

6  
IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 17TH DAY OF FEBRUARY 1998

Before :

THE HON'BLE MR.JUSTICE G.PATRI BASAVANA GOUD

WRIT PETITION No.44148/1995

Between :

The Management of Mysore  
Sugar Company Ltd.,  
Mandya. The Chief  
Administrative Officer,  
Mysore Sugar Co. Ltd.,  
Mandya.

.. Petitioner

( By Sri.B.C.Prabhakar, Advocate )

And :

1. The Secretary,  
Mysore Sugar Company  
Employees Association,  
Mandya.

2. The Presiding Officer,  
Industrial Tribunal,  
Mysore.

.. Respondents

( By Sri.<sup>K</sup>.H.Jagadish, HCGA for R-2 )

---

This Writ Petition is filed under Articles  
226 & 227 of the Constitution of India praying  
to quash vide Annex.A dated 26.12.1994.

This writ petition is coming on for hearing  
this day, the Court made the following :

2

ORDER

The 1st respondent-Employees Association raised an industrial dispute, that came to be referred to the Industrial Tribunal, Mysore, under Section 10 (1) of the Industrial Disputes Act, 1947. The dispute concerns five workmen who sought higher scale of pay/promotion on the footing that their juniors in the other section have been given higher scale of pay and promotion. The Industrial Tribunal, by its award dated 26.10.1994 at Annexure-'A', has answered the reference in favour of the Employees Association, that has now come to be challenged in this writ petition under Article 226 of the Constitution filed by the petitioner-employer.

2. The Industrial Tribunal based its finding on the footing that, though it is the prerogative of the management to transfer any employee; but giving of promotion to a junior by transferring him to other section as against the senior employee will amount to over looking his seniority, though he is qualified for promotion in all respects. (End of Paragraph-9 of the award). Again in Paragraph-10 of the impugned award, the

✓

SLA

Industrial Tribunal observed that the management had transferred employees who were junior to the 5 workmen concerned in this dispute and had promoted the said juniors by over looking the senior employees like the present 5 workmen, though they had requisite qualifications. The Industrial Tribunal at the end of Paragraph-10 concluded that the Employees Association was justified in demanding promotion of the workmen concerned from 1.1.1985.

3. The Industrial Tribunal, thus, found that, notwithstanding the fact that the employees promoted or given with higher scale of pay are working in different sections, if the dispute is raised, all of them should be treated equally and if they possess requisite qualifications, they should be given the promotion/higher scale of pay. In other words, the Industrial Tribunal disagreed with the contention of the petitioner-employer that it had been following the sectionwise seniority. The Industrial Tribunal has erred in so concluding, because, this principle of following sectionwise seniority in respect of this very establishment had been upheld by a Division Bench of this Court in Writ Appeal No.1519/96 disposed of on 2.9.1997

h

(Workmen of Mysore Sugar Co.Ltd., Mandya -vs- The Management of Mysore Sugar Co.Ltd., Mandya and another). The Division Bench endorsed the sectionwise seniority for the purpose of promotion of employees and taking due note of the said sectionwise seniority, the Division Bench agreed with the finding of the learned Single Judge as regards the status of the workmen concerned therein in relation to his seniority.

4. If sectionwise seniority is, thus, accepted as endorsed by the Division Bench in the above said decision, the order passed on the Industrial Tribunal's finding that the Employees Association was justified in demanding promotion of the workmen concerned based upon the promotion of the workmen in the other sections, cannot be legally sustain<sup>ed</sup>~~able~~.

5. Writ Petition is allowed. Impugned award is quashed.

Sd/-  
JUDGE