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W.P.Nos.12342 to 12346 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.Nos.12342 to 12346 of 2010
and M.P.Nos. 1 to 1 of 2010

M.Thirumoorthy	.. Petitioner in W.P.No.12342 of 2010
R.Mani	.. Petitioner in W.P.No.12343 of 2010
M.Madhan	.. Petitioner in W.P.No.12344 of 2010
A.Balakrishnan	.. Petitioner in W.P.No.12345 of 2010
K.Mani	.. Petitioner in W.P.No.12346 of 2010

VS.

- 1.The State of Tamil Nadu,
Represented by Secretary to Government,
Animal Husbandry, Dairying and
Fisheries (M.P.II) Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner for Milk,
Production and Diary Development,
Madhavaram Milk Colony,
Madhavaram, Chennai – 600 051.
- 3.The General Manager,
Dharmapuri District Co-operative,
Milk Producers' Union,



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Post Box No.13, Salem Main Road,
Krishnagiri 635 007, Krishnagiri District. ... Respondents in all W.Ps.

COMMON PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent relating to the order made in Letter No.20134/MP.11/2009-4, dated 28.04.2010 and quash the said order dated 28.04.2010 and direct the respondents to promote the petitioner as Senior Factory Assistant with effect from 06.09.1999 and fix him in the time scale of Rs.2550-50-2600-60-3200 and pay him the arrears and other monetary benefits and award costs.

In all W.Ps.

For Petitioner : Mr.S.Ayyathurai
For R1 & 2 : Mr.R.Neethi Perumal
Government Advocate
For R3 : Served – No appearance

COMMON ORDER

This Writ Petition filed challenging the letter dated 28.04.2010 issued by the 1st respondent and to direct the respondents to promote the petitioners as Senior Factory Assistant with effect from 06.09.1999 in the time scale of pay of Rs.2550-50-2600-60-3200 and to pay them the arrears and other monetary benefits.



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2. Heard Mr.S.Ayyathurai, learned counsel for the petitioners and Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents 1 and 2.

3. Mr.S.Ayyathura, learned counsel appearing on behalf of the petitioners would submit that the petitioners were all recruited through Employment Exchange as a daily wager in Dairy and Cold Storage owned by the 3rd respondent/Management. The petitioners were all assigned the work of packing, loading, unloading and other manual works in the Dairy and Cold Storage Unit. Since, there was a shortage of machine operators, the petitioners were doing the work of machine operators as well on the direction of the Management and they were all continuously employed for the last 20 years without break. He would further submit that in the year 1998, the Managing Director of the 3rd respondent had informed that the petitioners who were working as a Junior Mazdoor would be promoted as Senior Mazdoor (which has been now redesignated as Senior Factory Assistant) in the time scale of pay of Rs.2550-50-2600-60-3200.

4. However, since no orders were made, the petitioners had made



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representation to the respondents and the said representations were favourably considered by the 2nd respondent and had made recommendation to the 1st respondent. However, the 1st respondent by a cryptic order had rejected the claim of the petitioners and contend that their services cannot be regularised to the post of Senior Factory Assistant. He would further submit that the 1st respondent had not considered the case of the petitioners in the proper perspective.

5. He would submit that even though originally in the year 1988 they were appointed as a daily wager. In the year 1995, the petitioners were all absorbed as Junior Mazdoor on monthly wages with other attendant benefits by the order of the Managing Director of the 3rd respondent and they were entitled to be promoted as a Senior Mazdoor which was also confirmed by the communication dated 22.09.1998 by the Managing Director of the 3rd respondent. He would further submit that the claim of the petitioners had been rightly considered by the 2nd respondent and recommendations had been made by him to the Government. But, however, the Government relying upon the judgment of this Court had held that the petitioners were



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not possessing the required age, qualification, etc., had indicated that their services cannot be regularised without considering the fact that the petitioners have been absorbed as Junior Mazdoor as early as in the year 1995. Therefore, he would seek indulgence of this Court to interfere with the orders impugned in these Writ Petition.

6. Countering his arguments, Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents 1 and 2 would submit that it is not the case of the petitioners that they have required qualification to be posted as Senior Factory Manager. When that is the factual position, the petitioners cannot seek regularisation of their services in the Department that too to a higher post than the entry post. He would further submit that their appointment itself was in contravention to the rules and regulations and therefore, the petitioners cannot seek for appointment.

7. I have considered the submissions made by the learned counsel appearing for their respective parties and perused the materials available on record.



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8. The petitioners were originally appointed as daily wagers through Employment Exchange. Even during such appointment, the petitioners educational qualification, age and other criteria were taken into consideration and only thereafter, they have been appointed to the said post. The daily wagers working in the 3rd respondent/Management were all absorbed as Junior Mazdoor (presently Senior Assistant) by order of the Managing Director of the 3rd respondent dated 12.12.1995. Even under the said order, the educational qualification and the age of the petitioners were all verified and only based upon the satisfaction of the requirements, the petitioners were allowed to continue as Junior Mazdoors, the next avenue of promotion to them was the post of Senior Mazdoor (Senior Factory Assistant). The communication, dated 22.09.1998, the Managing Director of the 3rd respondent referring to a Committee Meeting dated 10.09.1998 had informed to the petitioners that they would be promoted as Senior Mazdoor in the time scale of pay Rs.2550-50-2600-60-3200. The said communication was subject to the approval by the Managing Committee of the 3rd respondent. It is also brought to the notice that the 2nd respondent herein by two communications dated 21.11.2005 and 11.08.2005 had recommended



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the promotion of the petitioners in the post of Senior Mazdoor including the regularisation of their services. It is to be noted that the representation had been made by 17 persons. But, however, the Government had cryptically in a single line had stated that they did not possess required age and educational qualification, etc., and therefore, their appointment was in contravention with the Rules and Regulations. Such a view taken by the Government is wholly arbitrary and colourable exercise of power, which I conclude to a knee jerk reaction, as they were forced to take such a decision since, the petitioners had initiated a contempt proceedings for not complying with the direction given by the learned Single Judge who had directed the Government to dispose of their representations.

9. Coming to the merits of the Writ Petitions, the initial order of appointment as daily wager, it could be seen that the same had been made only through Employment Exchange which would pre-suppose that the petitioners rank as seniors, for the Employment Exchange to sponsor their names. It is also pertinent to note that the said order of appointment had also taken into account the age, educational qualification and other criterias.



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Even in the order of appointment of the petitioners as Junior Mazdoor, the 3rd respondent had also taken into consideration the age, educational qualification and other criteria and only thereafter had directed such appointment. In such circumstances, the decision of the Government, in my view does not hold good. The petitioners have been regularly appointed as Junior Mazdoors by the 3rd respondent in the year 1995 and they are also entitled to be promoted as Senior Mazdoors. It has been pleaded that the similarly placed workmen in other Co-operative Societies have been given promotion as Senior Mazdoor/Senior Factory Assistant, which fact has not been denied by the 1st respondent. On that ground alone, I am inclined to allow this Writ Petition as the petitioners are sought to be discriminated.

10. In fine, this Writ Petition is allowed setting aside the order of the Government with a direction to promote the petitioners as Senior Mazdoors with effect from the date on which they are entitled to be promoted and they are also entitled to time scale of pay as available to the post of Senior Factory Assistant. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



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Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No.

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K.KUMARESH BABU, J.

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