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**(1996) 04 MAD CK 0013**  
**In the Madras High Court**

T. Sebastian

APPELLANT

Vs

The Regional Manager, India Tourism Development  
Corporation and Others

RESPONDENT

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**Date of Decision :** 04-04-1996

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 9(A)

**Citation :** (1996) 2 MLJ 283

**Hon'ble Judges :** Ar. Lakshmanan, J

**Bench :** Division Bench

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## Judgement

AR. Lakshmanan, J.—The parties to the lis and the subject matter of dispute are inter-linked and therefore, by consent of both parties, both

the writ petitions are taken up together for final hearing.

2. First I will take up W.P. No. 372 of 1996. This writ petition was filed to call for the records relating to the impugned order made in Ref. P/DPC

dated 1.11.1995 passed by the 2nd respondent and quash the same and consequently direct the respondents to promote the petitioner as

Assistant Traffic Supervisor with effect from 27.10.1992.

3. The facts leading to the filing of W.P. No. 372 of 1996, as found in the supporting affidavit filed, are as follows:

The petitioner was working as Tourist driver from 7.1.1970 in the India Tourism Development Corporation Limited (hereinafter referred to as the

Corporation) at its Regional Office at Madras. He has been sincerely and efficiently discharging his duties without any blemish or black mark. As

per the settlement dated 16.4.1985 arrived at before the Joint Commissioner of Labour, the petitioner was appointed as Selection Grade driver

retrospectively from 1.4.1973. The 1st respondent by his order dated 13.4.1989 posted the petitioner as counter-assistant and the same was

confirmed by order dated 9.5.1989 and he was directed to work under an Assistant Manager (Travels) in the Travel Agency Wing.

4. According to the petitioner, he underwent special training in Travel Agency Wing. He was working as counter-assistant in the Corporation since

1989. According to the rules governing the promotion to the post of Assistant Traffic Supervisor, the qualification is that the counter-assistant has

to undergo three years travel trade experience. Even though the petitioner possesses the qualification for promotion to the abovesaid post, his

name was not considered for promotion as Assistant Traffic Supervisor, though four vacancies arose during 1992 by the resignation of one Mr.

Raghunathan, by the death of one Mr. Chandrasekar, by the dismissal of one Mr. Rajendran and by promotion of one Mr. Sankaranarayanan.

Further, two of his juniors working in the cadre of counter-assistant viz., V.D. Rajan and A. Akhil Kumar were promoted by order dated

27.10.1992 of the Assistant Manager (Personnel). Further, one G. Jayakumar, the petitioner's another junior, was also promoted on his voluntary

request and transferred to Madras during 1993.

5. The petitioner submits that in spite of his requisite qualification, he was not considered for promotion and that he was victimized for his union

activities as General Secretary, All India Tourism Development Corporation Employees Union, Tamil Nadu. The petitioner made several

representations to the Corporation to consider his name for promotion, but the Corporation remained silent without any response. While so, to the

utter shock of the petitioner, the 2nd respondent issued an order dated 1.11.1995 referring the petitioner as driver Grade I (Senior driver) and

presently discharging the duties of counter-assistant, and promoting him with the same designation to C.D.A. pattern of pay scale of Rs. 1400-

2300 with effect from 12.10.1995. It is submitted that the impugned order is illegal, void and is without jurisdiction. The petitioner has been

working as counter-assistant for the past six years and as per the rules governing promotion, he should have been promoted as Assistant Traffic

Supervisor in the year 1992 itself i.e., on 27.10.1992, the date on which his juniors were promoted. It is submitted that the Corporation has

changed his existing service conditions in the guise of promotion. The impugned order is an order of reversion in the guise of promotion, which is

contrary to the provisions governing promotion. The aforesaid act of the Corporation without following the procedures prescribed in Section 9(A)

of the Industrial Disputes Act is illegal, invalid and against the principles of natural justice. It is stated in paragraph 13 of the affidavit that since the

original impugned order is misplaced and is not traceable in spite of best efforts, the petitioner is filing a xerox copy of the same.

6. W.P. No. 372 of 1996 was admitted by me on 11.1.1996 and in W.M.P. No. 592 of 1996, the production of the original impugned order

dated 1.11.1995 was dispensed with. In W.M.P. No. 593 of 1996, interim stay was granted for four weeks initially and further extended until

further orders on 8.2.1996.

7. The 1st respondent filed a detailed counter-affidavit denying all the allegations contained in the affidavit of the petitioner. A preliminary objection

was also raised with regard to the maintainability of the writ petition and also the suppression of material facts in regard to the filing of a suit in O.S.

No. 7892 of 1995 on the file of the City Civil Court, Madras, and the filing of the earlier writ petition viz., W.P. No. 17133 of 1995 in this Court

challenging the very same impugned proceedings dated 1.11.1995.

8. Though a detailed counter-affidavit has been filed, the petitioner, has not chosen to file any reply affidavit denying or controverting the statements

made in the counter-affidavit.

9. I have been taken through the entire pleadings and also the documents filed in the form of typed set by both parties. I have heard the arguments

of Mr. V. Rama Jagadeesan for the petitioner and Mr. C. Franco Louis for the respondents.

10. The petitioner has admittedly filed O.S. No. 7892 of 1995 before the City Civil Court, Madras, with the following substantial prayers:

1. To declare that the promotion order in Ref. No. P/DPC dated 1.11.1995 effective from 12.10.1995 issued by the defendant to the plaintiff is

only an order of reversion issued in the guise of promotion and therefore it is null and void.

2. To declare the plaintiff is a counter-assistant and consequently entitled to retrospective promotion as Assistant Traffic Supervisor on 1st

October, 1992 on the scale of Rs. 1,600-2,660 and in 1995 as Traffic Supervisor (with effect from 12.10. 1995) on the scale of Rs. 1,640-2,900

with also consequential benefits till date.

11. The Corporation received summons from the City Civil Court along with a copy of the plaint summoning them to appear on 25.1. 1996 before

the Third Assistant City Civil Court, Madras. Since the suit was not called, they made enquiries when they came to know that the petitioner had

withdrawn the suit on 15.11.1995 itself obviously because the petitioner was not successful in getting an ex parte interim injunction. The petitioner

also filed I.A. No. 15821 of 1995 in O.S. No. 7892 of 1995 for interim injunction. The prayer in that petition is as follows:

For the reasons stated in the accompanying affidavit, the petitioner. Plaintiff herein prays that this Hon"ble Court may be pleased to issue an order

of injunction restraining the respondent from giving effect to an order of promotion dated 1.11.1995 (given in the guise of promotion a reversion

order) or by their agents or servants pending disposal of the above suit thus render justice.

12. My attention was also drawn to the relevant portion of the Court Diary for 15.11.1995 which reads as follows:

I.A. No. 15821/95 in O.S. No. 7892/95:

O.S. No. 7892 of 1995: Hearing advanced as per order in I.A. No. 15922 of 1995.

13. The following is the endorsement made by the petitioner"s counsel in O.S. No. 7892 of 1995:

The above suit may be dismissed as withdrawn."" It is only thereafter that the present writ petition (W.P. No. 372 of 1996) has been filed before

this Court. The filing of the suit in the City Civil Court was suppressed and interim stay was obtained from this Court in W.M.P. No. 593 of 1996.

The petitioner has stated in paragraph 13 of the affidavit filed in support of W.P. No. 372 of 1996 that the original of the impugned order was

misplaced and was not traceable in spite of his best efforts. According to the Corporation, this statement is false, for, the original impugned order

was filed along with the plaint in O.S. No. 7892 of 1995 before the City Civil Court. The petitioner has not denied the said statement of the

Corporation.

14. According to the Corporation, the petitioner has barged into the cabin of the

Senior Manager (Personnel) on 16.1.1996 at 4.00 p.m., and threw a sheet of paper before him, which turned out to be my order in W.M.P. No. 593 of 1996 in W.P. No. 372 of 1996, used filthy language, hit him on his fore-head, slapped him on his face, threatened him and prevented him from getting up from his seat, prevented him from calling his colleagues, pushed the telephone down from his table and left the cabin with further threats. The petitioner was, therefore, issued an order of suspension dated 16.1.1996, which is the subject-matter of W.P. No. 803 of 1996. The statement made in paragraph 10 of the counter-affidavit has not been denied at all by the petitioner by filing any reply affidavit. But, suppressing the above mis-conduct, the petitioner has approached this Court and obtained an ex parte order of interim stay of suspension, in W.M.P. No. 1281 of 1996 in W.P. No. 803 of 1996.

15. This apart, the petitioner has already filed W.P. No. 17133 of 1995 on 12.12.1995 in this Court for the issue of a writ of certiorari and mandamus to call for the records relating to the impugned order dated 1.11.1995 passed by the respondent therein and quash the same and consequently to direct the Corporation to promote him as Assistant Traffic Supervisor with effect from 27.10.1992, the date on which his juniors were promoted, and grant all other attendant benefits from that date. Mr. R. Thamaraiselvam, counsel for the petitioner made the following endorsement on 4.1.1996:

W.P. No. 17133 of 1995 shall be dismissed as withdrawn.

On the basis of the above endorsement, I passed the following order on 4.1.1996:

Mr. R. Thamaraiselvam, learned Counsel for the petitioner states that he has received instruction from his client to withdraw the writ petition.

Accordingly, the writ petition is dismissed as withdrawn. Consequently, the W.M.P. for stay is also dismissed.

16. Learned Counsel for the Corporation contended that since the petitioner has come before this Court with unclean hands, the present writ petitions have to be straightway dismissed. He cited the decision of the Supreme Court reported in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, . That is also a case of withdrawal of a writ petition without permission to institute a fresh writ

petition in respect of the same cause of action. The Supreme Court in paragraph 9 of the judgment observed as follows:

The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the

Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this

point the decision in *Daryao and Others Vs. The State of U.P. and Others*, is of no assistance. But we are of the view that the principle

underlying Rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition

also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in

bench-hunting tactics. In any event there is not justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the

High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a

fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution since such withdrawal does not amount to

*res judicata* the remedy under Article 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause

of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a

fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without

permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being

applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of *habeas*

*corpus* or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing

altogether. We, however, leave this question open.

17. The above judgment directly applies to the facts of the case on hand. In this case, the petitioner has withdrawn the writ petition (W.P. No.

17133 of 1995) filed by him challenging the order dated 1.11.1995, which is also the subject matter of W.P. No. 372 of 1996 filed under Article

226 of the Constitution of India without the permission of the court to institute a fresh petition. Therefore, as pointed out by the Supreme Court, the remedy under Article 226 of the Constitution by filing the subsequent writ petition (W.P. No. 372 of 1996) challenging the very same proceedings dated 1.11.1995 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws the earlier writ petition without such permission.

18. Learned Counsel for the Corporation next relied on a Full Bench decision of the Punjab and Haryana High Court reported in Teja Singh Vs.

Union Territory of Chandigarh and Others, , wherein the Full Bench has observed as follows:

This brings me to the provisions of Order 23, Rule 1 of the Code. As has come to the contention of Shri Anand Swarup, the applicability of this

provision was sought to be avoided solely on the plea that a petition which has been dismissed as withdrawn could not be a bar to the filing of the

second petition as in a petition which is got dismissed as withdrawn, the merits of the controversy are not gone into; but this approach of the

learned Counsel is without any merit. It is correct that in the petition which is dismissed as withdrawn, the merits of the controversy are not gone

into but that fact by itself would not entitle a litigant to claim entertainment of his second petition in the wake of the provisions of Order 23, Rule 1

which become applicable to writ proceedings by virtue of Rule 32. It may be noticed that the applicability of the provisions of Order 23, Rule 1

shall have a very salutary effect as it would minimise to a great extent the chances of the abuse of the process of this Court. To elucidate the point

further, I take an example. A litigant files a petition in this Court which comes up for motion hearing. During the arguments an impression is

gathered that the Bench is not agreeing and the petition is likely to be dismissed and on the basis of that impression, the petition is got dismissed as

withdrawn. Thereafter, on the same facts and in respect of the same cause of action a second writ petition is filed. Now in such case, if the

contention of Mr. Anand Swarup is accepted, then the second writ petition must be entertained and disposed of on merits one way or the other by

passing a speaking order. Such a course, if adopted, would, in my opinion, not only result in the abuse of the process of the court, but would also

give handle to a dishonest and unscrupulous litigant to harass his opponent.

By the applicability of the provisions of Order 23, Rule 1, no constitutional right of a litigant is being taken away. A litigant has a right to withdraw

his petition; but in case he wishes to file a fresh petition on the same cause of action, then permission of the court has to be taken, and for that

purpose, proper legal foundation has to be laid.

19. The decision reported in *Kishori Singh Vs. State of Bihar and Others*, , is also a case of unconditional withdrawal of a writ petition. S.S.

Sandhawalia, C.J., speaking for the Bench answered the question posed to the Bench in the affirmative and held that the unconditional withdrawal

of a writ petition would operate as a bar to the filing of second writ petition on the same facts and in respect of the same cause of action by the

same party. The Division Bench has also followed the Full Bench decision of the Punjab and Haryana High Court reported in *Teja Singh Vs.*

*Union Territory of Chandigarh and Others*, .

20. On the question of suppression of material facts, the learned Counsel for the Corporation relied on the decisions reported in *K. Marappa*

*Gounder, K.M.S. Bus Service Vs. The Central Road Traffic Board and Others*, , *Deptylal v. The Collector of Nilgiris* (1959)2 M.L.J. 208, Dr.

*Vijay Kumar Kathuria Vs. State of Haryana and Others*, , *G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka*

and another, , *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, .

21. In *K. Marappa Gounder, K.M.S. Bus Service Vs. The Central Road Traffic Board and Others*, , *Rajagopalan, J.*, has held as follows:

It is a well-settled proposition of law that it is the duty of a person invoking the special writ jurisdiction of a court to make a full and true disclosure

of all relevant facts. He should not suppress any facts. An applicant for a writ under Article 226 of the Constitution must come in the manner

prescribed and must be perfectly frank and open with the court. If he makes a statement which is false or conceals something which is relevant

from the court, the court will refuse to go into the matter. If the court comes to the conclusion that the affidavit in support of the application was not

can did and did not fully state the facts, but either suppressed the material facts or stated them in such a way as to mislead the court as to the true

facts, the court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits.

The reason for the adoption of this rule is not to arm the applicant's opponent with a weapon of technicality against the former, but to provide an essential safeguard against abuse of the process of the court.

Where the petitioner is clearly found to have suppressed material and relevant facts which, if brought to the notice of the court when applying for a

rule nisi, should certainly have influenced the court in deciding one way or the other, and such suppression was certainly calculated to deceive the

court into granting the order of rule nisi, the petition should on that ground be dismissed. It is not enough to say that even had those facts been

placed before the court, the court might first have issued the rule nisi pending a final adjudication. If the facts are relevant it is the duty of the

applicant to have placed them before the court leaving it to the court to decide whether it was a case where the rule nisi that was asked for should

issue. When that has not been done "the High Court should decline to interfere in the exercise of its jurisdiction under Article 226 of the

Constitution. The court in an application for a writ under Article 226 should be reluctant to interfere with a finding of fact, unless the circumstances

gathered from the material placed before it conclusively establish that no reasonably minded tribunal could have reached that conclusion,

particularly when it cannot be said that the petitioner has made out the case he set out to prove.

22. In *Deptylal v. The Collector of Nilgiris* (1959)2 M.L.J. 208, Balakrishna Iyer, J., has observed as follows:

A party invoking the special jurisdiction of the High Court under Article 226 of the Constitution is bound to make a full and true disclosure of all

relevant facts. If the applicant has not been as frank and candid as he is under a duty to be, but is found to have suppressed material facts relevant

to the issues involved and to have made misleading allegations, he is disentitled to any relief from the court on that ground alone.

23. In *Dr. Vijay Kumar Kathuria Vs. State of Haryana and Others*, , the Supreme Court has observed as follows:

In the instant case, the petitioners by making a false representation that the

provisional admissions granted to them were not cancelled and that they were continuing their studies as post-graduate students of Medical College on the relevant date obtained an order of status quo as of that date to be maintained from the Supreme Court.

Held, that by reason of such conduct the petitioners disentitled themselves from getting any relief or assistance from the Supreme Court and the special leave petitions were liable to be dismissed.

24. In *G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another*, , the Supreme Court has held as

follows:

The relief under Article 136 is discretionary and a petitioner who approaches the Supreme Court for such relief must come with frank and full

disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed.

25. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , the Supreme Court has observed as follows:

The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an

act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by

another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in

the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal

Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without

disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and

not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the

court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered

copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all documents executed by him which are

relevant to the litigation. If he withholds a vital document in order to gain

advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

26. "Fraud avoids all judicial acts, ecclesiastical or temporal," observed Chief Justice Edward Coke of England about of few centuries ago. It is

the settled proposition of law as laid down by our Supreme Court that the judgment or order obtained by playing fraud on the court is a nullity and

non-est in the eyes of law. As already seen, the petitioner has failed to mention the filing of an earlier suit in the City Civil Court, Madras and also

the filing of W.P. No. 17133 of 1995 in this Court and withdrawal of the same. That writ petition was filed challenging the very same impugned

order. The petitioner is, therefore guilty of suppression of material facts. The petitioner by suppressing the above facts to his counsel Mr. Rama

Jagadeesan and to the court has filed W.P. No. 372 of 1996 and obtained interim order by playing fraud counts. The petitioner has come to this

Court with unclean hands. Such a litigation should not be allowed to continue and deserves immediate dismissal on this short ground. Hence, I hold

that W.P. No. 372 of 1996 is liable to be dismissed and the same is dismissed.

27. Since both parties have argued both the writ petitions on merits, I propose to consider the case on merits. Respondents" counsel submitted

that the petitioner has affirmed a false affidavit before this Court stating that he is 53 years when in his application for employment in his own

handwriting he has declared that his date of birth is 15.6.1940. The said declaration was made on 18.12.1969. The petitioner has also given a

Certificate of Physical Fitness dated 13.12.1969 issued by the Civil Assistant Surgeon, Government Royapettah Hospital, Madras, declaring that

"his age is, according to his own statement, 29 years and by appearance about 29 years". At the end of his career, the petitioner wants his date of

birth corrected in his favour. This threat also figures in the Senior Manager"s report dated 16.1.1996.

28. The petitioner in his application for employment dated 18.12.1969 has declared himself as follows:

Examination passed: "III Form"

Technical and/or Professional : Driving Licence and Tourist Qualification driver.

The petitioner was taken as a driver with effect from 7.1.1970. The first para of the appointment order dated 1.1.1970 reads as follows:

With reference to your application dated the... and subsequent interview, we have pleasure in offering you a temporary post of driver in this

Corporation on a starting pay of Rs. 110 in the scale of Rs. 110-3-131-4-143-EB-4-155.

As a driver, the petitioner was attached to the respondents' transport unit at Madras which was later known as Ashok Travels and Tours,

Madras. He functioned as driver of tourist cars and coaches. The petitioner, therefore, knows that he applied for the post of driver and was

appointed as a driver and worked as such. In other words, the substantive post of the petitioner is that of driver.

28. During 1988-89, the petitioner was continuously ill and was unable to perform his duties as a driver. He was asked as to why he was not

performing the duties of a driver but merely signing the attendance register. The petitioner replied by his letter dated 13.4.1989 as follows:

I am to state that I have been performing alternate duties at the Garage, as per the ATS instructions, however I am not able to perform the driving

duties and also I could not meet the doctor, since the doctor is away for abroad.

In view of the petitioner's above assertion that he is unable to perform driving duties, for which he was appointed, and considering his illness, the

Corporation, taking a lenient and sympathetic view issued him the following Office Order dated 13.4.1989:

Shri T. Sebastian, S.G. driver, ATT, Madras in the scale of pay of Rs. 330-560 is hereby posted to work as counter-assistant in his same grade

and scale of pay with effect from 15th April, 1989. He shall report to Shri P.G. Natarajan, Assistant Traffic Supervisor for duty instructions and

until further orders.

[Italics supplied]

29. According to the learned Counsel for the Corporation, pursuant to the issuance of the above order to the petitioner, the General Manager,

(ATT), called for details, which were furnished vide Memorandum dated 22.9.1992. In reply thereto, the respondent received a letter from the

General Manager (ATT), which reads as follows:

This has reference to your Memo No. SPER 4.22 dated 22.9.1992, regarding the seniority of Shri T. Sebastian, Senior Driver as counter-

assistant. The matter has been referred to the Corporate Personnel Division for

appropriate decision. Till such time Shri T. Sebastian should not be considered for promotion in any of the counter staff category.

[Italics supplied]

30. Learned Counsel for the Corporation would submit that the petitioner was asked to do counter job in view of his illness and on the petitioner's

admission that he is unable to perform driving duties. The petitioner did not have even the minimum requirement to do travel agency work.

Therefore, some practical guidance were given to him on some routine matters.

31. Inviting my attention to the Office Order dated 13.4.1989, the counsel for the Corporation contended that but for the petitioner's ill-health and

his letter dated 13.4.1989, the management's order dated 13.4.1989 would not have come about. Even the management's order dated

13.4.1989 has made it clear that the petitioner will be in the same grade and scale of pay. If the letter was intended to promote him as a counter-

assistant, as contended by the learned Counsel for the petitioner, the wordings to the effect that the petitioner will be in the same grade and scale of

pay would not have come about. Further, in case of promotion, there would be a fresh fixation of pay and a letter of confirmation in the promoted

post, would have been issued. Both of which are absent in the present case. The notification dated 22.4.1992 has not been issued pursuant to an

order of competent authority. It is pointed out that the power to reticent vests with the Chairman and Managing Director. The said notification has

been erroneously issued and the petitioner is taking advantage of the said erroneous notification.

32. According to the learned Counsel for the Corporation, as per the Recruitment, Promotion and Seniority Rules of the Corporation, the basic

educational/technical qualification and experience for the post of a counter-assistant is that one should be a graduate with three years experience in

travel trade. Admittedly, the petitioner has not even passed his school final examination, for, he has studied only upto VIII Standard. From the

above it is clear that in the first place, the petitioner can never become a regular counter-assistant with his educational qualification. The basic

educational/technical qualification and experience for the post of Assistant Traffic Supervisor is that one should be a graduate with Diploma in

Marketing/Tourism/Sales/Travels trade with three years relevant experience. The

petitioner is not at all qualified to apply for the post of an Assistant Traffic Supervisor.

33. For a departmental promotion to the post of counter-assistant, one should first be a counter clerk. In the case of the petitioner, it has to be treated only as a case of direct recruitment, for, he is in a totally different cadre, in which case, he will have to satisfy the prescribed educational qualification, which is admittedly absent. Even if we assume that the petitioner is a graduate and fulfills the required qualification, still, he will not be entitled to be selected straightway, for, as per the Presidential Directives with regard to reservation of vacancies for Scheduled Castes/Scheduled Tribes, the next point for direct recruitment as counter-assistant is a backlog vacancy for Scheduled Caste category. So also, there is a backlog vacancy of one post for Scheduled Caste and one current vacancy for Scheduled Caste for the post of Assistant Traffic Supervisor. Similarly, during 1989, for departmental promotion as counter assistant, there was a backlog vacancy of one post each for Scheduled Caste and Scheduled Tribe. So also for departmental promotion as Assistant Traffic Supervisor during 1992, one backlog vacancy for Scheduled case and one current vacancy for scheduled tribe existed. The present position is, that there is one backlog vacancy for SC and ST. It is not the case of the petitioner that he does fall under the category of SC. Therefore, there is no general category vacancy which will arise in the near future. At any rate, the petitioner could not have been promoted even departmentally. When such is the case, it is understandable as to how the petitioner can aspire to become Assistant Traffic Supervisor. The petitioner, taking advantage of the Management's leniency in having asked him to perform the duties of a counter-assistant on sympathetic grounds, forgetting his substantive post and his qualification, wants to be promoted to the post of Assistant Traffic Supervisor.

34. Mr. V. Ramajagadeesan, learned Counsel for the petitioner, submitted that four vacancies arose during 1992 and that the juniors of the petitioners in scale, who were working in the cadre of counter-assistant viz., V.D. Rajan and A. Akilkumar were promoted. The contention of the learned Counsel for the petitioner was refuted by the learned Counsel for the respondents. In so far as C. Raghunathan is concerned, it is

contended that he was demoted by way of a punishment from the post of Assistant Traffic Supervisor to that of counter-assistant with effect from

9.6.1987 and in view of further misconduct, he was dismissed from service with effect from 16.3.1988. As far as C.S. Chandrasekaran is

concerned, he was an Assistant Traffic Supervisor (Technical) and died on 30.9.1986. So far as V. Rajendran is concerned, he was an Assistant

Traffic Supervisor (Technical) on probation. His probationary service was terminated with effect from 4.2.1984. His termination was upheld by the

Additional Labour Court, Bangalore, on 6.7.1991. As far as K.R. Sankaranarayanan is concerned, he was an Assistant Traffic Supervisor

(Commercial) and was promoted as Traffic Supervisor (Commercial) with effect from 24.10.1992.

35. In regard to C.S. Chandrasekaran and v. Rajendran, it is submitted by the learned Counsel for the respondents, that the qualification for the

post of Assistant Traffic Supervisor (Technical) is Diploma in Automobile Engineering with two years relevant experience and that appointment to

that post is by 100% direct recruitment. Under such circumstances, as rightly urged by the learned Counsel for the respondents, the petitioner can

never aspire for the said post/vacancy.

36. In regard to C. Raghunathan and K.R. Sankaranarayanan, it is submitted by the respondents that two counter-assistants by name A.

Akilkumar and V.D. Rajan were promoted as Assistant Traffic Supervisors to the vacancy created in the place of C. Raghunathan and K.R.

Sankaranarayanan with effect from 24.10.1992 and that A. Akilkumar and V.D. Rajan, who were working as counter-assistant with effect from

20.5.1982 are graduates. Prior to becoming counter-assistants, they were working as counter clerks. Counter clerks/counter assistants/Assistant

Traffic Supervisors/Traffic Supervisors belong to the same non-executive cadre. As pointed out earlier, the post of driver is a separate cadre. G.

Jayakumar was working as an Assistant Traffic Supervisor with effect from 10.10.1983 at Delhi. In view of his request for a voluntary transfer

from one region to another, G. Jayakumar was transferred to Madras as Assistant Traffic Supervisor and as per the Recruitment, Promotion and

Seniority Rules of the Corporation, he will rank junior most in his cadre on joining duty at Madras. It is not as though G. Jayakumar was working

as a counter-assistant and was promoted only in 1993.

37. Mr. V. Ramajagadeesan contended that the petitioner was victimized. Mr. Franco Louis learned Counsel for the respondents, while denying

the case of victimisation, contended that under the impugned order the petitioner has been promoted in his cadre with an increased scale of pay

viz., from Rs. 1,200-2,040 to Rs. 1,400-2,300. By the said order, the petitioner has not been asked to revert back to his driver duties. The

respondents have correctly described him as driver Grade I presently discharging the duties of counter-assistant at ATT, Madras. The petitioner

assumes that promotion is automatic and by this time he could have become a Traffic Supervisor, which is borne out of his imagination, The

impugned order, as rightly pointed out by the learned Counsel for the respondents, does not ask the petitioner to relinquish the present duties

discharged by him. The impugned order, as contended by Mr. V. Ramajagadeesan, is not an order of reversion but a promotion to higher pay

scale in his own substantive post. The increase in the scale of pay is pursuant to the office Order dated 21.8.1995, which conveys the Chairman

and Managing Director's approval to give higher scale of pay, which would be personal, with the same designation. The petitioner cannot be said

to be adversely affected and the question of Section. 9-A of the Industrial Disputes Act being attracted does not arise at all. Pursuant to the office

order dated 21.8.1995, the Departmental Promotion Committee had its sitting on 5.10.1995 and its recommendations were approved by the

Competent Authority on 12.10.1995 and the resultant impugned order came about. The respondents have also denied the allegation of the

petitioner that he was appointed as Selection Grade driver retrospectively with effect from 1.4.1973. The petitioner, in fact, had the notional

benefit for the purpose of fixation of pay from 1.4. 1973. However, with regard to benefit of appears, the same was given from the date of his

actual promotion as Selection Grade driver with effect from 24.4.1978.

38. From the fore-going discussions, the following are the undisputed facts:

(a) The substantive post of the petitioner is that of a driver.

(b) the petitioner has studied only upto VIII Standard;

(c) the post of driver is such that he gets promotion only in the cadre of drivers as well as in the scale of pay.

(d) The Management's Order dated 13.4.1989 came about only in view of the petitioner's poor health condition.

(e) The post of driver is not a feeder post to that of counter-assistant.

(f) The petitioner has never discharged any duty as a counter-assistant prior to 13.4.1989.

(g) The qualification required for the post of counter-assistant by direct recruitment is graduation.

(h) The Presidential Directives for reservation for SC/ST categories would apply.

When the above being the factual and legal position, the petitioner, throwing away all norms, assumes that he is a qualified counter-assistant and

consequently qualified to become an Assistant Traffic Supervisor when he is not even qualified to apply as counter-assistant. There are absolutely

no merits in W.P. No. 372 of 1996 and the same is liable to be dismissed.

39. Now, I will take up W.P. No. 803 of 1996. As stated earlier, the petitioner has in this writ petition challenged the proceedings of the 1st

respondent in VP/ATT/14/96 dated 16.1.1996. The impugned proceedings reads thus:

It is reported that you, to-day, (i.e., 16th January, 1996-Tuesday) at about 16.00 hrs. barged into Mr. As. Ganesan, Senior Manager

(Personnel's) room at Regional Office, Madras and indulged in activities not expected of an employee of Ashok Travels and Tours, India Tourism

Development Corporation, Madras.

You are hereby placed under suspension forthwith. The charge-sheet would follow.

40. According to the petitioner, in spite of the stay order in W.M.P. No. 593 of 1996 in W.P. No. 372 of 1996, the Corporation has addressed a

letter to the petitioner describing him as driver Grade I and placing him under suspension with immediate effect. The order of suspension was

passed on 16.1.1996 for the alleged occurrence on 16.1.1996. According to the petitioner, it is not known how the respondents were able to

know about the alleged incident which took place at 16.00 hours on 16.1.1996 and how the 1st respondent was able to gather the particulars on

the same day and passed orders suspending the petitioner on the very same day. The impugned order has been passed in a hasty manner. The

same has been passed with a view to victimise the petitioner and to curtail his

union activities. The impugned order has been passed on the very next day on which notice was served on the 1st respondent by this Court in W.P. No. 17581 of 1995. The action has been pre-planned and pre-determined. There was no such occurrence as alleged in the suspension order. It is a clear case of victimisation of an office bearer of a labour union and the price for fighting for justice. The incident alleged to have been stated in the impugned order is nothing but false. There was no untoward incident and the reasons assigned in the impugned order are invented reasons for the purpose of victimising the petitioner.

41. The 2nd respondent filed a detailed counter-affidavit. The respondents have in detail referred to the incident that took place on 16.1.1996, which I have extracted in paragraphs supra. The letter dated 16.1.1996 written by A.S. Ganesan about the incident that took place in his cabin on that date, to the Regional Manager and to the 2nd respondent has also been extracted in the counter-affidavit. The 2nd respondent was present at that time in the Regional Manager's cabin. The Senior Manager (Personnel) telephonically reported about the incident to the Vice President (ATT) and also to the higher-ups at New Delhi. It was telephonically reported by the 2nd respondent at about 5.00 p.m., the same day to the General Manager, (ATT) and the Vice President (ATT) at New Delhi. It is thereafter, the impugned order came to be passed telegraphically and by post.

42. Following the order of suspension, a letter dated 17.1.1996 was also forwarded to the petitioner by the 2nd respondent under registered post.

It is stated that even though the petitioner was under suspension, he signed the attendance register on 17.1.1996 and 18.1.1996. The report

submitted by the Senior Manager (P), Regional Manager, Manager (ATT) and Senior Stenographer were forwarded to New Delhi. Thereafter, on

29.1.1996, the Madras Office received charge-sheet dated 25.1.1996 to be issued to the petitioner. While the management was in the process of

serving the charge-sheet, the respondents received a letter dated 24.1.1996 on the afternoon of 29.1.1996 from the petitioner's counsel stating

that this Court has granted stay of operation of the order of suspension dated 16.1.1996. It is stated in the counter-affidavit that this Court's order

as mentioned in the petitioner's counsel's letter dated 24.1.1996 was communicated to the Vice President (ATT) at New Delhi. Thereafter, the

Vice President (AIT) advised the petitioner that he can resume duty but the same is subject to further orders of this Court.

43. Thus, it is seen, that the entire incident which took place on 16.1.1996, was the basis for the suspension order dated 16.1.1996. As already

stated, the respondents have filed a detailed counter-affidavit in the connected W.P. No. 372 of 1996. The petitioner has not chosen to file any

reply affidavit to the counter-affidavit filed in W.M.P. No. 593 of 1996 in W.P. No. 372 of 1996. The petitioner has suppressed the entire

episode which took place on 16.1.1996, while approaching this Court with W.P. No. 803 of 1996.

44. It is contended by the learned Counsel for the respondents that in view of the order of this Court dated 24.1.1996 granting interim stay of

operation of the suspension order dated 16.1. 1996, the respondents have not served the charge sheet dated 25. 1.1996 and they sought the leave

of this Court to issue the said charge sheet. There cannot be any objection on the part of the petitioner in granting such a request. The respondents

are, therefore, at liberty to now serve the charge sheet and proceed with the departmental action. In my opinion, the petitioner deserves to be

placed under suspension. The report of the Senior Manager (P) dated 16.1.1996 narrates the entire, episode that took place on the fateful day of

16.1.1996 at 4.00 p.m. in his cabin. It is seen from that report that the petitioner has used filthy language, hit the Senior Manager on his fore-head,

slapped him on his face, threatened him and prevented him from getting up from his seat. It is on the basis of the report sent by the Senior Manager

(P), the petitioner was placed under suspension pending enquiry. Therefore, I am not expressing any opinion on the report dated 16.1.1996 of the

Senior Manager (P) and it is within the domain of the Enquiry Officer to conduct an enquiry on the basis of the said complaint and proceed with

the same in accordance with law. However, I am of the prima facie view that the order of suspension now made does not call for any interference

at this stage and it is for the petitioner to prove his innocence at the enquiry

45. As stated earlier, the order of suspension dated 16.1.1996 came to be passed on the basis of the telephonic report passed on to the higher ups

at New Delhi. Therefore, the divisional head thought it fit to place the petitioner under suspension by means of telegram dated 16.1.1996 and also

by post. In my opinion, the management has rightly taken immediate action in matters of this nature. Otherwise, it would tell upon the moraic of the

officers and other employees of the Corporation. Here again, the petitioner has, without disclosing the correct facts, obtained an order of stay of

the order of suspension in W.M.P. No. 1821 of 1996. The interim stay granted in 24.1.1996 is liable to be vacated and the same is accordingly

vacated. The management is at liberty to proceed with the departmental action against the petitioner as per rules.

46. The petitioner has alleged that he was victimised because of his labour union activities, which is denied by the respondents. It is true that

suspension causes great mental agony to the person concerned. But, in this case, the accusations are grave enough since, should they be ultimately

proved, it would result in serious consequences. It is only a bona fide exercise of power and therefore there is no vindictiveness or arbitrariness on

the part of the respondents in exercising their power under the Rules. The petitioner only ceases to exercise the power and to discharge the duties

of his office for the time being. In this case, the power has been exercised to suspend the petitioner rightly and carefully.

47. In the decision reported in D. Uthirakumaran v. The Government of Tamil Nadu 1988 W.L.R. 229. a Division Bench of this Court consisting

of S. Mohan, J., as he then was, and Padmini Jesudurai, J. has elaborately considered the situations in which a member of service can be placed

under interim suspension. The Division Bench held that suspension pending enquiry is certainly not punitive in character. In such a case, it means,

the relationship of master and servant remains in abeyance for a temporary phase. It is an action in order to maintain purity of service when an

employees is awaiting an enquiry in regard to his suspected misconduct. The Bench also held that suspension pending or in contemplation of

disciplinary enquiry does not amount to temporary removal from service. The power of suspension not by way of punitive action but to keep an

officer out of the sphere of action, is a substantive power and it is not dependent on the enquiry on the charges and the result flowing from the

enquiry.

48. The principles laid down in the above decision squarely apply to the case on hand. In this case, the accusations made by the Senior Manager

(P) in his report dated 16.1.1996 are very grave enough since should they ultimately be proved, it would result in serious consequences. Therefore, the learned Counsel for the petitioner is not correct to urge that there are no materials for placing the petitioner under suspension. I can only conclude this order by saying that it is only a bona fide exercise of power and there is no vindictiveness or arbitrariness in exercising that power by the respondents.

49. In the result, both the writ petitions fail and are dismissed. The interim orders granted in W.M.P. Nos. 593 and 1821 of 1996 are vacated. The respondents are at liberty to serve the charge-memo on the petitioner and proceed with the enquiry in accordance with law. W.M.P. Nos. 593 and 1821 of 1996 are also dismissed.

50. Though the conduct of the petitioner in suppressing material facts and obtaining interim orders deserves awarding of exemplary costs, taking into consideration of the position which the petitioner is holding (driver), with reluctance, I take a lenient view and not awarding any costs. Hence, there will be no order as to costs.