

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.20017 OF 2001

ORDER:

The petitioner filed this writ petition to issue a Writ of Mandamus declaring the proceedings issued by the 1st respondent in Rc.No.18690/96/B1 dated 07.12.2000, wherein the 1st respondent passed orders to recover an amount of Rs.99,195/- while rejecting the petitioner's case for payment of full additional charge allowance, as illegal and arbitrary.

2. The case of the petitioner is that while he was working as a Manufacturing Chemist at Nizamabad Co-operative Sugar Factory Limited, Nizamabad, a post of Chief Chemist fell vacant in the 2nd respondent society. The 2nd respondent requested the 1st respondent to spare the services of the petitioner as he is fully qualified and eligible to discharge the duties of Chief Chemist. The 1st respondent, on considering the proposal of the 2nd respondent, has issued proceedings in Rc.No.18690/96/B1 dated 02.02.1998 enabling the 2nd respondent to take petitioner's services on transfer basis. In pursuance of the said proceedings, the petitioner was relieved himself from the Nizamabad Co-operative Sugar Factory and joined in the 2nd respondent society on 07.02.1998. As the petitioner was fully eligible and qualified to hold the post of Chief Chemist, the Committee of persons-in-charge of the 2nd respondent headed by the Joint Collector,

Chittoor approved the candidature of the petitioner to post him in full additional charge of the post of Chief Chemist after obtaining the approval of the 1st respondent. The 1st respondent issued proceedings in Rc.No.18690/96/B1 dated 20.03.1998 placing the petitioner in full additional charge of the post of Chief Chemist in the 2nd respondent society. Pursuant to the said proceedings, the petitioner is discharging the duties of Chief Chemist from 01.04.1998, but the 2nd respondent was paying only the salary attached to the post of Manufacturing Chemist to the petitioner. Then, he submitted a representation dated 08.05.1998 requesting the 2nd respondent to pay the salary attached to the post of Chief Chemist. The 2nd respondent addressed a letter to the 1st respondent requesting the 1st respondent to allow the 2nd respondent to pay the minimum timescale attached to the post of Chief Chemist to the petitioner, while referring the cases of Chief Engineer and the Chief Agricultural Officer working in the 2nd respondent society and they were also paid the minimum timescale attached to the said posts as they were qualified and eligible and discharging the duties attached to the said posts. In spite of reminders, the 1st respondent has not approved the proposal of the 2nd respondent and when the same is pending, the 2nd respondent again after obtaining the approval of the Committee of persons-in-charge headed by the Joint Collector issued proceedings in CCS/ESTT/OM/CC/99, dated

03.04.1999, sanctioning the minimum timescale attached to the post of Chief Chemist to the petitioner and thereby, the petitioner was discharging the duties of Chief Chemist from 01.04.1998. Thereafter, the petitioner was appointed as Chief Chemist by the 1st respondent vide proceedings in Rc.No.22893/90/B1/CC dated 29.02.2000. In pursuance of the said proceedings, the petitioner assumed charge as Chief Chemist on regular basis from 02.03.2000 and discharging his duties in the 2nd respondent society. Thereafter, the Board of the 2nd respondent discussed the payment of minimum timescale of Chief Chemist to the petitioner from 01.04.1998 to 01.03.2000 and a resolution appears to have been passed on 03.10.2000, to obtain the permission of the 2nd respondent within 30 days and if no permission is granted, resort to recover an amount of Rs.99,195/- paid to him as the said amount was paid to him towards holding the full additional charge of the post of Chief Chemist pending approval of the 1st respondent. Thereafter, the 2nd respondent issued a show-cause notice dated 10.10.2000 asking the petitioner to show cause within 7 days as to why the amount of Rs.99,195/- should not be recovered from him. Then, the petitioner submitted a detailed reply on 17.10.2000. In spite of the same, the 2nd respondent issued a final notice in Ref. CCS/ESTT/OM/E2/2000 dated 27.10.2000 directing the petitioner to remit the said amount within 5 days. Questioning the said notice dated 27.10.2000, the petitioner

filed Writ Petition No.20804 of 2000 before this Court. This Court granted interim suspension while admitting the writ petition. When the said writ petition is pending before this Court, the 1st respondent issued the impugned proceedings in Rc.No.18690/96/B1 dated 07.12.2000, rejecting the request of the 2nd respondent. In view of the said proceedings, this Court vacated the interim order on 23.08.2001. Against the impugned order dated 07.12.2000, this writ petition is came to be filed.

3. Sri P.Govind Reddy, learned counsel for the petitioner, would contend that the petitioner on request came to the 2nd respondent society as Manufacturing Chemist and full additional charge of the post of Chief Chemist. On being satisfied with the performance of the petitioner and eligibility, the 1st respondent vide proceedings in Rc.No. 22893/90/B1/CC dated 29.02.000, appointed the petitioner as Chief Chemist and he assumed charge as Chief Chemist on regular basis on 02.03.2000 and discharging the duties of Chief Chemist. When the petitioner was not yielded to the Board of Directors for their illegal demands, the 2nd respondent's Board had discussed the issue of payments of minimum timescale of Chief Chemist to the petitioner from 01.04.1998 to 01.03.2000 and passed a resolution on 03.10.2000 to obtain the permission of the 2nd respondent and that if no permission was granted, necessary action would be taken to recover an amount of Rs.99,195/- paid to

the petitioner towards advance amount for holding full additional charge of the post of Chief Chemist during the period from 01.04.1998 to 01.03.2000. In pursuance of the resolution, the 2nd respondent addressed a letter to the 1st respondent. When the matter is pending before the 1st respondent for its sanction, the 2nd respondent issued a show-cause notice dated 10.10.2000 to show cause within 7 days why an amount of Rs.99,195/- should not be recovered from the petitioner. The petitioner submitted a detailed reply dated 17.10.2000. Pending 1st respondent's decision, the 2nd respondent issued a final notice on 27.10.2000, directing the petitioner to remit the amount within 5 days. Questioning the notice dated 27.10.2000, the petitioner filed W.P.No.20804 of 2000. This Court granted interim suspension of the notice pending writ petition. Pending writ petition, the 1st respondent passed the impugned proceedings in Rc.No.18690/96/B1 dated 07.12.2000. In view of the same, this Court vacated the interim order and passed the impugned order.

4. Per contra, Sri T.Balaji, learned counsel for the 2nd respondent, while reiterating the contents of the counter, would contend that the petitioner is not entitled for the minimum timescale of post as per Rule 20 of the Rules as he was holding the full additional charge of the post of Chief Chemist during the period from 01.04.1998 to 30.06.1998. But, the petitioner was sanctioned full additional charge

allowance in terms of Rule 20 of the service regulations for common cadre officers issued vide proceedings No.24127/93/B1 dated 15.06.1996 read with Rule 49 of the Fundamental Rules. When an employee is kept full additional charge of the higher post, he will be paid 1/5th of the basic pay for the first three months and 1/10th for the next three months as an allowance. Therefore, the petitioner is entitled 1/5th of the basic pay from 01.04.1998 to 30.06.1998 and 1/10th of the basic pay from 01.07.1998 to 30.09.1998 and more than that, the petitioner is not entitled any amount, but the petitioner has received Rs.99,195/-. As per the orders of the Joint Collector/Person-in-charge dated 31.08.1998, the Management sanctioned the difference amount as advance pending receipt of approval from the Director of Sugar subject to a condition that in the event of the proposals of the factory are ultimately negated, he should repay the advance paid vide proceedings dated 03.04.1999. The 1st respondent rejected the proposal of the 2nd respondent and the petitioner is liable to pay an amount of Rs.99,195/- which was received as advance amount after deducting the eligible full additional charge allowance.

5. After hearing at length, as stated above, the learned counsel for the petitioner, submits that the petitioner had submitted a representation dated 22.01.2016 to the Managing Director, Chittoor Co-operative Sugars Limited, Chittoor, requesting for release of gratuity and other terminal

benefits of Rs.3,58,086.03 Ps. for the service rendered in the Chittoor Co-operative Sugars Limited, Chittoor. He requested the Managing Director to deduct Rs.96,652/- instead of Rs.2,03,358/- and to pay the balance amount of Rs.2,61,434/-. It appears that the 2nd respondent-Management sought to recover Rs.96,652/- along with interest amounting to Rs.2,03,358/-, which is not permissible under law.

6. In the facts and circumstances of the case, the Managing Director of the 2nd respondent society is directed to consider the representation of the petitioner dated 22.01.2016 and deduct an amount of Rs.96,652/-, and to pay the balance amount of Rs.2,61,434/- by waiving the interest of Rs.2,03,358/-, which is charged on the due amount of Rs.96,652/-.

7. Accordingly, the Writ Petition is disposed of. No order as to costs.

8. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

11-07-2018
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