

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.1289 OF 2013

C.Sundara Vadivel

...Appellant

versus

1.The Government of Tamil Nadu,
rep. By its Secretary,
Industries Department,
Fort St.George, Chennai 9

2.The Commissioner of Sugar,
696, Anna Salai,
Nandanam, Chennai 35.

3.The Special Officer,
Dharmapuri District Cooperative Sugar Mills Ltd.,
Palacode 636 802
Dharmapuri District

....Respondents

Appeal filed against the order passed by this Court dated
20.2.2013 passed in W.P.No.27377 of 2008.

Prayer in WP.No.27377 of 2008:

Petition file under Article 226 of constitution of India
for issuance of a Writ of Certiorari, calling for the record of
the 2nd respondent in RC No. 22324/SL 2/2008-1 dated
26.09.2008 and quash the same and direct the second and 3rd
respondent to revise the re-fix the petitioner's scale of pay
on par with other C grade supervisors working in the 3rd
respondent sugar mil enabling the petitioners to receive the
scale of pay and allowance as that of the holders of other
"C" category employees with effect from 1.1.1990

For appellant : Mr.K.M.Ramesh

For Respondents : Mr.L.P.Shanmugasundaram

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The claim made by the appellant to revise his pay scale on par with "C" Grade Supervisors working in the Dharmapuri District Cooperative Sugar Mills Ltd., with effect from 10 March 1989 taking into account the common cadre system was rejected by the Commissioner of Sugar. The said order was unsuccessfully challenged before the writ court. Feeling aggrieved, the appellant is before this Court.

2. The appellant was initially appointed as Instrument Supervisor in Dharmapuri District Cooperative Sugar Mills Ltd. The post would come under the supervisory "C" grade in the Engineering Department. The Commissioner of Sugar introduced a common cadre system for efficient administration. As per the common cadre system, transfer is permitted from one sugar mill to another. The Commissioner of Sugar included certain posts in the supervisory "C" Grade in the common cadre system in the year 1989. The common cadre system was later abolished in the year 1997. After the abolition, the Government appears to have fixed a new scale of pay for the erstwhile common cadre Supervisory "C" Grade employees, based on the recommendation made by the Commissioner of Sugar.

3. The appellant approached the Commissioner of Sugar with a claim that his post should have been included in the common cadre system as it was supervisory in the nature of a "C" Grade post. The representation submitted by the appellant was rejected by the Commissioner of Sugar. The order dated 26 September 2008 was challenged before the writ court in W.P.No.27377 of 2008. The learned Single Judge dismissed the Writ Petition both on the ground of laches and merits.

4. The learned counsel for the appellant contended that the case of the appellant should have been considered in the light of the order in W.P.No.15192 of 2000. According to the learned counsel, Mrs.Chandra, petitioner in W.P.No.15192 of 2000 was also not given the benefits of common cadre system on the ground that the post was not included in the order. However, it was given subsequently, pursuant to the direction given by this Court. The learned counsel contended that once it is made out that the post is supervisory, which is included in "c" category, employee is entitled to the salary given to a similarly situated employee, included in the Supervisory "C" category and the common cadre system. The learned counsel further contended that the learned single Judge rejected the Writ Petition on the ground of laches, without taking into account the submission of representation by the appellant, immediately after the order in W.P.No.15192 of 2000.

5. The appellant was holding the post of Instrument Supervisor, which would come under the supervisory "C" cadre. The request of the appellant was to revise his pay scale on par with "C" grade supervisors working with effect from 10 March 1989.

6. The post in question was not included under the common cadre system. The Commissioner of Sugar, in his order dated 26 September 2008, made it clear that the post of Instrument Supervisor has not been brought under the common cadre system and it continued to be covered under the wage board scale.

7. It is not within the province of the Court to direct the employer to include a particular post under the common cadre system. It is for the management to consider all the relevant materials and to take a decision as to whether a particular post should be brought under the common cadre system. The Commissioner of Sugar made it very clear that not all the posts in Supervisory C Grade were brought under the common cadre system. The Government included only certain posts of Supervisory "C" Grade under the common category system.

8. The appellant placed reliance on the order in W.P.No.15192 of 2000 to claim the benefit of revised pay scale. The said Writ Petition was filed by Mrs.Chandra for issuance of a Writ of Mandamus to direct the Commissioner of Sugar to revise and refix her seniority. The learned Single Judge found that the post in which Mrs.Chandra was holding was included in the common cadre system earlier and she had also exercised the option as required by the management. When she was repatriated to the mill in the year 1992, it was found that the scale of pay and allowance availed by other category of supervisors were very much above her salary. It was only under such circumstances, the learned single Judge issued a Mandamus. The order was passed on 22 April 2003. The appellant submitted a representation long thereafter. The learned single Judge was therefore correct in the observation that the appellant was a fence sitter and waited for the decision of the Court in the case of other employees.

9. The case of Mrs.Chandra, petitioner in W.P.No.15192 of 2000 has no relevance to decide the issue raised by the appellant. The consent of the petitioner in W.P.No.15192 of 2000 was taken for bringing the post which she was holding under the common category. However, that is not the case here. The post of Instrument Supervisor was not included in the common cadre system. The appellant virtually wanted the Court to issue a direction for bringing the post of Instrument Supervisor under the common cadre system. The claim was rightly rejected by the learned single Judge.

10. The Hon'ble Supreme Court in P.U.Joshi and others vs. Accountant General and others, (2003(2) SCC 632), indicated the extent of judicial review in matters relating to determination of conditions of service.

The Supreme Court said :-

10. ... Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to

even an existing service.

11. The appellant seeks a direction to this Court to revise his pay scale taking into account the pay scale of the erstwhile employees under the common cadre without including the post in question under the said cadre. It is not for the Court to advise the Government to include a particular post under the common cadre and revise the salary of an employee, who is holding a similar post. We are therefore of the view that there is absolutely no merit in any of the contentions taken by the appellant.

12. In the upshot, we dismiss the intra Court appeal. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Industries Department,
Fort St.George, Chennai 9

2.The Commissioner of Sugar,
696, Anna Salai,
Nandanam, Chennai 35.

3.The Special Officer,
Dharmapuri District Cooperative Sugar Mills Ltd.,
Palacode 636 802
Dharmapuri District.

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.13108

+1cc to the Government Pleader, S.R.No.13417

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.13208

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GP(CO)

RRS (15/04/2019)

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