2021 to the management of Sankara Nethralaya, raising objections about not receiving the promotion and calling upon the 1st defendant to promote him.

19. According to seniority, the appellant also called upon the 1st defendant / 1st respondent to grant him a promotion immediately after receiving the notice, failing which he considered filing an objection under Section 2(k) of the Industrial Disputes Act. This indicates that he was aware of approaching the Industrial Tribunal. Furthermore, he is set to retire on superannuation on 01.06.2024. However, he claims that his superannuation should extend until 2028, though the relief has become infructuous after the filing of the suit. Despite this, he is also disputing the superannuation date.



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Additionally, the plaintiff has registered himself as a member of the Labour Liberation Front. He issued a notice on 21.02.2022 to 1st respondent through his union, named the Labour Liberation Front.

20. The notice recitals reveal that the appellant became a member of the said union on 12.04.2022 and, along with the union, called upon the 1st respondent to resolve the promotion issue amicably. These two notices clearly show that the appellant/plaintiff had already invoked the Industrial Disputes Act and called upon the 1st respondent/Management to grant the promotion, failing which he would approach the Industrial Tribunal, either individually or through the Labour Liberation Front union. As per the discussions, the plaintiff is a skilled person with Optometry qualifications and not employed in an administrative capacity. Therefore, the dispute between the employee and employer falls within the jurisdiction of the Industrial Tribunal, not the Civil Court. There was no substantial question of law involved, and the authorities cited by the plaintiff in the trial court were not applicable to the facts of this case.



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21. The trial Court rightly held that the Civil Court has no jurisdiction, and the Industrial Tribunal alone has jurisdiction in this matter. Therefore, there is no merit in the appeal and the second appeal is dismissed accordingly.

22. However, the plaintiff is granted liberty to approach the Labour Tribunal as per the law, and the 1st respondent is granted the liberty to raise all defenses before the Tribunal.

19.09.2024

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Index : Yes/No

Speaking Order: Yes/No

Nutral citation: Yes/No

To

- 1.The I Additional Judge, City Civil Court, Chennai.
- 2.The XI Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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