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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P. No. 30034 of 2011
and
Contempt Petition No. 1503 of 2012
and M.P.Nos.2 and 3 of 2011

Pondicherry PASIC Technical Employee Association
(Reg. No. 908/RT094) Rep. by its
President N.Kothandapani,
A2, 1st Floor, R.P. Apartment,
Sringeri Magam Street, Sivaganga Nagar,
Ellapillachavadi,
Puducherry-605 005.

...Petitioner in W.P.No.30034/2011
and Cont.P.No.1503/2012
Vs

1. The Managing Director,
Pondicherry Agro Service and Industries Corporation Ltd.,
Thattanchavadi,
Puducherry-605 009.
2. Union of India,
Rep. By its Chief Secretary to Government,
Government of Pondicherry.
3. The Secretary to Government,
Agricultural Department,
Government of Pondicherry.
(R2 and R3 impleaded as per order dated 20.03.2012 in M.P.1/2012)

...Respondents in W.P. No. 30034 of 2011

1. Mr.Vasantha Kumar
Managing Director,
Pondicherry Agro Service and Industries Corporation Ltd.,
Thattanchavadi,
Puducherry- 605 009
2. Mrs.Sathiyavathi I.A.S.
Chief Secretary to Government,
Government of Pondicherry



3. Mr. Pandey I.A.S.
Secretary to Government,
Agricultural Department,
Government of Pondicherry

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...Respondents/Respondents in Cont. P. No 1503 of 2012

Prayer in W.P. No. 30034 of 2011: Writ petition is filed under Art. 226 of Constitution of India praying to issue Writ of CERTIORARIFIED MANDAMUS after calling for the concerned records relating to the order file No. 5/PASIC/RP/MD/11-12/03, dated 27.05.2011 passed by the respondent and quash the same and consequently direct the respondent to restore the pay and promotion of the members of the petitioner Association prior to issue of Order No.5/PASIC/RP/MD/11-12/03, DATED 27.05.2011 passed by the respondent.

Prayer in Contempt No. 1503 of 2012: Contempt Petition is filed under Section 11 of Contempt of Courts Act, 1971, praying to initiate contempt proceedings against the respondents for having willfully disobeyed the direction given by this Hon'ble Court in M.P.No.3 of 2011 in W.P.No. 30034 of 2011 dated 03.07.2012 and punish them as per the provisions of the Contempt of Courts Act, 1971.

For Petitioner : Mr.M.Gnanasekar
in both cases
For Respondents : Mr.P.Manoharan
Senior Counsel for K.P.Jotheeswaran
R1 in both cases

For Respondent : Mr.Dejerany
for R2 & R3 (Pondicherry)

COMMON ORDER

Writ Petition is filed challenging the Order dated 27.05.2011 passed by the 1st respondent and seeks to quash the same and consequently direct the 1st respondent to restore the pay and promotion of the members of the petitioner Association.

Contempt Petition is filed seeking to initiate contempt proceedings against the respondents for having willfully disobeyed the direction given by this Court in M.P.No.3 of 2011 in W.P.No. 30034 of 2011 dated 03.07.2012 .

2. It is averred in the writ petition that the Pondicherry Agro Service and Industries Corporation Ltd., (PASIC in short) is a Government of Puducherry undertaking and carrying on



activities like selling products for Agriculture Activities viz., seeds, fertilizers, pesticides and Agriculture implements to the farmers. The members of the petitioner Association were promoted to the various post like depot Salesman, Depot Manager, Senior Depot Manager and Manager Technical on regular basis, by orders of the Managing Director based on the approval of the Board and issued by the competent authority is Managing Director and there was no illegality in the promotions made by the respondent. The salary for the month of December 2010 was paid without any recovery till March 2011. March 2011 salary was paid on June 2011. Along with the salary for the Month of March 2011, the order dated 27.05.2011 was given to the member of the Association. In the order dated 27.05.2011 it was stated that all promotions/up gradations/ replacement scale/re-designation etc., granted w.e.f. 01.01.2006 were examined and cancelled all the promotions etc., It is further submitted that the members of the petitioners were paid 20% of the salary paid as HRA was also unreasonably reduced to 10% in respect of members of the petitioners Association.

3. The learned counsel for the petitioner submits that the members of the Petitioner Association are regular employees and granted regular promotion granted by the Managing Director. The present order dated 27.05.2011 was issued by the same authority i.e. Managing Director and as per the decision of the Supreme Court, the administrative authority has no power of review. Further, the order of promotion granted already cannot be cancelled retrospectively without giving opportunity of hearing. The respondent had not given any notice before effecting changes in the promotion, therefore the order dated 27.05.2011 is in violation of Section 9A of the Industrial Disputes Act 1947.

4. The learned counsel for the petitioner further submits that as per the provisions of the Payment of Wages Act, the salary for the previous month should be paid on or before 10th of succeeding month. The respondent failed to pay even the reduced salary from the month of July 2011 to till date, which is highly illegal and arbitrary. After having extracted work from the employees, it is not open to the respondent to deny the salary for the period during which they have actually worked on the basis of the principle of quantum merit.

5. In the Contempt Petition, it is submitted that the members of the Petitioner Association have not been paid their salaries from the month of July, 2011 to till date. The respondents are not paying the monthly salary on the ground that the PASIC Administration has no fund to pay the salary to all the employees. The action of the respondents in not implementing the order dated 03.07.2012 in M.P.No.3 of 2011 in W.P.No. 30034 of 2011 is willful and deliberate.



6. The order passed by this Court on 03.07.2012 in M.P.No.3 of 2011 in W.P.No.30034 of 2011 reads as follows:-

" In pursuance of the order passed by me on 25.06.2012, Mr.T.Murugesan, learned Government Pleader of Pondicherry and senior counter submitted that since 80% of the amount payable by the Government of Puducherry to PASIC Limited, has to come from the Government of India, necessary arrangements have been made and that payment of dues to PASIC limited will be made by 16.07.2012, Therefore, immediately after receipt of the payment from the Government of Puducherry, the PASIC Limited is directed to settle atleast a portion of the arrears of wages to the workmen, so that the workmen who have not been paid wages for the past ten months do not suffer.

Call the matter for reporting compliance on 23.07.2012."

7. It is a matter of record that this court thereafter, on 24.07.2012 passed the order as follows:-

" Mr.T.Murugesan, learned Special Government Pleader, Pondicherry and learned Senior counsel brought the matter for being mentioned today. In my order dated 03.07.2012, I recorded a statement from the learned Special Government Pleader, Pondicherry and the Senior counsel, that 80% of the amount payable by the Government of Puducherry has to come from the Government of India. That, upon verification, it is found to be an incorrect information. Therefore, it is clarified that portion of the order dated 3.07.2012, as though 80% of the amount has to come from the Government of India, stands deleted. Post on 06.08.2012. "

8. The first respondent filed counter affidavit submitting that the then Political Chairman, Thiru A.Elumalai, M.L.A and the Managing Director, Thiru B.Prabakaran of the Corporation have (i) allegedly convened incomplete, incompetent, illegal and invalid Board Meetings without even quorum, (ii) completely ignored the PASIC (Staff Service) Rules 1988 and the Recruitment Rules and (iii) given promotions, upgradations, replacements scales, redesignation, double increments etc. to ineligible individual employees. Hence, all the said actions are beyond the scope of their power, authority and jurisdiction, and would not confer any legal and enforceable rights on such individual employees to those benefits. All such individual employees are



deemed to have knowledge of such violations, illegalities etc., and they are not entitled even for notice before cancellation of the same. Hence, by the impugned order dated 27.05.2001, the Corporation has rescinded all such illegal, invalid and unenforceable promotions, upgradations, replacements scales, redesignations, double increments etc. on and from 01.01.2006. Therefore, only those individual employees are aggrieved persons and the said order gives cause of actions only to them to challenge the same. The Petitioner as and Employees Association has no legal right to represent or challenge such individual grievances of its members. Hence, the Petitioner Association has no legal right and locus standi to challenge the impugned order dated 27.05.2011 and consequently the above Writ Petition filed by it, is not maintainable.

9. It is submitted that for carrying out the regular and permanent works in its Offices, Depots and Scales Outlets, the Corporation is having 417 sanctioned permanent posts. In accordance with the qualifications, method of recruitment etc. prescribed in the Rules and the procedures prescribed in the PASIC (Staff Service) Rules 1988, the Corporation has made regular appointments to the said posts and also filling up the vacancies arising therein from time to time. Rule 13 of the PASIC (Staff Service) Rules 1988 prescribes method of promotion, the constitution of (i) Senior Corporation Promotion Committee, consisting of Chairman, Vice-Chairman and Managing Director for Promotion to the Group-A & B Posts and (ii) Junior Corporation Promotion Committee, consisting of Managing Director, General Manager and Chief Accounts Officer for Promotion to the Group-C & D Posts, the procedures to be followed therefor etc. The Chairman/Managing Director of the Corporation has power, authority and jurisdiction to give promotions only to the employees possessing the qualifications prescribed in the Recruitment Rules in accordance with the methods and procedures prescribed in Rule 13 of the PASIC (Staff Service) Rules 1988. Otherwise, such promotions would be beyond the scope of their power, authority and jurisdiction.

10. It is further submitted that the Chairman and the Managing Director of the Corporation have power, authority and jurisdiction to give promotions, appointments, upgradations, increments etc. to its officers and employees only in accordance with the provisions contained in the PASIC (Staff Service Rules) 1988 and the Recruitment Rules framed and approved by the Board for all the sanctioned posts. They cannot give such service benefits to its employees and officers through any other method or procedure and if they do so, such actions would be beyond the scope of power, authority and jurisdiction.



11. The Board of Corporation is consisting of 7 members, including the Chairman, Director of Agriculture etc. In view of Article 96 of the Memorandum and Articles of Association of the Corporation, one third of the total strength of the Board (any fraction contained in that one third being rounded off as one) or two Directors whichever shall be the quorum, provided that such quorum shall not be deemed to complete unless two Directors who are Officers of the Govt. Puducherry are present at the Meeting as Directors. It is submitted that the above illegalities and irregularities have increased the monthly liability of the Corporation several folds, caused very huge loss to it, pushed it to a very severe financial crisis and made it struggle even for its survival. In fact, the C & AG Audit has raised serious objections to the above said undue and illegal benefits granted to the employees. Consequently, the Corporation is not able to pay salaries and wages to its officers and employees from the month of June 2011. Subsequently, out of the funds provided by the Government, the Corporation has not paid salaries to its officers and employees for 1 year till August 2012. Consequently, they and their families are put to lot of sufferings, inconvenience, problems and hardships.

12. In these circumstances, the Government of Puducherry has directed the Joint Director of Agriculture, the Department of Agriculture, to function as the Managing Director of the Corporation as additional duty on and from 03.03.2011 in an attempt to revamp the Corporation. The said Managing Director has been taking earnest efforts, rectifying the illegalities and irregularities committed earlier for improving the sources of income etc. As one such measure, the Board of Directors of the Corporation having the full attendance of all the Directors and Quorum as prescribed in Article 96 of the Memorandum and Articles of Association, has met on 21.06.2011, considered the above illegalities, irregularities and the huge loss caused to the Corporation and unanimously passed a Resolution No.74/2011, formally rescinded the illegal decisions/ resolutions/ approvals said to have been taken/passed/granted by the illegal and incompetent Board on 30.09.2010 & 30.12.2010.

13. As an another measure, the said Managing Director has also passed an order dated 27.05.2011, recording reasons and formally rescinding all the above said invalid and unenforceable promotions, upgradations, replacements scales, redesignations, increments, double increments and other monetary benefits, computing and regulating the pay of all the employees with effect from 01.01.2006 with immediate effect and thereafter, the revised pay scales as on 01.01.2006 disbursed to the employees from March 2011. The above order was circulated to all the employees and the Cashier has also handed over the same to them at the time of disbursement of such revised pay made after such



order to them. Therefore, all of them have full knowledge about the said Order and also its effect.

14. The first respondent also filed an additional affidavit submitting that in the invalid Board Meetings, the Chairman and the Managing Director have completely ignored the PASIC (Staff Service) Rules 1988 and the Recruitment Rules in force and without any need or necessity, (i) created new posts, framed new Recruitment Rules or made amendments to the existing Recruitment Rules and fixed new scales of pay to various posts according to their convenience, (ii) given promotions/upgradations to 57 ineligible employees. In the process, they have promoted even 3 Drivers (LMV) to 4 new posts of Deputy Manager (Vehicle) created by them and to an Electrician to a new post of Deputy Manager (Electricals) created by them, (iii) given Replacement Scales to 111 ineligible employees, (iv) given Assured Career Progress Benefits to 24 ineligible employees, (v) made redesignations of 19 posts, (vi) given increments, including double increments to ineligible employees etc. Therefore, it is not binding on the Corporation.

15. The said illegal actions had very severely increased the monthly salary liability of the Corporation. Further, the CAG Audit has raised objections for the said illegal actions. Hence, to save the Corporation, the 1st Respondents has passed an Order dated 27.05.2011, canceling the said illegal promotions etc. with effect from 01.01.2006. Hence, the promotions given to K.Rajendran and M.Djeapradabane in accordance with the PASIC (Staff Service) Rules 1988 and the Recruitment Rules were also covered and stood cancelled. Those 2 persons have filed W.P.Nos.25399 & 25400/2013 and by order dated 11.09.2020, this Court was directed to consider that the promotions given to them were in accordance with the Rules and quashed the same.

16. The promotions/redesignations/upgradations etc. given by the then Chairman in the year 2010 in direct violation of the PASIC (Staff Service) Rules 1988 and the Recruitment Rules are illegal and in so far as those employees are concerned, the order dated 27.05.2011 is legal and valid. Even otherwise, those employees are individually aggrieved and in respect of such individual grievance, the Petitioner Association has no legal right, locus standi and cause of action to file a Writ Petition. However, the Petitioner Association has filed the above Writ Petition, challenging the Order dated 27.05.2011.

17. It is further submitted that the Petitioner Association cannot refer to the Order dated 11.09.2020 made in W.P.Nos.25399 & 25400/2013 made in respect of 2 employees, who were promoted earlier in the year 2007 in accordance with the PASIC (Staff Service) Rules 1988 and the Recruitment Rules.



18. Respondents 2 and 3 filed counter affidavit and submitted that the first respondent is a company incorporated at Pondicherry and is a corporation. Therefore it is a legal person who has to manage its affairs on its own. Respondents 2 and 3 have not employed any members of petitioner's association and therefore it has no liability towards any of the employees permanent or part time are engaged whatsoever. The 1st respondent company has paid up share capital of Rs.13.84 crores and all its shares remain paid up and held by the President of India, the Government of Pondicherry, represented by the Development Commissioner and Secretaries to Government. The Company was incorporated in the year 1986. The 1st respondent company has its own subject in memorandum of association for providing services to the farmers of the Union Territory of Pondicherry. For the purpose of achieving its object and to provide the best agro services, the Government of Pondicherry provided managerial subsidy to begin with for a period of 5 years and such subsidy was gradually reduced at 20% every year and it ended at the end of the 5th year. There is no obligation either statutory or otherwise on the part of the Government of Union Territory of Pondicherry to give any financial assistance except in the case of any need for further investment required as per law.

19. It is further submitted that there are service rules framed and enforced by the PASIC Company in the name of PASIC (Staff Service) Rules, 1988. These rules clearly point out that the employer is the 1st respondent and the employees are those permanently recruited to various posts of this Company and rendering service as required. Therefore in the absence of such a situation the petitioner claims against the Government is totally unfounded and illegal. There is no employer and employee relationship at all between the Government and the employees of the 1st respondent company and there is nothing against the government indicating any liability.

20. A perusal of records would go to show that the Government of Puducherry has directed the Joint Director of Agriculture, the Department of Agriculture, to function as the Managing Director of the Corporation as additional duty on and from 03.03.2011 to revamp the Corporation. The said Managing Director, as one such measure, with the Board of Directors of the Corporation having the full attendance of all the Directors and Quorum as prescribed in Article 96 of the Memorandum and Articles of Association on 21.06.2011, unanimously passed a Resolution No.74/2011 and formally rescinded the illegal decisions/ resolutions/ approvals granted by the incompetent Board on 30.09.2010 & 30.12.2010.



21. Further it is transpired that the said Managing Director has also passed an order dated 27.05.2011, recording reasons, rescinded invalid and unenforceable promotions, upgradations, replacements scales, redesignations, increments, double increments and other monetary benefits, computing and regulating the pay of all the employees with effect from 01.01.2006 with immediate effect and thereafter, revised the pay scales as on 01.01.2006 and disbursed to the employees from March 2011.

22. The first respondent also made it clear before this court that without any need or necessity, the previous Board without any competent quorum created new posts, framed new Recruitment Rules and made amendments to the existing Recruitment Rules and fixed new scales of pay to various posts according to their convenience and given promotions/upgradations to 57 ineligible employees and therefore, it is not binding on the Corporation. Therefore, to save the Corporation, the 1st Respondents has passed an Order dated 27.05.2011, canceling the said illegal promotions etc. with effect from 01.01.2006. As far as the promotions given to two individual persons are concerned, it was in accordance with the PASIC (Staff Service) Rules, 1988. Therefore, in the Writ Petitions filed by the above said two persons, this Court vide order dated 11.09.2020, in W.P.Nos.25399 & 25400/2013 quashed the order of the 1st respondent and directed the respondent to consider the promotion given to them. In the present issue, the promotions / redesignations/upgradations etc. given by the then Chairman in the year 2010 was in direct violation of the PASIC (Staff Service) Rules 1988 and the Recruitment Rules are illegal. Therefore, the impugned order dated 27.05.2011 passed by the 1st respondent Corporation by rescinding the invalid promotions, upgradations, cannot be said as vitiated one. Even otherwise, in respect of such individual grievance and their claim, the Petitioner Association has no legal right to challenge the Order dated 27.05.2011. The challenge to the impugned order dated 27.05.2011 has no merit and the claim of the Petitioner Association for restoration of pay and promotion to its members based on the order of the incompetent Board is not sustainable.

23. It is pertinent to point out that this court also clarified by order dated 24.07.2012 in M.P.No.3 of 2011 that 80% of the amount payable by the Government of Pondicherry is not by Union Government Funds and clarified that that portion of order dated 24.07.2012 stands deleted. Therefore, the order dated 03.07.2012 is clarified. The first and second respondents also submitted before this court that first respondent is a company incorporated at Pondicherry and is a Corporation and it has to manage its affairs on its own. The Government of Union Territory of Pondicherry has no obligation to give any financial



assistance except in the case of any need for further investment required as per law.

24. In view of the foregoing observation, this court is of the considered view that the impugned order does not warrant any interference by this court since the impugned order has only rescinded the invalid promotions made by the incompetent Board. Therefore, the claim of the Petitioner association has no merit. Accordingly, the Writ Petition is dismissed. Further, the petitioner has not made out any case for contempt.

24. In the result, the Writ Petition is dismissed and the Contempt Petition is closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

nvsri

To

1. The Managing Director,
Pondicherry Agro Service and Industries Corporation Ltd.,
Thattanchavadi,
Puducherry-605 009.
2. The Chief Secretary to Government,
Government of Pondicherry.
3. The Secretary to Government,
Agricultural Department,
Government of Pondicherry.

+1cc to the Government Pleader, S.R.No.57436

W.P. No. 30034 of 2011
and Cont.Pet.No. 1503 of 2012

MG[co]
NSK 25/11/2021