

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.9986 of 2010
and M.P.Nos.1 to 5 and 5251 of 2010

G.Gunaseelan

... Petitioner

Vs

1.The Principal Secretary to Government,
Industries Department, Secretariat,
Chennai - 600 009.

2.The Commissioner of Sugar,
690, Anna Salai, Nandanam,
Chennai - 600 035.

3.The Administrator,
N.P.K.R.R. Co-Operative Sugar Mills Ltd.,
Thalainairu, Elanthoppu - 609 201,
Mayiladuthurai, Nagai District.

.... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari praying to call for the records of the first respondent and second respondent in Letter No.26553/MIC.2/2006-5, dated 24.03.2010 and RC.No.28636/A&I/2005(7), dated 24.04.2010 and quash the same.

For Petitioner : Mr.Md.Noorulla

For Respondents: Mr.A.Zakir Hussain
Government Advocate

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O R D E R

The prayer in the writ petition is to issue a Writ of Certiorari praying to call for the records of the first respondent and second respondent in Letter No.26553/MIC.2/2006-5, dated 24.03.2010 and RC.No.28636/A&I/2005(7), dated 24.04.2010 and quash the same.

2. The petitioner was initially appointed as Technical Assistant and subsequently, his service was regularized as per the proceedings of the Joint Commissioner of Sugar dated 29.03.1992 in the Supervisory cadre and the petitioner was redesignated as Assistant Engineer, in compliance with the proceedings of the Joint Commissioner of Sugar, in Rc.No.51438/G2/1990, dated 21.05.1992.

3. The pay scale of the petitioner was fixed from the date of acquiring B.E.degree qualification. In the year 1991, a Common Cadre System was introduced in the Cooperative and Public Sector Sugar Mills vide G.O Ms.No.866 dated 25.7.1984 by the 1st respondent, wherein the 1st respondent authorised the 2nd respondent to frame necessary rules and regulations for appointment, transfer etc., for the second and third level officers of Co-operative & Public Sector Sugar Mills. Consequent to the introduction of the Common Cadre System, the 2nd respondent brought certain posts/categories and also extended the benefit of Common Cadre System to certain other posts/categories including Assistant Engineer Cadre. Subsequently, the above Common Cadre System was abolished in the year 1997.

4. The respondent in his letter No.28553/MIC.2/2006-5, dated 24.03.2010 had issued directions to the second respondent to re-examine the issue of redesignation and pay fixation based on redesignation in the grade of Assistant Engineer (Civil) in Co-op Sugar Mills and to consider cancellation of the said orders.

5. The relevant portion of the orders dated 24.03.2010 , which reads hereunder:

" I am directed to refer your letter cited, wherein you have requested the Government to issue instructions to proceed further on the representations submitted by the 15 individuals requesting for re-designation as Assistant Engineers.

2. In the Joint Commissioner's of Sugar proceedings Rc.No.51438/G2/90, dated 21.05.1992, it has been stated that the Civil Engineering Staff in the sugar mills would be designated as follows:

"All the personnel with degree qualification will be designated as Assistant Engineer and all the personnel with diploma qualification will be designated as Junior Engineer in which they are functioning. There will be no change in the

present emoluments of all the personnel because of the change in designated as Junior Engineer. Those who do not have these qualification, will be continued under the present designation. There will be no change in the present emoluments of all the personnel because of the change in designation and the existing system will continue".

3. It has been stated that, in the Letter Rc.No.3505/G2/99, dated 30.08.99 permission was accorded by the then Commissioner of Sugar to the Special Officer, Salem Co-operative Suga Mills and M.R.Krishnamurthy Co-operative Sugar Mills to re-fix the scale of pay of Thiru R.Ravichandran and Thiru.K.N.Murugan, Junior Engineer (Civil) on par with the Assistant Engineer (Mechanical) and Assistant Engineer (Electrical) as they have acquired the B.E. Degree. It has also been stated that on the basis of the representations received from the individuals, the then Director of Sugar permitted the Chengalrayan Co-operative Sugar Mills to re-designate Thiru M.Karunanidhi, Electrical Supervisor as Assistant Engineer (Electrical), Dharmapuri District Co-operative Sugar Mills to re-designate Thiru M.Ramachandran, Electrical Supervisor to re-designate as Assistant Engineer (Electrical) and Arignar Anna Sugar Mills to re-designate Tvl.A.Melvin Joseph, Draughtsman and D.Saravanan Junior Engineer, (Mechanical) as Assistant Engineer (Electrical) respectively and to revise their scales of pay on par with Assistant Engineers.

4. Tvl.M.Palani and Fourteen others, working in various categories in the Co-operative and Public Sector Sugar Mills have submitted representations to re-designate them as Assistant Engineer as they have acquired B.E/B.Tech, Degree and to revise their scale of pay on par with the Assistant Engineer citing the above four individuals.

5. On examination of the issue it is seen that, the order has been issued on the wrong interpretation that Diploma holder Assistant Engineers (Electrical)/Assistant Engineers (Mechanical) are eligible for the scale of pay applicable to Graduate Engineers once they acquire B.E. degree as per proceedings RC.No.25185/89/C3, dated 27.12.1989 of the Commissioner of Sugar. Following the said wrong precedents, the then Director of Sugar has ordered re-designation of Thiru A.Arul, Technical Assistant of

M.R.Krishnamurthy, Co-operative Sugar Mills, Ltd., with effect from 15.06.1996 and of Thiru G.Gunaseelan, Technical Assistant of NPKRR Co-operative Sugar Mills Ltd., from 15.06.1996 and 10.05.1994 respectively. The then Director of Sugar has also entertained the representations of some Electrical Supervisors, a Draughtsman and a Junior Engineer (Mechanical) for the re-designation as Assistant Engineers in view of their possession of BE degree with re fixation of pay applicable to Graduate Engineers, Thiru.T.Senthilvel, Electrical Supervisor, working in Arignar Anna Sugar Mills which is a unit of Tamil Nadu Sugar Corporation Ltd., has represented to revise his scale of pay on par with Assistant Engineer, for possession of BE degree. Though the Tamil Nadu Co-operative Engineer, for possession of B.E. Degree. Though the Tamil Nadu Co-operative Societies Rules, 1988, are not applicable to Public Sector Sugar Mills, his name has been included in the list along with others working in Co-operative Sugar Mills Ltd., seeking guidelines of the Government on the representation.

6. The Assistant Engineer post is a direct recruitment post and not a promotional post and the basic qualification for the post of Assistant Engineer (Electrical) is as follows:

" A Degree in Electrical Engineering of any recognized University with an experience of atleast 3 years and or maintenance of power station and electrical equipment of sugar factory or a Diploma in Electrical Engineering of any recognized University with an experience of atleast 5 years in Erection and or maintenance of power station or Electrical Equipments in Sugar factories. Other persons having similar educational qualification and experience of 5/7 years for degree holders and diploma holders respectively in working Turbo Alternators, High pressure Turbine and High Power and High Speed Motor in any large Industrial Undertaking may also be considered.

The post of Assistant Engineers can not be filled up by re-designating the existing employees and they have to undergo the process of selection. While notifying the vacancies as per the existing procedures. The former Director of Sugar has not

followed relevant rules/procedures or any norm for such re-designation of the 4 individuals mentioned in para 3 above. Arignar Anna Sugar Mills is a public Sector undertaking which comes under the control of Chairman and Managing Director, Tamil Nadu Sugar Corporation Ltd. The former Director of Sugar has passed orders re-designating Thiru.A.Melvin Joseph, Draughtsman, Arignar Anna Sugar Mills as Assistant Engineer (Electrical) from the date of possession of B.E. qualification from 2000 with monetary benefit from 01.02.2006 without placing the case of the said individual before the Board of Tamil Nadu Sugar Corporation Ltd., which is more relevant body to take a decision.

7. The Special Officer/Administrator/Chief Executive of the concerned mills is the appointing authority for the post of Assistant Engineer. As the pay fixation of certain individuals has been ordered initially on wrong interpretation and wrong precedents, and without the approval of the Board. I am directed to request you to re-examine the whole issue with reference to the rules/procedure, consider cancellation of the orders already issued by the then Director of Sugar and issue fresh orders in accordance with the rules relating to direct recruitment.

6. The relevant portion of the orders dated 24.04.2010, which reads hereunder:

Based on your proposal sent under reference 1st cited orders have been issued in this office letter 2nd cited redesignating Thiru.A.Arul, Junior Engineer (Civil) as Assistant Engineer (Civil) with monetary effect from 20.05.1994.

Consequent on the above, representations have been received from various employees of various Cooperative Sugar Mills seeking such redesignation to them also. Hence a proposal has been sent to Government which is the competent authority to make such a re designation as per Rule 187 of the Tamil Nadu Co-operative Societies Rules 1988. The Government after examination of the whole issue existing Rules and procedures in this regard have passed orders re-examine the whole issue with reference to Rules/Procedures and to consider cancellation of orders already issued by the then Director of Sugar in the reference 2nd cited and

issue fresh orders in accordance with the rules relating to direct recruitment, vide Government letter 4th cited, a copy of the same is enclosed. The whole issue was examined carefully with the rules, procedures and you are therefore requested to revise the orders issued based on this office letter 2nd cited to the above individual, as directed in the Government letter 4th cited, immediately and send a copy of the same to this office along with the individual."

7. The learned counsel for the petitioner submits that similar issue challenging the re designation order was covered in a Writ Petition, which was dismissed by this Court. The Writ Appeals against the said order were also dismissed by an order dated 08.12.2011 in W.A.Nos.1979 and 1980 of 2011. This matter was taken to the Supreme Court in C.A.Nos.9206-9207 of 2013 and the Supreme Court has taken a lenient view regarding the recovery of pay. The Hon'ble Supreme Court held that since the appellant was not responsible for re designation, no recovery should be made. The relevant portion is as under:

"We have heard learned counsel for the parties. It is not in dispute that the appellant was not responsible for the alleged mistake committed by the concerned authority in re-designating him as Assistant Engineer (Electrical) and fixing his pay in the scale prescribed for that post. This being the position, there was absolutely no justification to order recovery of the amount paid to the appellant in the pay scale prescribed for the post which he was holding at the relevant time.

8. In view of the orders of the Hon'ble Supreme Court, the Writ Petition is dismissed. However, there shall no order of recovery of amount paid to the petitioner, in the pay scale of Assistant Engineer.

9. This Writ Petition is disposed of with the above said directions. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Asst.Registrar (Insp cell)

/true copy/

Sub Asst. Registrar

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To

1.The Principal Secretary to Government,
Industries Department, Secretariat,
Chennai - 600 009.

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690, Anna Salai, Nandanam,
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3.The Administrator,
N.P.K.R.R. Co-Operative Sugar Mills Ltd.,
Thalainairu, Elanthoppu - 609 201,
Mayiladuthurai, Nagai District.

+2 ccs to Mr.Md.Noorulla Advocate sr80360
+1 cc to Special Government Pleader sr80738

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