

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :05.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.28251 of 2013
and
M.P.No.1 of 2013

S.Sudhakar

.. Petitioner

- Vs -

1.The Commissioner of Sugars,
450, Anna Salai,
Nandhanam,
Chennai 600 035.

2.The Special Officer,
Kallakurichi Cooperative Sugar Mills Ltd,
Munghilthuraipattu Post & Village,
Kallakurichi Taluk,
Villurparam District.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the respondent to regularize the services of the petitioner in the post of Instrument Supervisor in the second respondent mill and to grant time scale of pay with all consequential service and monetary benefits.

For Petitioner : Mr.R.Chandrasekaran
For Respondents: Mr.L.P.Shanmugasundaram,
Spl.G.P (Coop) for R1

: Mr. B. Anand for R2

ORDER

The writ petition was filed by the petitioner, to direct the respondent to regularize the services of the petitioner in the post of Instrument Supervisor in the second respondent mill and to grant time scale of pay with all consequential service and monetary benefits.

2.The case of the petitioner is that the petitioner joined as Junior Engineer (Electrical) in the 2nd respondent Mills on

08.11.2004 on daily wages basis after completion of Diploma and requisite apprenticeship training in Triupattur Cooperative Sugar Mills Ltd. From the date of his appointment, the petitioner has rendered unblemished service without giving room for any complaint; he had continuously served in the respondent Mill for 600 days without any break. As per the order of the Government in G.O.Ms.NO.191 (PC) department, dated 29.04.1998, the petitioner's daily wages was raised to Rs.160/- per day.

2.1.The grievance of the petitioner is that even after completion of 600 days of continuous service, and also possessing the requisite qualification and experience to the post of Junior Engineer (Electrical), he was not appointed in the said post. The petitioner made several representations to the second respondent requesting to appoint him in a permanent vacancy and the second respondent, vide its letter dated 22.3.2006, sought permission of the 1st respondent, however the first respondent vide its proceedings dated 17.5.2006, permitting the appointment of the petitioner on permanent basis in the 2nd respondent Mill. But to his shock and surprise, the 3rd respondent ousted the petitioner from service on 18.8.2006 and it was informed to the petitioner orally.

2.2.Aggrieved against the same, the petitioner raised an industrial dispute in I.D.No.143/2007 before the Labour Court, Cuddalore and further a reply was given by the 2nd respondent under RTI Act stating that the post of Electrical Engineer (Electrical) is vacant as on 10.06.2010 in the second respondent mill. Pending the above industrial dispute, the second respondent has made an advertisement in the Newspaper on 2.7.11 for filling up the permanent vacancy to the post of junior Engineer (Electrical)/ Electrical Supervisor in time scale of pay in the 3rd respondent mill, which was taken into note by the Labour Court, Cuddalore, during enquiry in connection with industrial dispute raised by the petitioner. However in response to the advertisement, the petitioner has made an application seeking appointment to the said post and thereafter he was called for interview and he also attended the interview. However the petitioner was not selected due to the pending industrial dispute before the Labour Court, Cuddalore.

2.3. It is the further averment of the petitioner that the Labour Court has passed an award on 27.09.2011 in favour of the petitioner, while setting aside the oral termination dated 17.8.2006 and directed the 2nd respondent to reinstate the petitioner in service in the post of Junior Engineer (Electrical). Pursuant to the said award, the petitioner made representation dated 27.01.2012 to the respondent enclosing the copy of the award of the Labour Court, requesting to reinstate him into service. However the 3rd respondent did not come

forward to appoint the petitioner, which prompted the petitioner to file WP.No.10545 of 2012 before this Court seeking implementation of the award passed by the Labour Court. However, this Court by its order dated 27.09.2011 dismissed the petition.

2.4. In the mean while, the second respondent preferred W.P.No.10830 of 2012 as against the award of the Labour Court and this Court, vide order dated 28.09.2012, directed the petitioner and management therein to comply with Section 17 (B) of the Industrial Disputes Act, 1947 and to pay the last drawn wages every month from the date of the writ petition and also directed to pay arrears within a period of four weeks. In spite of the said order, the respondents did not come forward to implement the award passed by the Labour Court, thereby, the petitioner was constrained to file a contempt petition and in pursuance of the above contempt proceedings, the petitioner was reinstated from 22.4.2013 in the post of Instrument Supervisor as the post of Junior engineer (Electrical) was not vacant at that time. In order to regularise his service, the petitioner made representation on 1.6.2013 to the respondents, which did not evoke any response and, therefore, the present petition has been filed.

3. Learned counsel appearing for the petitioner submitted that the representation submitted by the petitioner pursuant to the order passed by this Court has not been complied with in letter and spirit and the respondents have not regularised the services of the petitioner and, therefore, prays for allowing the present petition.

4. Though detailed counter has been filed by the respondents, however, learned Special Government Pleader appearing for the respondents submitted that in view of the relief sought for by the petitioner, this Court may direct the 1st respondent to consider the petitioner case on the basis of the representation and the orders passed by this Court, in accordance with law within a particular time frame.

5. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. The facts in the present case are not in dispute. A perusal of the entire records reveal that after a series of prolonged litigation the petitioner was reinstated in service on the basis of the orders passed by this Court and on initiation of contempt proceedings and this Court, vide its order dated 28.9.12, directed the respondents herein to comply with the provisions of Section 17-B of the Industrial Disputes Act, 1947.

However, the said direction has not been complied with. In the facts and circumstances of the case, this Court is of the considered opinion, that while the respondents should be directed to comply with the orders of this Court dated 28.9.12 relating to complying with Section 17-B of the Industrial Disputes Act, insofar as the petitioner is concerned it would suffice if liberty is granted to the petitioner to file appropriate petition before the Labour Court insofar as it relates to non-implementation of the award. Till such time, the respondents are directed not to disturb the employment of the petitioner.

7. Accordingly, this writ petition is disposed of directing the respondents to comply with the orders of this Court dated 28.9.12 relating to complying with Section 17-B of the Industrial Disputes Act and further the the petitioner is granted liberty to file appropriate petition before the Labour Court relating to non-implementation of the award. Till such time, the respondents are directed not to disturb the employment of the petitioner. In the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jrs

To

1.The Commissioner of Sugars,
450, Anna Salai,
Nandhanam,
Chennai 600 035.

2.The Special Officer,
Kallakurichi Cooperative Sugar Mills Ltd,
Munghilthuraipattu Post & Village,
Kallakurichi Taluk,
Villurparam District.

+1 CC to Govt. Pleader sr 32885

+1 CC to Mr.R.Chandrasekaran, Advocate sr 32524

W.P. NO. 28251 of 2013

SAI (CO)
SP(12/10/2020)