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W.A. No. 3317 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2023

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No. 3317 of 2019
&
C.M.P. No. 21305 of 2019

1. The Government of Tamil Nadu,
rep.by the Secretary to Govt.,
Industries (MIC-2) Department,
Secretariat, Chennai – 600 009.
2. The Commissioner of Sugar,
No.474, Anna Salai,
Chennai – 600 035.
3. The Management,
Kallakurichi Co-op Sugar Mill Ltd.,
Unit -I, rep. By its Special Officer,
Moongilthuraipattu,
Sankarapuram Taluk,
Villupuram District – 605 702.

..Appellants

Vs.



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Kallakurichi -I Co-op. Sugar Mill Dhina
Coolie Thozhilalar Sangam STA -309/1984,
Moongilthuraipattu,
Sankarapuram Taluk,
Vilupuram District – 605 702,
rep. By Secretary Mr.L. Devendran.

..Respondent

Prayer: Writ Appeal as against the order dated 10.10.2018 passed in
W.P. No. 23523 of 2018.

For Appellants :: Mr.R. BalaRamesh

For Respondent :: Mr.J. Muthukumaran

J U D G M E N T

S. VAIDYANATHAN,J.

AND

MOHAMMED SHAFFIQ,J.

Questioning the order in W.P. No. 25323 of 2018 dated 10.10.2018,
the present appeal has been filed by the appellants, who are respondents in
the writ petition.

2. The writ petitioner/respondent herein had approached this
Court to appoint 15 members of their union in Kallakurichi Co-operative



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Sugar Mills Ltd, Unit I, who are members of the petitioner Sangam in the existing vacancies in the light of the award dated 25.05.2011 in I.D. No. 82 of 2009 by the Labour Court, Cuddalore. Since the representation dated 19.09.2018 was not acceded to by the 3rd appellant Mill and the Government, the writ petition came to be filed.

3. While dealing with the issue, with regard to accommodating 15 persons, counter affidavit had been filed by the Kallakurichi Co-operative Sugar Mills Limited, Unit I mentioning that out of sanctioned strength of 529 workers, 350 posts are vacant and that there were more than 100 applications pending for consideration with regard to appointment on compassionate grounds from the year 1977 till date. The Union contended that eventhough they had the benefit of the award, they have been driven from pillar to post and that the Mill is appointing other members, who are not the members of the petitioner Union and granting compassionate appointments, which is contrary to the award of the Labour Court. It has been contended by the Union that the award has become final as it has not been proceeded with, by the Management/Mill and it has also been accepted



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by the Management. Learned Single Judge proceeded to hold that though the applications for compassionate appointment need to be considered and they cannot be kept pending for a longer time as its very purpose would get defeated, at the same time, that cannot be taken advantage of, to deprive the writ petitioner the benefit of the award. Learned Single Judge directed the Commissioner of Sugars and the Mill to comply with the award dated 25.05.2011 in I.D. No. 82/2009 passed by the Labour Court, Cuddalore and the directions of this Court in W.P. No. 13097 of 2013 dated 15.04.2014 within a period of one month. Till such time, status quo ante with regard to fresh appointments was directed to be maintained. Aggrieved by the said order, the present writ appeal has been preferred by the respondents in the writ petition.

4. Heard both sides.

5. For the sake of convenience, the award of the Labour Court, more so, paragraph No.9 is extracted below:

"9. In the result, this industrial dispute is allowed, the



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petitioners/workers mentioned in the list attached to this petition are entitled to get regularization for postings in the vacancies in the respondent/management on seniority basis according to their educational qualifications and according to their technical qualifications, if the petitioners who do not have requisite qualifications they have to be regularized in their services on their seniority basis for postings in the vacancies in the case of mazdoors, in cases where the qualification is not required the respondent/management should utilize the services of the daily wages i.e., the petitioners alone are to be engaged for daily works in the seasons and the respondent/management should not go outside for fresh hands. No costs. An Award is passed accordingly."

6. It is not in dispute that there are 15 employees alone who have not been regularised. The Mill has also filed a counter affidavit dated October, 2018 wherein daily rated employees numbering 110 have been appointed on permanent basis based on their qualifications and the relevant



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paragraphs 8 & 9 are extracted below:

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"8. I humbly submit that as directed by this Hon'ble High Court there are around 110 Daily Wages Employees were appointed as permanent workers based on their qualifications in the respondent management from the year 2010 to 2017 i.e., in the year 2010, 2012, 2013, 2014, 2016 and 2017 there are 3, 35, 29, 8, 29 and 6 workers have been regularised. It is further submitted that there are 15 daily rated employees remaining in service.

9. I submit that the petitioner in their affidavit submitted before the Hon'ble High Court Madras, has accepted that during the years from 2010 to 2017, the management has given appointment to 113 no. Of NMRs. Whereas Legal Heirs are deprived of this benefit. According to consensus opinion arrived at between NMRs and Legal Heirs as regards employment, ratio 75:25 to NMRs and legal heirs respectively should be considered, and this point has been enlightened by the Commissioner of Sugar circulars. Abiding by this principle there exists backlog vacancies under compassionate ground basis. It is just and proper at this juncture to give employment to legal heirs of employees of the deceased employee, who are the only bread winner of the family and because of their demise, their families are in indigent (See) circumstances and reeling in poverty. They are in the role right from 1977 till



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date. As per the principle stated above, and G.Os. Issued in this regard, by natural justice also, the contention that remaining NMRs be appointed first and then the legal heirs may be considered is far from justice and in fact, the legal heirs if not given chance for appointment at this stage at least, it would remain as a great injustice caused to them. Rational opportunities will be given at the time of appointment and the place of NMRs would also be considered suitably."

It is further stated by the Mill that there are about 15 daily rated employees to be considered for regular employment and that they lack technical and educational qualification as per the special bye-laws of the Mill and hence, could not be accommodated. In the grounds of appeal also, the Management has taken a plea by means of an affidavit in C.M.P. No. 21305 of 2019 that unless relaxation is given with regard to age and the mode of recruitment, it would be difficult to accommodate these 15 persons and the relevant paragraphs at 13 & 14 of the affidavit dated 11th July, 2019 are extracted below:

"13. It is respectfully submitted that the By-Law of the 3rd petitioner/3rd appellant Sugar Mills, prescribes the eligible criteria that the maximum age for recruitment for post of Mazdoor is below



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30 years. It is also submitted that the members of the 1st respondent union are in the age group of 46-57 years. Therefore, in order to consider the request of the 1st respondent, the relaxation has to be obtained from the Government for two conditions:-

A) Absorption of existing NMRs in the post of Mazdoor instead of following the procedure of direct recruitment.

B) Age Relaxation.

14. It is respectfully submitted that the power of relaxation extended to the Government shall be exercised only on exceptional circumstances in order to redress the grievances; and that the relaxation shall be not exercised in a routine manner. Further, the power to grant exemption cannot be exercised in a manner to destroy the general provision from which the exemption is granted."

7. The learned counsel for the writ petitioner had addressed arguments that preference should be given to the members of the petitioner Union and would further submit that without implementing the award of the Labour Court and by-passing the same, accommodating other persons on compassionate grounds is illegal and that only after exhausting the list of 15 persons, who are languishing for years together for getting permanent posting in the Mill, other persons shall be recruited. The appointment on compassionate ground by-passing these persons is itself illegal. Eventhough



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they are not against those persons, taking note of the fact that these 15 persons are going to retire shortly, they shall be accommodated in preference over others, at least from now onwards and that they shall be regularised.

8. The award which has been extracted supra would make it very clear that the Management can appoint persons based on educational qualification and technical qualification in the respective posts and regularise their service. In case, if they do not have qualification, they can be accommodated as Mazdoors provided they have qualification to hold the post of Mazdoor failing which they must be engaged for daily works in the seasons without taking fresh hands. The award has become final and in the light of the above observations, qualification is essential to accommodate these 15 persons, which according to the Management is absent, more so, in the light of the affidavit dated 11th July, 2019 filed in the miscellaneous petition along with writ appeal, which has been extracted supra, that the Government needs to consider the relaxation of qualification and the age to accommodate these 15 persons.



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9. Eventhough the counsel for the Union contends that the award is in favour of the Union, it appears that the award has the qualifying words with regard to permanent status and appointment, in case, the employees have got required qualification. The contention that the employer will have to by-pass the award cannot be accepted, more so, in the light of Section 18(3)(d) of Industrial Disputes Act, 1947, which is extracted below:

"18

(3) ...

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

The award will bind not only these 15 employees, but also would be applicable to new entrants, who may have joined after the award unless the award is modified by means of a subsequent settlement or award.

10. In the present case on hand, if the 15 persons do not have the



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qualification. Unless the Government takes a decision to relax the age qualification and other criteria that may be required for accommodating these persons, we are of the view that the direction given by the learned Single Judge cannot be held to be erroneous. Hence, we are of the view that while confirming the order of the learned Single Judge, the respondents are directed to comply with the award of the Labour Court extracted supra.

11. It is also needless to mention that without sleeping over the matter, the Government is expected to take a decision with regard to the contentions raised by the Mill in paragraph Nos. 13 & 14 extracted supra and communicate the decision one way or the other so that the employees numbering 15 will know whether they could be accommodated and absorbed in the service before they attain the age of superannuation. The Government is expected to take a decision within a period of three months from the date of receipt of a copy of this order.



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nv

12. The writ appeal is disposed of accordingly. No costs.

Connected C.M.P. Is closed.

nv

(S.V.N.J.) (M.S.Q.J.)
06.01.2023

To

1. The Secretary to Govt.,
Industries (MIC-2) Department,
Secretariat, Chennai – 600 009.
2. The Commissioner of Sugar,
No.474, Anna Salai,
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