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W.P.No.23393 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23393 of 2015

and

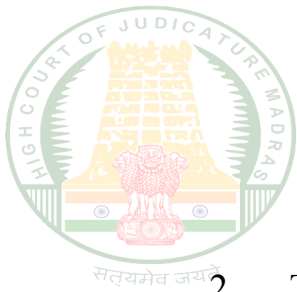
MP.Nos.1 & 2 of 2015

1. The General Manager,
Southern Railway,
Park Town, Chennai - 600 003.
2. The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai - 600 003.
3. The Chief Workshop Manager,
Carriage & Wagon Works,
Southern Railway,
Perambur, Chennai-600 003.

... Petitioners

Vs.

1. M.Ganesan
(Senior Section Engineer/Inspection/PCO(Retired)
Carriage & Wagon Works, Southern Railway,
Perambur, Chennai - 600 023.)
No.6, Majestic Colony, 3rd Street,
Ponnammanmedu, Chennai - 600 110.



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2. The Central Government Industrial Tribunal
Cum Labour Court, Chennai,
Rep. by its Presiding Officer,
1st Floor, B-wing,
26, Haddows Road, Shastri Bhawan,
Chennai - 600 006.

3. The Deputy Chief Labour Commissioner (Central),
V Floor, Shastri Bhavan,
Haddows Road, Chennai - 600 006.

... Respondents

PRAYER : 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 order dated 02.12.2014 passed by the 2nd respondent Industrial Tribunal cum Labour Court in C.P.No.4 of 2014 read with all the consequential proceedings pending before the 3rd Respondent vide proceedings bearing reference No.14(01)/2015-D1 dated 01.07.15, 03.07.15, 10.07.15 and quash the same as being illegal, perverse and unjust, award costs.

For Petitioners : Mr.M.Vijay Anand

For Respondents : Mr.R.Pandian, for R1
: Mr.G.Venkatesan, for R2 & R3

ORDER

This Writ Petition has been filed by the Southern Railway, aggrieved by an order dated 02.12.2014 passed by the Industrial Tribunal cum Labour Court in C.P.No.4 of 2014.



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2. The first respondent joined the services in the Southern Railway in the year 1978 and was retired from service in July 2013. When the first respondent was working as Junior Instructor (Ex-Cadre), he was selected for the post of Inspector in the Inspection Wing of Production Control Organization in Carriage Works, Perambur, on 10.04.1989. Though the pay for the post of Inspector was upgraded to Rs.1,400-2300 with effect from 01.01.1986, he was placed in the pay scale of Rs.1320-2040. According to him, this is against the policy adopted by the Railway Board not to place the Inspectors below the level of highest paid Artisan who are involved in the manufacturing of products. It is the grievance of the first respondent that when similarly other persons were fixed in the pay scale of Rs.1400-2300 with effect from 01.01.1986, the first respondent, who joined the post on 14.04.1989 was placed in the lower scale of pay. From 01.04.1992, the first respondent was fixed in the pay scale of Rs.1,400-2,300. Consequent to the implementation of 5th Central Pay Commission Recommendations, the scale of pay applicable to the first respondent should have been Rs.5,000-8,000 with effect from 01.01.1996, however, the



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petitioners have fixed the pay of scale of Rs.4,500-7,000. Therefore, seeking arrears of Rs.3,19,766/-, the first respondent had filed a computation petition before the Labour Court, Chennai. The Labour Court, on analysis of both oral and documentary evidence, allowed the computation petition and directed the petitioners herein to pay the difference in pay due to the first respondent by working out the amount that would have been payable to him by treating him to be in the pay scale of Rs.1,400-2,300 with effect from 01.01.1986. Aggrieved by the same, the present writ petition has been filed.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. Section 33C(2) of the Industrial Disputes Act, 1947, allows a workman to seek the computation of benefits due to them based on pre existing right, arising from an award, settlement or predetermined benefits. The Labour Court's jurisdiction is limited only to determining the amount due on the basis of the pre-existing.



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5. Section 33C(2) provides a mechanism for the workman to seek recovery of benefits on a monetary basis that are due to him, which provision is essentially a form of execution proceedings against the employer.

6. The Labour Court's role under this section is limited to the extent of determining if any benefit computable in terms of money or benefit due to the workman and the duty of the Labour Court does not traverse to find out and decide whether the workman is entitled to it in the first place. The above is the ratio laid down by the Courts in a catena of decisions and the Labour Court is bound to follow the said ratio as a matter of judicial discipline.

7. This Court gave its anxious consideration to the submissions advanced on behalf of the parties and also perused the materials available on record.



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8. The main aim of Section 33(C)(2) is only for creating a mechanism for providing the benefits with regard to the pre-existing rights to an employee, which are computable in terms of money. Therefore, the main ingredient that forms part of Section 33(C)(2) is the pre-existing right of an employee to receive a benefit requires to be established. Therefore, it becomes incumbent on the part of the employee to establish through materials his pre-existing right to a certain benefit, which alone would clothe the Labour Court with power to grant the benefit and there is no iota of adjudication which is required to be made by the Labour Court.

9. Before testing the correctness of the order passed by the Industrial Tribunal, it has to be ascertained that the first respondent is entitled for filing the computation petition under Section 33(C)(2) of the Industrial Disputes Act. A Computation Petition can be filed by an employee only when he has a pre-existing right and in a petition filed under Section 33(C)(2) of the Act, the Labour Court indeed acts a Executive Court.



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10. Therefore, this Court has to test whether the first respondent has made out a pre-existing right to make a claim.

11. The first respondent was initially appointed on 20.03.1980. Subsequently, he was selected as Junior Instruction/Basic Training Center with effect from 31.10.1986. Subsequently, he was given two more promotions. Ultimately, having passed the departmental test, he was temporarily promoted as Mistry/Inspector with effect from 01.04.1992 in the scale of pay of Rs.1,400-2,300. The post of Mistry was re-designated as Supervisor/Inspector and the scale of pay was revised to Rs.4,500-7,000 + 100 Special Allowance. The post of Inspector Grade-I/Trimmer was a work charged posts. Work Charged posts are created based on monetary value available in the various estimates. Once these posts are created and operated, they cannot be upgraded to higher posts with retrospective effect as the monetary value for the particular year would have already been consumed and there would not be funds available for upgrading the same



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with retrospective dates. This is precisely the reason whenever up-gradation is ordered, such up-gradation is restricted only to the permanent and temporary posts and work charged posts are not taken into account for such up-gradation. Admittedly, the post of Inspector Grade-I/Trimmer is a work charged post and knowing fully well the consequences, when up-gradation is ordered, it is restricted only to permanent and temporary posts and it will not apply to work charged posts.

12. The first respondent along with 6 others similarly placed employees gave representations to the Railway seeking for paying the difference in wages. The said representation was forwarded to the Chief Personnel Officer, Madras and the same Authority had advised that as per extant rules promotion against normal vacancies including additional posts created will take effect only from the date of actual promotion. The request of the employees for retrospective promotion in the scale of pay of Rs.1400-2300 (i.e.,) from the date of promotion as Inspector in the Scale of Rs.1320-2040 against work-charged posts operated in that scale is not found admissible under Rules.

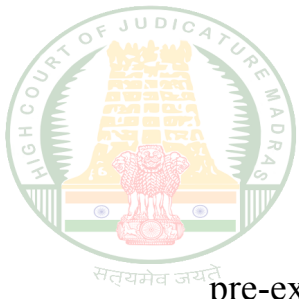


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13. Admittedly, the first respondent was working only under the work charged posts. He had gladly accepted the same post knowing fully well the consequences (ie.,) when up-gradation is given, it will be applicable only to the temporary and permanent posts and not for work charged posts. The first respondent has attempted to take over the opportunity to seek maximum monetary benefit. First, he accepted the work charged posts, when his promotion was still due. Having accepted the work charged post, he immediately asked for difference in wages.

14. The first respondent has not made any pre-existing right to make a claim before the Labour Court seeking difference in wages. When the fundamental principles for making the computation petition before the Labour Court have not been satisfied, the computation petition falls flat. However, this Court is not inclined to travel into the reasons laid by the Labour Court for allowing the computation petition filed by the first respondent. The Labour Court has misdirected itself while deciding the computation petition. The first respondent has not established his



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pre-existing right to make a claim for payment of difference in wages.

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Therefore, this Court is in complete agreement with the averments made in the writ petition and the arguments advanced by the learned counsel appearing for the writ petitioners.

15. In the result, this Writ Petition stands allowed and the order passed by the Labour Court in C.P.No.4 of 2014 dated 02.12.2014 is set aside. There shall be no order as to costs. Connected miscellaneous petitions are closed.

06.03.2025

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb



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To

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2. The Deputy Chief Labour Commissioner (Central),
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M.DHANDAPANI,J.

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