

RekhA.G Vs. the Traco Cable Co. Ltd.

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Court : Kerala

Decided On : Oct-26-2010

Judge : S.Siri Jagan, J.

Appeal No. : W.P.(C).No.12337 of 2006

Appellant : RekhA.G

Respondent : The Traco Cable Co. Ltd.

Advocate for Def. : SRI.RAMPRASAD, Adv.

Advocate for Pet/Ap. : SRI.P.M.BENZIR, Adv.

Judgement :

O R D E R

S.SIRI JAGAN, J.

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W.P.(C).No.12337 of 2006

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Dated this the 26th day of October, 2010

J U D G M E N T

In this writ petition the petitioner and the 4th respondent, who are employees of the 1st respondent company, vie with each other for the post of Confidential Assistant to the Managing Director of the company. That post is a promotion post from the post of Steno Typist Grade I. The petitioner entered service as per Ext.P1 order of appointment on 1.10.1994 as Typist. Her services were regularised by Ext.P3 order dated 6.4.1995. She was further promoted as Steno Typist Grade II by Ext.P5 order with effect from 1.1.1998. While so, the petitioner was again promoted as Steno Typist Grade I by Ext.P12 order with effect from 1.3.2001.

2. The 4th respondent was a PSC recruit. She was appointed in the Thiruvalla unit as a Steno Typist Grade II on 27.1.1993. She was temporarily transferred to Irumpanam unit with effect from 21.6.1997 by Ext.P7. By Ext.P8 dated 17.4.1999, she was permanently absorbed in the Irumpanam unit. According to the petitioner, in view of Article VIII of Ext.P11 memorandum of settlement between the unions and the management of the 1st respondent company, inter-unit transfers shall be resorted to only in exceptional circumstances and even if resorted to, the transferred employee will be junior to the existing employees in the same grade of the unit and their posting will not affect the promotion avenues of the lower category persons in the unit. Therefore, according to the petitioner, the 4th respondent having been given a transfer to Irumpanam unit from Thiruvalla unit, she ranks below the petitioner as junior to the petitioner by virtue of Article VIII of Ext.P11. Consequently, the 4th respondent could not have been promoted as the Confidential Assistant to the Managing Director in preference to the petitioner, is the contention of the petitioner. The petitioner, therefore, seeks the following reliefs:

"(i) To issue a Writ of Mandamus or other appropriate writ, Order or direction directing the 2nd Respondent to consider Ext.P6 representation submitted the Petitioner and pass appropriate orders in accordance with law within a time limit fixed by this Hon'ble Court.

(ii) To issue a Writ of Mandamus or other appropriate writ, Order or direction directing the 2nd Respondent to grant notional promotion to the Petitioner with effect from the date of occurrence of first vacancy after the date of effect of

promotion to the post of Steno Typist Grade II granted to the Petitioner.

(iii) To issue a Writ of Mandamus or other appropriate writ, Order or direction directing the 2nd Respondent to grant promotion to the Petitioner to the post of Confidential Assistant considering the seniority of the Petitioner."

3. A counter affidavit has been filed by respondents 1 and 2, wherein, they take the stand that although Ext.P12 order promoting the petitioner as Steno Typist Grade I was with effect from 1.3.2001, by Ext.R1(a) order, the same was kept in abeyance and it continues to be so even now. That means the petitioner was never promoted as Steno typist Grade I. But pursuant to Ext.R1(b) judgment in W.P.(C). No.19360/2005, the case of the 4th respondent was reconsidered and she was absorbed and appointed in the Irumpanam unit as Steno Typist Grade I with effect from 1.3.2001. They would submit that there is only one post of Steno Typist Grade I, which was filled up by the 4th respondent and, therefore, in the cadre of Steno Typist Grade I, the 4th respondent is senior to the petitioner, because of which, the petitioner cannot now aspire for promotion to the post of Confidential Assistant to the Managing Director, which is a promotion post for Steno Typist Grade I in preference to the 4th respondent, is the contention raised by respondents 1 and 2.

4. I have considered the rival contentions in detail.

5. From the averments and documents produced before this Court, it is quite clear that the 4th respondent became Steno Typist Grade I with effect from 1.3.2001. Although the petitioner was given promotion as Steno Typist Grade I by Ext.P12 order with effect from 1.3.2001, by Ext.R1(a), the same was kept in abeyance. That means the petitioner never took charge as Steno Typist Grade I. That fact is beyond dispute now. The petitioner did not challenge either Ext.R1(a) or the appointment of the 4th respondent as Steno Typist Grade I with effect from 1.3.2001. Even in this writ petition filed on 2.5.2006, five years later, the petitioner does not challenge either Ext.R1(a) or the appointment of the 4th respondent as Steno Typist Grade I, but she only stakes a claim for promotion for herself. I do not think that such a belated claim can be entertained to interfere with the promotion already given to the 4th respondent as Confidential Assistant at this point of time,

especially since the petitioner has not challenged Ext.R1 (a) or the appointment of the 4th respondent as Steno Typist Grade I even in this writ petition. Therefore, the petitioner is guilty of unexplained delay and laches and accordingly, on that ground, this writ petition is dismissed.

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