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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2022

Coram:

The Honourable Mr. Justice V. PARTHIBAN

W.P.No.20093 of 2016

P.Sivaprakasam (E.C.No.4742)
Special Grade Senior Factory Assistant
Milk Recorer Grade III In-charge,
Ambattur Dairy, TCMPF Ltd.
Chennai - 600 098.

..Petitioner

Vs

1. The Commissioner and Secretary to Government,
Animal Husbandry & Fisheries Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.
2. The Commissioner for Milk Production
Dairy development,
Madhavaram Milk Colony,
Chennai - 600 051.
3. The Managing Director,
The Tamilnadu Cooperative
Milk Producers Federation limited, AAVYN Illam,
Chennai - 600 051.
4. The Joint Managing Director,
Tamil Nadu co-operative Milk Producers
Federation Ltd.,
Plot No.29& 30 Ambattur Industrial estate,
Chennai - 600 098.

..Respondents

Prayer

This Writ Petition is filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order bearing No.589/E4/16 dated 18.03.2016 of the fourth respondent and quash the same and further direct the respondents to appoint/regularize the service of the petitioner in the post of Milk Recorder Grade III with effect from 31.07.2007 along with all consequential benefits.



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For Petitioner .. Mr.K.S.Viswanathan
For Respondents .. Mr.L.S.M.Hasan Fizal
Additional Government Pleader
for R1 & R2
Mr.R.Bala Ramesh
for R3 & R4

O R D E R

The petitioner was originally appointed as casual labourer in the respondent Federation with effect from 14.08.1984. He was thereafter, appointed as Factory Assistant with effect from 01.01.1991. In 2001, he was made as selection grade Senior Factory Assistant. Subsequently, he was posted as Milk Recorder Grade III in-charge with effect from 31.07.2007. The petitioner has been looking after the work of Milk Recorder Gr.III as in-charge since 2007 and till date.

2. According to the petitioner, when he was appointed to the Federation Service, there were three grades of milk recorders, i.e., Gr.I, Gr.II and Gr.III. Subsequently, all the grades were merged and a single grade was created as Milk Recorder Gr.III. Originally, there was no educational qualification for appointment to the post of Milk Recorder Gr.III by promotion from the post of Senior Factory Assistant. The total number of incumbents working in the Milk Recorder Grade-III were 17 in number and out of which, 7 of them being promoted on regular basis and 10 of them as in-charge, including the petitioner herein.

3. While matter stood thus, over a period of time, the persons who were Milk Recorder Gr.III in-charge have been regularly appointed to the posts except the petitioner who was admittedly the senior most and ranked at Serial No.1 in the seniority. Although he was working as Milk Recorder Gr.III as in-charge since 31.07.2007 continuously, his regularisation in that post has not been forthcoming, despite, several representations seeking for the relief. In the meanwhile, several juniors of the petitioner had been promoted as Milk Recorder Grade-III vide proceedings dated 18.02.2013 and subsequently also vide order dated 21.01.2016 similar promotions were effected. In the said circumstances, the petitioner was constrained to approach this Court by filing W.P.No.6542/2016 seeking a direction to the respondents to consider his representation seeking regularisation of service in the post of Milk Recorder Gr.III with effect from 31.07.2007 with all consequential benefits.



4. In the writ petition, notice has been ordered and the same is pending finalisation before this Court. However, in the meanwhile, by order dated 18.03.2016, the 4th respondent has rejected the claim of the petitioner on the ground that the petitioner failed in 10th standard and therefore, not eligible to be considered for promotion as per the amended special bye-laws applicable to the Federation. Challenging the rejection of the petitioner's request, the present writ petition has been filed.

5. Mr.S.Viswanathan, the learned counsel for the petitioner would submit that at the time when the petitioner was appointed, there was no minimum educational qualification prescribed for promotion to the post of Milk Recorder Gr.III from the feeder cadre. The persons who were working as Senior Factory Assistant had been promoted to the post of Milk Recorder Gr.III on the basis of number of years of qualifying service put in by them. The petitioner has fulfilled the experience qualification, as he has been working as in-charge of Milk Recorder Gr.III from 31.07.2007, and thus fully eligible to be appointed on regular basis. But for some reason, the benefit of regularisation has not been granted to him.

6. The learned counsel would submit that subsequent to the petitioner's appointment in 2007, the bye-laws applicable to the Federation came to be amended on 11.01.2008, wherein the educational qualification of old SSLC or equivalent was introduced for promotion to the post of Milk Recorder Gr.III. Subsequently, the prescription of educational qualification of SSLC came to be withdrawn through another amendment which was introduced in the bye-laws on 09.03.2012. In that amendment, the eligibility was 5 years of service alone as Senior Factory Assistant was the criterion for promotion to the post of Milk Recorder Gr.III as it stood earlier. After the said amendment, several colleagues of the petitioner, who were in charge of Milk Recorder Gr.III had been given promotion even though, they were not in possession of SSLC or equivalent qualification in terms of the first amendment dated 11.01.2008.

7. In this regard, the learned counsel would also refer to two promotion orders issued to one Mr.P.Ramaraj and Mr.Dhasarathan, both were promoted to the post of Milk Recorder Gr.III on 18.03.2013. The former qualification was 8th standard and the latter qualification was S.S.L.C fail. Likewise, several others were also promoted without minimum SSLC qualification. The petitioner alone was singled out to be regularly appointed to the post of Milk Recorder Gr.III.



8. The learned counsel would also submit that the cancellation of educational qualification of SSLC or equivalent was recalled again in 2016 and the said qualification came to be restored by further amendment to the bye-laws on 29.12.2016. In any event, between 2012 and 2016, several colleagues of the petitioner had been promoted as Milk Recorder Gr.III on regular basis, even though they did not have SSLC qualification. The learned counsel would therefore submit that the petitioner has been singularly left out from being promoted to the post on a regular basis, though he has been made to work for more than 15 years in the post. According to the learned counsel, when he was made in-charge in 2007, he was fully eligible for appointment on a regular basis. Even otherwise, when all his colleagues were promoted without SSLC qualification in 2013 and in 2016, at least the petitioner, ought to have been considered and promoted along with his juniors during that time.

9. The learned counsel would therefore sum up contending that the non-promotion of the petitioner as Milk Recorder Gr.III on a regular basis since 2007 is violative of Article 14 of the Constitution of India, opposed to fair play, good conscience and justice.

10. Mr.L.S.M.Hasan Fizal, the learned Additional Government Pleader appeared for the 1st and 2nd respondents and Mr.R.Bala Ramesh, the learned counsel appeared for the 3rd and 4th respondents. A counter affidavit has been filed on behalf of the 4th respondent.

11. The facts as to the appointment details of the petitioner have been admitted in the counter affidavit. In the counter affidavit, it has been clarified that some of the persons cited by the petitioner had been promoted to the post of Milk Recorder Gr.III, ahead of the petitioner, had passed SSLC qualification. However, in respect of the instances of promotion of two persons in 2013 without SSLC qualification, the counter affidavit is conveniently silent. Even during the oral submission by the learned counsel for the respondent, this fact has not been disputed at all.

12. According to the learned counsel for the respondents, in view of the subsequent amendment which had been effected in the special bye-laws in 2012, recalling the earlier prescription of SSLC qualification, some of the colleagues of the petitioner had, as a matter of fact, been promoted as Milk Recorder Gr.III during the relevant time, as they fulfilled the eligible criteria. The learned counsel however, would also admit that the petitioner is the only employee, who had been left out of such regularisation.



13. This Court considered the submissions of the learned counsel for the petitioner and the learned counsels for the respondents.

14. On consideration of the entirety of the facts and circumstances of the case, admittedly, the petitioner herein is the only person who has been unfortunately left out from being regularly appointed to the post of Milk Recorder Gr.III. There are two issues that arise for consideration before this Court. One, whether the petitioner could said to be qualified and eligible, de hors the amendment to the bye-laws dated 11.01.2008 or not? in the face of his appointment in-charge on 31.07.2007.

15. Admittedly at that point of time, the petitioner was fully eligible to be appointed as Milk Recorder Gr.III which is not in any dispute at all. But when he sought promotion on regular basis to the said post what stood in the way was the amendment to the bye-laws by bringing in minimum educational qualification as SSLC or its equivalent. But even the prescription of SSLC qualification or its equivalent came to be withdrawn by the subsequent amendment to the bye laws dated 09.03.2012 and status quo ante was restored as before 11.01.2008.

16. In the above circumstances, the respondents ought to have considered the claim of the petitioner for promotion to Milk Recorder Gr.III on regular basis atleast at that point of time in 2012. The petitioner being appointed as in charge of Milk Recorder Gr.III with effect from 31.07.2007 has put in more than 15 years of service in the post and fulfilled necessary criteria for regular appointment. Even otherwise, when identically placed colleagues came to be promoted vide order dated 18.02.2013, as pointed out by the learned counsel for the petitioner, without SSLC qualification, it was unreasonable, arbitrary, unjust and discriminatory on the part of the respondents to have denied promotion to the petitioner on regular basis in the post of Milk Recorder Gr.III.

17. Be that as it may, even assuming for a moment that the petitioner cannot stated to be eligible for promotion in view of the existing bye-laws prescribing SSLC qualification, the fact that the petitioner has been allowed to work as in-charge for a period of 15 years would by itself make the petitioner fully eligible to seek the relaxation of the rules in terms of Clause XII of Special Bye-laws to the Service conditions of the employees. Clause XII of Special Bye-laws reads as follows:

XII. RELAXATION OF RULES:

The Government may in the interest of the organisation by a general or a special order exempt or modify or relax any of the provisions of the



Special By-law as may be specified in its order.

18. The above provision is included in the rules for it to be invoked on certain exceptional contingencies where the operation of the rule causes extreme hardship to a particular concerned employee. In this case, the claim of the petitioner can said to be the most deserving and exceptional for grant of relaxation of the rules even if the same is required in the circumstances of the case. If such procedure is mandatorily to be followed towards grant of regular promotion to the petitioner, the same shall be resorted to by the respondents.

19. On the whole, this Court is of the view that the petitioner is entitled to be regularised in the post of Milk Recorder Gr.III on the basis of his qualification prescribed at the time of his appointment as in-charge Milk Recorder Gr.III on 31.07.2007. In case, there is any legal compulsion to obtain relaxation as provided in the aforementioned Special bye-laws, the same shall be granted to the petitioner to facilitate his eventual promotion to the post of Milk Recorder Gr.III on a regular basis. This Court is fully convinced that the petitioner has made out a very strong case for grant of relief.

20. In the above circumstances, the Writ Petition is allowed. The impugned order bearing No.589/E4/16 dated 18.03.2016 passed by the 4th respondent is hereby set aside.

21. The respondents 2 to 4 are directed to grant promotion to the petitioner to the post of Milk Recorder Grade-III on regular basis from the date when the petitioner was put in charge from 31.07.2007 on the basis of the then existing eligibility criteria and grant him all attendant and consequential benefits.

22. In the event of any legal impediment coming in the way of such regularisation in the teeth of the existing prescription of educational qualification, the 1st respondent is directed to grant appropriate relaxation as provided in the above extracted clause as contained in the Special bye-laws. If any such contingency that may arise, the 1st respondent is directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. On such grant of relaxation, the petitioner is deemed to have been appointed on a regular basis as Milk Recorder Grade-III with effect from 31.07.2007.

23. In case, there is no requirement for such relaxation, the respondents are directed to pass appropriate orders regularising the service of the petitioner with effect from 31.07.2007 granting him all consequential benefits within a



period of four weeks from the date of receipt of a copy of this order. No costs.

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Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Commissioner and Secretary to Government,
Animal Husbandry & Fisheries Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.
2. The Commissioner for Milk Production
Dairy development,
Madhavaram Milk Colony,
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3. The Managing Director,
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4. The Joint Managing Director,
Tamil Nadu co-operative Milk Producers
Federation Ltd.,
Plot No.29& 30 Ambattur Industrial estate,
Chennai - 600 098.

+1cc to the Government Pleader, S.R.No.25512

W.P.No.20093 of 2016

MG (CO)
SB(26/04/2022)