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W.P.Nos.37991 to 38001 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.37991 to 38001 of 2015
and M.P.No. 1 of 2015

W.P.No.37991 of 2015 :-

The Management
Erode District Co-operative Milk
Producers Union Ltd (ED 296)
Vasavi College (Post) – 638 316,
Erode Taluk,
Erode District.

...Petitioner

-Vs-

1. The General Secretary,
Salem mandala Anaithu,
Paniyalarkal Sangam,
44-A, Mariamman Kovil Street,
Hasthampathi,
Salem – 636 007.

2. The Presiding Officer,
The Labour Court,
Salem.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari, calling for the records relating to the



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impugned order dated 09.04.2015 passed by the second respondent in

I.D.No.48 of 2010 and quash the same.

In all W.Ps.

For Petitioner : Mr.R.Blaramesh

For Respondents

For R1 : Mr.R.Nalliyappan

R2 : Court

For Respondents

3 to 6 in

W.P.No.37996/2015 : Mr.A.R.Nixon

COMMON ORDER

All these writ petitions challenging the award dated 09.04.2015, passed by the second respondent in the industrial dispute raised by the various Union on behalf of the workmen in I.D.Nos.48, 145, 138, 113, 50, 146, 209, 111, 49, 55, 112 of 2010, thereby directing the petitioner to regularize the workmen service as Lab Technician from the date of their initial appointment and to pay their arrears of salary and other benefits.

2. The petitioner in all the writ petitions (herein after called as "the management") is an establishment registered as a co-operative



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society under the Tamilnadu Co-operative Societies Act, 1983. It's functions are procuring and processing of milk and manufacturing of milk products such as cream, butter, ghee, khoa, milk powder etc., and marketing. The business nature of the petitioner/management is seasonal with two distinct period in a year viz., flush season from November to April and lean season from May to October. In the flush season, the quantity of milk procured will be huge due to various natural factors. In view of this increase in the quantity of milk, the volume of work in the processing of milk and manufacturing of mild products will also proportionately increase. This situation will require the services of the employees and workers in the organization satisfactorily.

3. The workmen of the first respondent union were working as causal labour and regularized with effect from 10.01.1990. Therefore, they became Junior Factory Assistant as per the General Manager's proceedings on various dates. Thereafter, they were re-designated as Senior Factory Assistant and elevated to selection grade. However they had not acquired any qualification of training to work as lab technician. In fact, some of them were failed in their SSLC examination.



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4. However, the first respondent union raised industrial dispute under Section 2(K) of the Industrial Dispute Act, for the right of the individuals who are seeking promotions to the various post as against which they does not qualified for the post as prescribed by the bye-law of the petitioner/ management. The management filed counter and their specific stand is that in order to fill up the post by recruitment or promotion, permission of the Commissioner should be obtained as envisaged in Commissioner's circular dated 22.10.2007.

5. As per circular issued by the Commissioner of Milk Production and Dairy Development, Chennai, dated 22.10.2007, all the Managing Directors/General Managers of District Cooperative Milk Producers' Unions instructed once again to scrupulously follow the instructions as per the Commissioner's earlier circular dated 16.05.1996 and not to indulge in such pay fixation, pay revision, enhancement of D.A and other allowances, promotions, infrastructure development, creation of asset etc., without prior permission of the Commissioner.



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6. The workmen were working as Helper in the quality control section headed by Deputy General Manager (Quality Control). They were engaged as manual labour viz., manufacturing process or any kind of work incidental to connect with manufacturing process. However, the second respondent viz., Labour Court, directed the petitioner management to give post of Lab Technician from the date of their initial engagement of appointment and pay arrears of salary. Therefore, the petitioner management approached this Court with the present writ petitions.

7. Heard the learned counsel appearing on both side and perused the material placed before this Court.

8. The petitioner management filed respective workmen details with regard to their initial appointment, date of their regularization and date of promotions and date of retirement along with the educational qualification as follows:-



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S.No.	Name	WP.No.	I.D.No.	Date of Regularisation (Junior Factory Assistant/Junior Mazdoor)	Date of Promotion (Senior Factory Assistant/Senior Mazdoor)	Promoted as	Date of Retirement	Educational Qualification
1	K. Gunasekaran	37991/15	40/10	10.01.1990	10.01.1992			10th Fail
2	A. Kumaravel	37992/15	145/10	27.09.1990	10.01.1992			10th Fail
3	R.M. Palanisamy	37992/15	145/10	01.04.1992	10.01.1992			12th Fail
4	V.S. Haridoss	37992/15	145/10	17.11.2000	01.04.2005		Expired	12th Fail
5	K.S. Ramasamy	37993/15	138/10	10.01.1990	10.01.1992			
6	S. Poppley	37993/15	138/10	10.01.1990	10.01.1992			
7	K. Dhanapalan	37993/15	138/10	10.01.1990	10.01.1992		30.05.2009	
8	V. Rathinavel	37994/15	113/10	10.01.1990	10.01.1992			
9	P.L. Rajendran	37995/15	50/10	10.01.1990	29.01.1992	Junior Executive		
10	V. Thyagarajan	37995/15	50/10	10.01.1990	29.01.1992	Junior Executive		
11	V. Viswanathan	37995/15	50/10	10.01.1990	29.01.1992	Junior Executive		
12	S.V. Ravichandrar	37995/15	50/10	10.01.1990	29.01.1992	Junior Executive		
13	E. Alexander	37995/15	50/10	10.01.1990	29.01.1992			
14	M. Sudipalan	37995/15	50/10	10.01.1990	29.01.1992	Milk Recorder		
15	E.K. Selvan	37995/15	50/10	10.01.1990	29.01.1992	Junior Executive		
16	K.S. Mani	37996/15	146/10	01.12.2000	01.04.2005		Retired	10th
17	R. Alirahm	37996/15	146/10	07.12.2000	01.04.2005			10th
18	K. Anandhakumar	37996/15	146/10	10.01.1990	10.01.1992			9th
19	M. Gunasekamy	37996/15	146/10	06.12.2000				4th
20	K.A. Karthikeyan	37996/15	146/10	10.01.1990	10.01.1992			Higher
21	P. Jayaprakasham	37997/15	209/10	10.01.1990	10.01.1992	Promoted		
22	P. Subramanian	37997/15	209/10	10.01.1990	10.01.1992		Expired	
23	P. Venkatesamy	37997/15	209/10	10.01.1990	10.01.1992		Retired	
24	P. Pruthyasekaram	37997/15	209/10	10.01.1990	10.01.1992		Retired	
25	K. Ramesh	37997/15	209/10	10.01.1990	10.01.1992		Retired	
26	N. Sevaraj	37997/15	209/10	10.01.1990	10.01.1992	Junior Executive	Retired	

27	J. Sarathan	37998/15	111/10	17.11.2000	01.04.2005	Light Vehicle Driver		
28	P. Govindaraju	37998/15	111/10	01.12.2000	01.04.2005			
29	P. Dhanevelan	37998/15	111/10	01.12.2000	01.04.2005			
30	S. Iswaran	37998/15	111/10	01.12.2000	01.04.2005	Technical Operator		
31	S.M. Sundararaman	37999/15	49/10	10.01.1990	10.01.1992	Junior Executive	Retired	8th
32	K.R. Palanisamy	37999/15	49/10	10.01.1990	10.01.1992			SSLC
33	R. Ganeshan	37999/15	49/10	10.01.1990	10.01.1992		Retired	11th
34	N. Sebastian	38000/15	55/10	10.01.1990	10.01.1992			9th
35	K. Sekar	38000/15	55/10	17.11.2000	01.04.2005			12th
36	K. Perumal	38001/15	112/10	09.03.1981		Special Grade Senior Mazdoor	Retired	
37	K.V. Yash	38001/15	112/10	09.03.1981		Special Grade Senior Mazdoor	Retired	
38	K. Sathasivam	38001/15	112/10	27.09.1990	10.01.1992		Expired	
39	K. Subramanian	38001/15	112/10	27.09.1990	10.01.1992			
40	P. Palanisamy	38001/15	112/10	27.09.1990	10.01.1992			
41	K. Lakshmanan	38001/15	112/10	27.09.1990	10.01.1992			
42	R. Palanisamy	38001/15	112/10	27.09.1990	10.01.1992			
43	N. Rengasamy	38001/15	112/10	27.09.1990	10.01.1992			
44	K. Thirumoorthy	38001/15	112/10	27.09.1990	10.01.1992		Retired	
45	S. Joseph Raj	38001/15	112/10	27.09.1990	10.01.1992		Retired	
46	K.P. Ravichandrar	38001/15	112/10	27.09.1990	10.01.1992			
47	K. Kuppasamy	38001/15	112/10	27.09.1990	10.01.1992		Retired	
48	R. Yesuraj	38001/15	112/10	27.09.1990	10.01.1992		Retired	
49	M. Vivekanandhan	38001/15	112/10	27.09.1990	10.01.1992			
50	J. Subramanian	38001/15	112/10	27.09.1990	10.01.1992			
51	R.P. Moreshwaran	38001/15	112/10	27.09.1990	10.01.1992			
52	P. Subramanian	38001/15	112/10	27.09.1990	10.01.1992		Expired	
53	S. Chendrasekaran	38005/15	112/10	27.09.1990	10.01.1992			
54	A. Chandran	37992/15	145/10	27.09.1990	10.01.1992			10th Fail
55	V. Murugesan	37992/15	145/10	27.09.1990	10.01.1992			8th Pass



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9. Accordingly, some of the workmen were promoted to the post of Junior Executive, Milk Recorder, Technical Operator and Special Grade Senior Mazdoor etc. Therefore, those who are having qualification for the post of Lab Technician were already promoted to the post of Lab Technician. Those who are not having required qualification are not granted promotions. Some of the workmen are already retired and also expired as stated supra. While pending the writ petitions filed by the management in W.P.No.37996 of 2015, some of the workmen were impleaded themselves as respondents.

10. The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in **2023 SCC Online SC 28** in the case of **Union of India and ors Vs. Rajib Khan and ors.**, which held that nature of work may be more or less the same but the scale of pay may vary based on academic qualification or experience which justifies classification. Further inequality of men in different groups excludes applicability of the principle of 'equal pay for equal work' to them. The classification based upon the higher educational qualification for grant of higher pay scale to a trained person or a person



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possessing higher qualification. Therefore, educational qualification cannot be a ground for denial of allowance is unsustainable.

11. The doctrine of 'equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. It has no mechanical applicability in every case. Article 14 of the Constitution of India permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristic must have a reasonable relation to the object sought to be achieved. In service matters, merits or experience can be a proper basis for classification for the purpose of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. A very fact that the person has not gone through the process or recruitment itself, in certain cases, make a difference. If the educational qualifications are different then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected



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by a selection committee on the basis or merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged.

12. It is also relevant to extract the judgment reported in **(2006) 4 SCC 1** in the case of **State of Karnataka Vs. Umadevi**, in which the Hon'ble Supreme Court of India held as follows :-

“It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with



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a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal ages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are, therefore, overruled."

13. Though all the workmen were engaged as daily wages worker, subsequently as stated supra, they were regularized to the post of Junior Factory Assistants. Thereafter, they promoted to the post of Senior Factory Assistant and elevated to selection grade. While pending writ petition, they were promoted as Junior Executive/Milk recorder/



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Technical Operator/Special Grade Senior Mazdoor, taking upon their educational qualification and other qualifications. Therefore, the claim of the workmen to absorb them in the service of Lab Technician cannot be considered, since they are not appointed as per the relevant recruitment rules for the post of Lab Technician. Therefore, this Court finds infirmity in the orders passed by the second respondent and the same cannot be sustainable and liable to be quashed.

14. Accordingly, the impugned orders dated 09.04.2015, passed by the second respondent in I.D.Nos.48, 145, 138, 113, 50, 146, 209, 111, 49, 55, 112 of 2010, are hereby quashed and all the Writ Petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to cost.

07.08.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

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G.K.ILANTHIRAIYAN. J.

rts

To

1. The Presiding Officer,
The Labour Court,
Salem.
2. The General Secretary,
Salem mandala Anaithu,
Paniyalarkal Sangam,
44-A, Mariamman Kovil Street,
Hasthampathi,
Salem – 636 007.

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and M.P.No. 1 of 2015

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