

# SUPREME COURT OF INDIA

Management of Tamil Nadu Cements Corporation Limited

Vs.

Secretary, Tamil Nadu Cements Corporation and Quarry Thozhilalar Sangam

C.A.No..... of 2005

(D. M. Dharmadhikari, N. Santosh Hegde and S. B. Sinha JJ.)

20.04.2005

## JUDGMENT

### **D. M. Dharmadhikari, J.**

1. Leave granted.

2. The respondent workman was employed by the appellant-company on August 24, 1967 as a Maistry Grade-II. On October 5, 1978 he was promoted as Telephone Operator, Grade-I. Subsequently on August 14, 1982, he was further promoted as Telephone Operator Grade-II. Then on February 2, 1988, he was promoted as Senior Telephone Operator, Grade-III. While he was so working, the respondent-workman made certain representations to the Management stating that he would be stagnating in that post without there being any further promotional avenue in that Grade and he be given a post of Telephone Supervisor as a promotional post so that will have further promotional opportunity. The Management did not agree to the said proposal. But on the said representation, instead of creating a post of Telephone Supervisor, the Management transferred the respondent-workman to the post of a Clerk.

3. Being aggrieved by the said transfer since the same made him to work under his juniors and also not being satisfied with the salary available to that post, he raised an industrial dispute. In the said dispute, the respondent-workman prayed that he be placed by the management in the higher grade in the non-technical branch w.e.f. July 29, 1990 and he be promoted with consequential monetary benefit flowing therefrom. The said dispute came for adjudication before the Addl. Labour Court, Madurai, which rejected the submission of the management that the relief sought for by the respondent-workman did not arise from the referral order and the same cannot also be granted because of the fact that the respondent-workman was not qualified to hold that post; by so holding the Labour Court by its impugned order directed that the respondent-workman shall be placed by the management in a higher grade in the non-technical branch w.e.f. July 29, 1990 and he be promoted as Accountant with all consequential monetary benefits.

4. Being aggrieved by the order of the Labour Court, the management preferred a writ petition before the learned single Judge of the Madras High Court. The High Court having noticed the difficulty in granting the relief granted by the High Court, proceeded to alter the award by directing the management to pay wages to the respondent-workman equal to the scale of the post of Accountant without promotion. This amended direction given by the learned single Judge came to be challenged before the Division Bench of the High Court which agreed with the learned single Judge and dismissed the appeal. It is against the said order of the Courts below, the management is in appeal before us.

5. We have heard the learned counsel appearing for the parties and perused the records. It is admitted fact that the minimum qualification required for the post of Accountant is SSLC pass which qualification the respondent-workman did not possess. If that be the case, it is not open to the Labour Court to have directed the promotion of the respondent-workman to that post solely on the ground that there was no other promotional avenue available to the respondent-workman. We think the said direction could not have been made by the Labour Court in law. However, taking into consideration the facts and circumstances of this case and the fact that the respondent-workman has been working as a clerk, we think ends of justice would be met if we modify the order of the Courts below and direct that the respondent-workman be posted as Senior Telephone Operator Grade-III on a pay-scale of Rs. 675-1395/- the pay-scale which he was drawing after the order of transfer by the management. He shall be entitled to all retiral benefits calculated on the basis of the abovesaid pay-scale.

6. With the above modifications, this appeal is disposed of. The direction issued hereinabove to give the post of Senior Telephone Operator Grade-III is because of the fact that the respondent-workman will be retiring very shortly and it shall not be a precedent in the future. However, on the facts of this case and taking into consideration the respondent-workman had to go through different fora to get relief, we think it appropriate that a sum of Rs. 10, 000/- be paid as cost by the management to the respondent-workman.