IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.08.2018

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.No.36605 of 2002

S.Jagatheeswaran ... Petitioner

Vs.

1.The Commissioner of Sugars
No.490 Anna Salai
Chennai – 600 035.

2.The Administrator
Tiruttani Cooperative Sugar Mills Limited
Tiruvalangadu – 631 210
Tiruvallur District ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for records of the respondents pertaining to the Rc.No.E2/8119/99 dated 09.08.2000 and Rc.No.E2/11426/95 dated 15.05.2002 of the 2nd respondent as confirmed by the 1st respondent in Proc.No.17128/S&L-2/2002 dated 29.08.2002.

For Petitioner : Ms.R.Meenal

For Respondents : Ms.T.Girija
Government Pleader.

O R D E R

The prayer sought for in this writ petition is for the issuance of a Writ of Certiorari, calling for records of the respondents pertaining to the Rc.No.E2/8119/99 dated 09.08.2000 and Rc.No.E2/11426/95 dated 15.05.2002 of the 2nd respondent as confirmed by the 1st respondent in Proceedings No.17128/S&L-2/2002 dated 29.08.2002.

2.Heard Ms. R. Meenal, learned counsel for the petitioner and Ms.T.Girija, learned Government Advocate appearing for the respondents

3. The short facts, which are required to be noticed for disposal of the writ petition are as follows :-

4. The petitioner was appointed as Junior Clerk – Grade IV at Vellore Co-operative Sugar Mills in the year 1978 and he had been working there till 1982. On 23.08.1982, the petitioner had been transferred to the 2nd respondent Sugar Mills, viz., Tiruttani Cooperative Sugar Mills Limited, where on transfer, he has been absorbed as Junior Assistant. He had been working there as Junior Assistant for some years and thereafter he had been promoted as Superintendent and he retired from service on superannuation in the year 2010.

5. During his service at the second respondent Mill, the second respondent by its proceedings dated 15.11.1999, directed the revised pay for the petitioner. With the result of which, the petitioner was started drawing Rs.100/- more per month.

6. However, subsequently by order dated 09.08.2000, the 2nd respondent Mill directed that the petitioner was not entitled to get the higher pay of Rs.100/- more per month and therefore, it was directed to be recovered from the petitioner. Pursuant to which, on 15.05.2002, an order of recovery was issued by the second respondent.

7. Before issuance of either the order dated 09.08.2000 or the order dated 15.05.2002, the second respondent had not issued any notice to the petitioner and all of a sudden recovery was ordered.

8. Therefore, challenging the said orders, the petitioner preferred the appeal before the 1st respondent, who in turn, after considering the appeal of the petitioner, passed the final order on 29.08.2002, whereby the order of recovery passed by the second respondent was confirmed. As against the said orders, the present writ petition has been filed.

9. The learned counsel appearing for the petitioner would submit that, before issuance of the orders, dated 09.08.2000 or 15.05.2002 seeking to recover Rs.100/- per month, allegedly paid as excess to the petitioner, the petitioner has not been put on notice and no notice was served on him. The learned counsel further submitted, insofar as the entitlement of the petitioner is concerned, after having considered that the petitioner has been transferred from Vellore Mill to Tiruttani Mill, the said

amount of Rs.100 had been given per month as a revised pay and once the said pay has been fixed by the orders of the 2nd respondent, dated 15.11.1999, before the same is modified even for plausible reason, notice should have been given to the petitioner and therefore on that ground this impugned orders have to be interfered with.

10. Per contra Ms.T. Girija, learned Government Advocate appearing for the respondents made submissions, by relying upon the order passed by the 1st respondent, dated 29.08.2002, which is impugned herein also that, the minimum monetary benefit of Rs.100/- is to be given to the workers and staff, whose pay was fixed at a consolidated rate initially for a period of one year at the time of joining in the Mill.

11. In this regard, the learned Government Advocate would further submit that, even from the date of joining in the 2nd respondent Mill, the petitioner was getting time scale of pay and therefore, as per the condition for giving the monetary benefits of Rs.100 p.m., the petitioner is not entitled to get the said benefit, as he was not getting the consolidated pay from the date of transfer or absorption at the 2nd respondent Mill.

12. In view of the said reasoning given by the first respondent, the impugned order would be sustained, as the petitioner is not entitled to claim the excess amount of Rs.100 per month. Accordingly, the said excess payment was sought to be recovered through the impugned order hence, the same need not be interfered with.

13. I have considered the said submission made by the learned counsel appearing for the petitioner as well as the learned Government Advocate for the respondents.

14. As has been rightly pointed out by the learned counsel appearing for the petitioner, admittedly before issuance of the orders dated 09.08.2000 and the order dated 15.05.2002 for recovery, no notice has been given to the petitioner. Moreover, in the order dated 09.08.2000, the 2nd respondent has stated that the pay fixed for the petitioner from 01.01.1999 has been re-fixed or modified, pursuant to the settlement reached under section 18(1) of the Industrial Disputes Act, 1947 on 29.07.1999. Assuming that the 18(1) Settlement has been reached between the employees and employers, subsequently, the conditions of the said settlement cannot be imposed against the employees

retrospectively, that too pre-judicial to the interest of the employees.

15. Therefore, assuming that the 18(1) settlement under Industrial Disputes Act, 1947, dated 29.07.1999, does not pave the way for higher pay and accordingly, the pay has to be modified, the same cannot be made with retrospective effect prejudicial to the interest of the employees, who are already getting the higher pay. Moreover, the said higher pay is nothing but a sum of Rs.100/- per month and the said amount has been paid to the petitioner on the ground that the petitioner already gained experience in other sugar Mill, with that experience he had come to the present Mill. Therefore, in order to recognise the experience gained by the petitioner, which can be best utilised by the 2nd respondent Mill, that monetary benefit of Rs.100/- p.m. was issued and therefore, the same cannot be taken away by the subsequent 18(1) settlement under the Industrial Disputes Act.

16. Moreover, the petitioner is a C and D Group of employee and as per the law declared by the Hon'ble Apex Court, such a recovery cannot be made even for a wrong payment already made by the employer, from C and D group employees and also from the retired employees.

17. In view of all these reasons that no notice has been given to the petitioner before passing the order of recovery and also the pay benefit accrued already before the 18(1) settlement cannot be modified, prejudicial to the interest of the employees and also taking into account, the law declared by the Hon'ble Apex Court that the recovery cannot be made from C and D group employees as well as the retired employees, this Court has no hesitation to hold that the impugned recovery proceeding cannot be sustained and accordingly the said proceedings are liable to be interfered with.

18. In the result the impugned orders are quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition, if any is also closed.

Sd/-
Assistant Registrar(Co)

//True Copy//

vsi2/vv2 Sub Assistant Registrar

To

1.The Commissioner of Sugars
No.490 Anna Salai
Chennai - 600 035.

2.The Administrator
Tiruttani Cooperative Sugar Mills Limited
Tiruvalangadu - 631 210
Tiruvallur District.

+1cc to Ms.R.Meenal , Advocate SR.No. 55618
+1 CC TO GOVERNMENT PLEADER SR.NO. 55657

W.P.No.36605 of 2002

VSN II
ASK(10/09/2018)