

(2009) 03 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 2459 of 2008

New Mangalore Port Trust

APPELLANT

Vs

General Secretary, New Mangalore Port and Dock Workers"
Union

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

New Mangalore Port Trust (Recruitment, Seniority and Promotion) Rules, 1980 — Rule 31

Citation : (2010) 1 KCCR 100

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Ashok Haranahalli, Associates, for the Appellant; M.C. Narasimhan, Associates, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—This petition is by the Management challenging the award passed by the CGIT, Bangalore in C.R. No. 6/03 wherein the CGIT has held that Management was not justified in not promoting the first party-workman to the post of Assistant Marine Foreman by relaxing the academic qualification as per Rule 31 of New Mangalore Port Trust (Recruitment, Seniority and Promotion) Regulations, 1980 and further, the first party-workman was declared to be promoted to the said post on notional basis with effect from 31.1.01 the date on which Sri. H. Jaya was promoted and thereby directed the Management to fix the pay scale of the first party in the grade of Assistant Marine Foreman with effect from 31.1.01 and to pay him all the arrears of salary in the said scale from the said date till he retired from service.

2. Heard.

3. It is the submission of the learned Counsel appearing for the Management that the first party workman's case could not be considered, as at the relevant point of time there were several other persons qualified and that he cannot plead for equality to give him relaxation of qualification. It is further submitted that the

case of Sri. Jaya had been considered since he had completed SSLC and initially he was posted as incharge on temporarily basis on 31.1.2001 and thereafter his service was regularised on 9.3.2001 on completion of three years of service. Insofar as the case of Sri. Yogesh Karkera is concerned, since at that relevant point of time no other person was eligible and that he had the completed 8th standard and also put in sufficient service his case was considered for promotion as per Rule 31 of the Regulations, whereas, the first party workman had studied only up to 5th standard and although he has put in sufficient years of service since there were better candidates available at that relevant point of time, they were considered as against the first party workman and the same benefit cannot be extended to the first party workman and as such impugned order passed by CGIT requires interference. In support of his argument, he relied upon the decision reported in Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, in the case of Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, wherein referring to Article 311 of the Constitution of India it is held that, "in-charge arrangement is not a recognition of or is necessarily based on seniority. No rights, equities or expectations could be built upon it". Further, he has also relied upon the decision reported in (2007)9 SCC 467 in the case of TTD v. K. Jotheeswara Pillai and Ors. (2007)9 SCC 467 wherein the Apex Court in paragraph 8 of the judgment has held that, "merely because on two earlier occasions the Appellant granted exemption from eligibility criterion in respect of some employees cannot be a ground to grant relief to the writ Petitioners. Even if some concession had been shown to some employees in the past it would not confer any right upon anyone seeking employment in future to claim exemption from eligibility criterion as a matter of right."

4. Per-contra, the learned Counsel appearing for the Respondent has submitted that when the case of other persons who are similarly placed could be considered a discrimination has been practiced as against the first party workman. Since he has already retired from service during April 2006 his case could be considered with effect from 31.1.2001 on notional basis so that he would get monetary benefits.

5. In the instant case, it is seen that the case of one Jaya had been considered for promotion since he was possessing SSLC qualification and as he was short of two months experience he was promoted as incharge on temporary basis and thereafter it was regularised on 9.3.2001, the same cannot be found fault with. So far as the case of Yogesh is concerned, since there were no other candidates contesting for promotion as contended by the Management and when he had completed 8th standard qualification and also had sufficient experience, his case was considered. But, whereas, in the case of the first party workman, there were other better-qualified persons, as such, his case could not be considered. The Tribunal without applying its mind and by drawing some analogy has tried to extend the benefit for which the first party-workman is not entitled.

6. In the circumstances, petition is allowed. The impugned award passed by

CGIT dated 10.8.07 is hereby quashed.