



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.11.2021

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.3721 of 2021 &
W.M.P.No.4250 of 2021

M.Subramanian

...Petitioner

Vs.

1.The Managing Director,
Nadippisai Pulavar K.R.Ramasamy,
Co-operative Sugar Mills Ltd,
Thalainayar, Mayiladuthurai Taluk,
Nagapattinam District - 609 201.

2.The Commissioner of Sugar/Director of Sugar,
No.690, Anna Salai,
Periyar Building,
Chennai - 600 035.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in proceedings Rc.No.2365/2005/A1 dated 06.12.2019, quash the same and consequently direct the respondents to pay the petitioner, salary for the post of Office Manager and pay the difference in salary for the period from 13.02.2007 to 31.08.2010 along with interest and with all attendant terminal benefits.

For Petitioner .. Ms.D.Geetha

For Respondents.. Mr.G.Krishna Raja, AGP (for R.2)
***M/s.A.Shahana Fathima for R1**

ORDER

The case of the petitioner is that he was initially appointed in the first respondent / Cooperative Sugar Mills Ltd., as a Store Keeper in 1985 and subsequently was appointed as Cane Office Manager In-charge. In 2010 after attaining the age of superannuation, he retired from service while officiating as Office Manager In-charge. The petitioner claims to be a Post Graduate Degree holder in History and also in possession of Diploma in Industrial Cooperative Management and Diploma in Labour Laws. According to him, he had earlier served in the post of Superintendent 'C' Grade which was feeder grade for promotional post of Office Manager.



2. According to the petitioner, the qualification required for the promotion to the post of Office Manager is a degree from any recognized University with experience of 5 years in Supervisory feeder category. The Bye-Laws which prescribed the qualification also state that promotion from one level to another is based on basic qualification, experience, merit, suitability and seniority. The petitioner having worked as Store Keeper for many years and then as Superintendent had acquired sufficient experience in the operation of the Sugar Mills which cannot be disputed at all.

3. According to the petitioner, in 1997, the common cadre system in the public sector Sugar Mills came to be established and certain guidelines thereafter issued in 1999 for filling up vacancies arising in each Sugar Mill. In terms of the guidelines issued by the second respondent, the posts which were lying to be vacant was identified and to be filled up with qualified candidates. In respect of the first respondent, a post of Office Manager was lying vacant as on 01.07.2000. The permission was sought from the second respondent for filling up the said post by promoting an eligible candidate from among the available candidates in the first respondent Mill itself. However, despite several reminders, no response was forthcoming. In the said circumstances, the petitioner being the senior most C-Grade Superintendent in the feeder category, had applied for consideration for promotion. Unfortunately, without filling up the post with the petitioner herein who was the most eligible and experience candidate, the post had been filled up on Ad-hoc basis by bringing candidates from other Mills for a period of 4 years.

4. In 2004, the post of Office Manager became vacant again and once again an application was sent by the petitioner but however it was not considered and it was notified inviting applications from others on 11.03.2005. The petitioner therefore was constrained to approach this Court in W.P.No.10840 of 2005 challenging the action of the first respondent. During the pendency of the Writ Petition, the petitioner was officiating as Office Manager, by proceedings dated 13.02.2007 and 21.02.2007 as Full In-charge for the post of Office Manager. After a brief gap from 08.01.2018, the petitioner once again officiated as In-charge Office Manager. Till his superannuation on 31.08.2010, according to him, he was performing all the administrative functions and duties of a regular Office Manager. Unfortunately, he was not paid salary applicable to the post of regular Office Manager.

5. In the above circumstances, the petitioner appeared to have made a representation on 12.10.2009 seeking fixation of salary as applicable to the post of Office Manager during the period of his service as Office Manager.



6. In the meanwhile, the Writ Petition filed by the petitioner in W.P.No.10840 of 2005 came to be dismissed by this Court on 30.01.2019. As against that, the petitioner filed a Writ Appeal in W.A.No.1399 of 2019, a Division Bench of this Court which heard appeal was pleased to pass an order on 17.07.2019 and the relevant paragraphs of the judgment read as under:

"7. There is no right accrued to the appellant to claim that he should be appointed substantively in the post of Office Manager. The fact that he was given full additional charge in the post of Office Manager would not give him any right to claim appointment on regular basis. It was for the Management to decide as to whether a particular post should be filled up. The Management has to take into account several factors, before taking a decision, for filling up the post. It is not for the Court to direct the Management to fill up the post, without taking into account, the financial condition of the Mill. We are therefore of the view that the learned single Judge was justified in rejecting the request for giving promotion to the appellant.

8. The next question is, as to whether the Management was correct in not denying the salary to the appellant, notwithstanding the fact he was given full additional charge of the post of Office Manager.

9. The appellant has already given two representations, the last one being dated 12.10.2009. The Mill appears to have given a reply to the said representation to the effect that on account of the pendency of the writ petition, it would not be possible to consider the claim for salary in the post of Office Manager.

10. We direct the first respondent to consider the representation dated 12.10.2009 on merits and taking into account the relevant regulations. The Management, should also consider the fact that the appellant was given full additional charge in the post of Office Manager and he has been functioning as such till his retirement. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment."

7. It appeared that pursuant to the above said order of the Division Bench, the first respondent passed an order on the representation of the petitioner rejecting his request vide proceedings dated 06.12.2019. Being aggrieved by the rejection of the request, the present Writ Petition has been filed challenging the proceedings dated 06.12.2019.



8. Mrs. D. Geetha, learned counsel for the petitioner reiterated the above facts. The principal contention of the learned counsel is that after having allowed the petitioner to officiate as Office Manager, it is not open to the first respondent to deny him the pay and allowance as the Administrative Manager. The learned counsel also contended that similarly placed persons with degrees had been posted as Office Manager and held the post without any issues raised. Only in respect of the petitioner alone, certain objections were raised as to his qualification and non-eligibility. When the first respondent thought it fit to engage services of the petitioner as Office Manager and extracted work from him, ought not to be allowed to raise technical objections as to the lack of qualification on the part of the petitioner or lack of funds in the Mills.

9. According to the learned counsel, once the service of the petitioner had been utilized by the first respondent as Manager In-charge, whether he was fully qualified or not become immaterial. The petitioner was made to work as In-charge Manager in order to sub-serve the interest of the mill and hence denial of wages to him is totally unfair, arbitrary and unjust.

10. On behalf of the first respondent, no counter has been filed and no effective representation had also been forthcoming. Since, the petitioner herein is 70 years old, being a very senior citizen, this Court has taken a call to dispose of the matter on the basis of the facts and the materials that are made available on record.

11. From the above factual narrative, this Court cannot have any other view except to agree with the conditions raised on behalf of the petitioner. Admittedly, the petitioner was officiating as Manager In-charge for some period between 2007 and 2010 till his retirement. The principal objection on behalf of the respondent as disclosed in the impugned communication is lack of qualification on the part of the petitioner. According to the first respondent, his PG Degree without a UG Degree was not considered as eligible qualification in terms of the provisions of the Cooperative Societies Act. But the fact that he was holding the post as Additional In-charge is admitted in the impugned communication. It is further pointed out on behalf of the first respondent that there was a bar in filling up of the vacant posts and also financial constraint faced by the Mill. In the said circumstances, according to the first respondent, the claim for salary for the post of Office Manager was not feasible on account of his ineligibility and for other alleged reasons stated therein.

12. This Court is unable to countenance such specious objections raised on behalf of the first respondent. First of all, the issue in regard to the ineligibility of the



petitioner may be a valid defence against the claim of the petitioner over appointing him on a regular basis. Even according to the first respondent, there was a bar in filling up of the vacancy but however, the post of Manager needed to be manned for the effective functioning of the Mill. In such circumstances, having utilized the services of the petitioner herein as Manager In-charge between 2007-2010, the salary and allowance admissible to the post of Manager, in such circumstances cannot be denied to him at all.

13.It is needless to mention that once the work of the post had been extracted by the Management, it does not lie in the mouth of the management to come up with factors like ineligibility etc., such objections may hold good in case there was any regular appointment to the post of Manager. But in a case like this, when the petitioner was allowed to officiate as Manager In-charge and the functioning of him was to the benefit of the Mill, the first respondent certainly is not entitled to deny pay parity to him on the ground that he was not eligible to be considered for regular appointment in terms of the provisions of the Cooperative Societies Act.

14.The other objection regarding financial constraint cannot be countenanced in law at all for denying the petitioner his due for a considerable period of time, once a person's service had been utilized against a particular position/post. If this Court were to accept the explanation of the first respondent, that the petitioner can be denied salary applicable to the position he held and discharged between 2007 and 2010, it would amount approving the action of the first respondent for exploiting the service of the petitioner in violation of Article 14 of the Constitution of India.

15.This Court is of the view that the first respondent on one hand cannot be allowed to make use of the service of the petitioner as Manager In-charge, on the other hand can come up with a specious plea that the petitioner was not ineligible for regular appointment and therefore was not entitled to be paid salary admissible to the post of Manager. In the above circumstances, this Court is of the view that the writ petitioner has made out a case for relief.

16.In the circumstances, the impugned proceedings in Rc.No.2365/2005/A1 dated 06.12.2009 is hereby set aside and the Writ Petition stands allowed. The first respondent is directed to pay salary and admissible allowances for the post of Office Manager and pay the differential amounts for the period he worked as Manager In-charge between 2007 and 2010 * **the difference in salary for the period from 13.02.2007 to 31.08.2010 with all attendant terminal benefits.**



17.The direction of the Court shall be complied with by the first respondent within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition stands closed.

WEB COPY

Sd/-

Assistant Registrar (CS-VIII)

dated 10.12.2021

*** Corrected as per order of this Court
dated 22.12.2021 made in WMP No.29236/2021
in WP No.3721/2021.**

****incorporated as per order of this Court
dated 22.12.2021 made in WMP No.29236/2021
in WP No.3721/2021.**

//True copy//

Sd/-

Assistant Registrar (CS-VIII)

dated 12.01.2022

Sub Assistant Registrar

mrm

To

**To be substituted to the
order already despatched
on 20.12.2021**

1.The Managing Director,
Nadippisai Pulavar K.R.Ramasamy,
Co-operative Sugar Mills Ltd,
Thalainayar, Mayiladuthurai Taluk,
Nagapattinam District - 609 201.

2.The Commissioner of Sugar/
Director of Sugar,
No.690, Anna Salai,
Periyar Building,
Chennai - 600 035.

***+1cc to M/s.D.Geetha, Advocate SR.No.69232**

***+1cc to Mr.R.Gophinath, Advocate SR.No.69395**

+1cc to Government Pleader SR.No.59443

W.P.No.3721 of 2021 and
W.M.P.No.4250 of 2021

KV (CO)

GMV (10/12/2021)
GMV (12/01/2022)