



W.P.No.24962 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	5/12/2023
Pronounced on	9/2/2024

C O R A M

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.24962 of 2009
and
W.M.P.Nos.1 and 2 of 2009

1. P.Elumalai
2. B.Rajamani
3. A.Shanmugam
4. A.Kumaravel
5. A.Mani
6. V.Jayakumar
7. T.Lourdhusamy
8. V.Subramani

...Petitioners

Vs.

1. The Commissioner of Sugar,
No.474, Anna Salai, Nandanam,
Chennai - 600 035.
2. The Special Officer,
Kallakurichi Coop. Sugar Mill, Unit - I,
Moongilthuraipattu post,
Sankarapuram Taluk,
Villupuram District.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.7815/Sa.Tho.2/2009, dated 24.07.2009 and quash the same and consequently directing the respondents to revise the pay scales of the petitioners.

For petitioners	:	Mr.Thenmozhi Shiva Perumal
For R1	:	Ms.M.Jayanthy Additional Government Pleader
For R2	:	Ms.S.Anitha

ORDER

This writ petition is filed to quash the order passed by the first respondent in his proceedings Na.Ka.No.7815/Sa.Tho.2/2009, dated 24.07.2009 and direct the respondents to revise the pay scales of the petitioners.



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2. The facts in brief culled out from the affidavit enclosed in the writ petition are as follows:

2.1. The petitioners were working for the past 20 years in the respondent Corporation as canteen employees and their pay scales were fixed in the year 1991 as per settlement. Subsequently, another settlement was entered between the employees and the second respondent under Section 18 (1) of I.D. Act, and pay scales were fixed but they were not implemented.

2.2. Similarly placed employees working in other hotels run by the Government are being paid more and their pay scales were revised frequently. As like other hotels which are run by the Government, the second respondent is also undertaking of the Government of Tamil Nadu but the petitioners employed in the said Corporation were getting only a meager amount as salary and no enhancement of pay was done.

2.3. In connection to this, a written representation dated 28.04.2009 was made to the first respondent to revise the pay scales on par with the employees working in other Government hotels. As there was no response, a



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writ petition in W.P.No.10626 of 2009 was filed, wherein, this Court has directed the first respondent to dispose of the representation within a period of six weeks. Subsequently, the first respondent in Na.Ka.No.7815/Sa.Tho.2/2009 dated 24.07.2009 rejected the request of the petitioners on the ground that the mill was running in loss and hence this writ petition.

3. The Commissioner of Sugar, Chennai/first respondent has filed a counter affidavit, wherein it is stated that the present pay scales given to the petitioners are in accordance to the guideline issued by the Government with regard to the pay scales given by the Labour Commissioner to hotels and canteen workers along with Dearness Allowance as specified in the said guidelines. Hence the petitioners cannot insist on revision of pay scales.

4. Heard Ms.Thenmozhi Shiva Perumal, learned counsel for the petitioners, Ms.M.Jayanthi, learned Additional Government Pleader for the first petitioner and Ms.S.Anitha, learned counsel for the second respondent.

5. The learned counsel for the petitioners drew the attention of this



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Court by placing reliance on the judgment dated 05.05.1998, in Tamil Manila Thozhilalar Sangam, represented by its General Secretary vs The Chairman, TNEB, Anna Salai, Madras and Others, the relevant portion are extracted hereunder:

*"40. In the result, for the reasons stated, the writ petition No.193 of 1990, and the writ appeal Ni.425 of 1991 are allowed, and we grant the following reliefs keeping in view the reliefs granted in **Parimal Chandra Raha's Case**, 1995 Suppl. (2) S.C.C.611 of the Apex Court aforementioned:-*

(i) The workers concerned in the writ petition as well as writ appeal working in the canteen, shall be deemed to have become the regular employees of the respondent Board from the date of filing the writ petition, and they shall be paid the arrears of salary and other monetary benefits if any from the said date after adjusting the salary and monetary benefits the workers have already received."



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6. The learned counsel for the first respondent submits that the canteen was established in the year 1974 in the second respondent Corporation and is administered by a canteen Committee. The canteen staff were paid on daily wages or consolidated pay till the year 1990. An agreement was entered between the petitioners and the second respondent Corporation in the year 1991 where the pay scale was fixed with uniform dearness allowance of Rs.225/- per month and also with certain entitlements and fixed allowances.

7. It is also submitted that a second agreement was entered where Rs.70/- per month was provided as permanent allowance, w.e.f. 01.04.1994. Though, a third agreement for re-fixation of pay and Dearness Allowances was arrived w.e.f. 22.03.1996, under Section 18(1) of Industrial Dispute Act, 1981, the same was not adopted due to the request made by the canteen workers as certain anomalies arose if the agreement was implemented.

8. The learned counsel for the first respondent further submitted



that as the second respondent Corporation belongs to a different category where salaries are paid to the employees based on the subsidy received and hence those hotels or Departments it cannot be compared with the second respondent's Corporation. Further, the subsidy granted for the past 13 years has been reduced and was brought down from Rs.18 lakhs to Rs.4.5 lakhs in the year 2009-2019.

9. It is also further submitted by the learned counsel for the first respondent that the second respondent Corporation is running in losses and the salaries paid to the petitioners are in accordance to the guidelines issued by the Government with respect to the pay scales given by the Labour Commissioner to hotels and canteen workers along with the Dearness Allowances. Due to the financial constraint, it is not feasible for the Corporation to grant the pay specified by the petitioners.

10. Perused the materials available on record.

11. There is no dispute that the canteen was established in the year 1974 by second respondent Corporation and the canteen staff are being paid



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daily wages on consolidated pay until 1990. Thereafter, on account of agreement between the petitioners and Corporation, pay scales were fixed with uniform allowances, etc. Subsequently, two more agreements were also entered into between the petitioners and second respondent.

12. The petitioners are seeking for a direction to the respondents to revise the pay scale of the petitioners on par with the employees working in Tamil Nadu Hotels run by the Government of Tamil Nadu and Tourism Department. The petitioners have been working in the canteen for more than 20 years. The petitioners have been given representation to the first respondent on 28/4/2009 and subsequently, also made several representations. As there was no response, Writ Petition No.10626 of 2009 was filed, wherein the directions were given to consider the representations, however, the first respondent has rejected the said representation. Aggrieved by the same, the present writ petition is filed.

13. The main contention of the learned counsel for the first respondent is that the canteen staffs were paid salaries basing on the subsidy, thereby, petitioners cannot compare their salaries with the salaries of the second



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respondent. The subsidy granted to the Sugar Mills over the past 13 years have been substantially reduced and it has been brought down from Rs.18 lakhs in the year 1997 – 98 to that of Rs.4.5 lakhs in the year 2009 – 2010. It is also further submitted that Mill has accumulated loss of Rs.192.69 crores and on account of financial constraint, it is not feasible for the second respondent to pay the salaries.

14. On considering the submissions made by the learned Additional Government Pleader for the first respondent and on perusal of the counter affidavit, it is clear that the second respondent Corporation is considering the case of the petitioners not on par with the Government establishments, like hotels which have no relevance to the present case, since the petitioners belong to a totally different category and are paid salary based on the subsidy allotted to the concerned Sugar Mill. The said contention cannot be accepted. As long as the second respondent runs the canteen, they are expected to protect the pay of the petitioners.

15. This Court, in ***TAMIL MANILA THOZHILALAR SANGAM, rep. By ITS GENERAL SECRETARY Mr.K.NITYANANDAM 1998 (III)***



CTC – 1, which was disposed of on 5/5/1998 gave a finding that canteen is part of Ennore Thermal Power Station and workers in the canteen are employees of the Tamil Nadu Electricit Board. Running of canteen is incidental to or connected with the manufacturing process. The relevant portion of the judgment are extracted hereunder:

“19. It is not disputed that the respondent Board has statutory obligation to provide canteen facilities for the workers as per [Section 46](#) of the Factories Act, 1948 read with Rules 65 to 71 of the Tamil Nadu Factories Rules; the premises in which the canteen is run is part of the plant of the Board, meant for the canteen purpose given to the contractor without any rent; the electric supply to the canteen is also at the expense of the respondent Board; even the fuel gas is supplied by the Board free of cost; the cost of food items are subsidised; and quality of the food is supervised by the respondent Board; and the tables, chairs, vessels, and all materials belong to the respondent Board. The workers employed in the canteen prepare lunch, tiffin, etc. for the staff members and workers of the power station.



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20. Providing and maintaining a canteen is a statutory obligation placed on the respondent Board which fact is not disputed. As a matter of fact also the canteen is provided and maintained for long number of years, and the position continues to be so even today. The workers in the canteen could not be treated as casual labourers as the services of workers were needed all along. It is also stated that the workers whose cause is espoused in both the writ petitions have been working in the canteen for long number of years, except those who are not continuing.

21. In [Parimal Chandra Raha's](#) case, 1995 Suppl. (2) S.C.C. 611 the facts were that the 42 workmen employed in the canteens at four different offices of the Life Insurance Corporation of India had contended that they were the canteen workers of the respondent Corporation engaged in the operation incidentally connected with the industry carried on by the respondents; they should be treated on par with the other employees; they also stated that they being engaged in work incidentally connected with the industry carried on by the Corporation, they were entitled to get the pay that was admissible to regular employees of the Corporation; the case of the respondent Corporation was that the canteens did not belong to it



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nor they were run by it; the corporation only gave its employees the facilities to run the canteens; it has no connection, much less contract of employment; nor did it have any control over their work, conditions of service, or termination of their service; therefore they were not the employees of the Corporation; and they could not be deemed as employees of the Corporation.

22. Two questions that arose for consideration before the Apex Court were (i) whether the appellants are/or should be deemed to be the regular employees of the respondent Corporation? and if the answer is in the affirmative, (ii) what pay scales and other service conditions should be made available to them?

23. The Apex Court, having extracted [Section 46](#) of the Factories Act, 1948, and referred to various decisions including the case of [M.M.R. Khan v. Union of India](#). 1990 Supp. S.C.C. 191, in paragraphs 13 to 24 of [the said judgment](#), has stated in paragraph 25 the position that emerged from the Statute law and the judicial decisions, which are already extracted in paragraph 4 of this judgment. Paragraph 29 of the same judgment of the Apex Court reads:-



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"The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been from time to time, taking steps to provide the said services. The canteen committees, the Co-operative Society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The Corporation has been taking active interest even in organising the canteen committees. It is further the Corporation which has been appointing the contractors to run the canteens and entering into agreements with them for the purpose. The terms of the contract further show that they are in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation. The



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Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the record shows that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time, whatever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the infrastructure for running the canteen, viz., the premises, furniture, electricity, water etc. is supplied by the corporation to the managing agency for running the canteen. Further, it cannot be disputed that the canteen service is essential for the efficient working of the employees and of the offices of the Corporation. In fact, by controlling the hours during which the counter and floor service will be made available to the employees by the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the premises of the office itself and continuously since inception of the Corporation as pointed



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out earlier. The employees of the Corporation have all along been making the complaints about the poor or inadequate service rendered by the canteen to them, only to the Corporation and the corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary breakdown in the canteen service, on account of the agitation or of strike by the canteen workers, it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees, the co-operative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation."

16. Further according to the petitioners, salary of the petitioners was



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not revised for the past 20 years. The second respondent has approached the labour Court, Coimbatore for revision of pay scales in I.D.No.72 of 1984 and the same was allowed by the labour Court, holding that pay scales for the canteen employees should be fixed on par with the employees in the Sugar Mills.

17. The only defence taken by the second respondent is that since they are not getting the subsidy, salaries of the petitioners were not being revised and that cannot be an excuse. Hence, the salaries of the petitioners have to be regularised on par with the employees of the second respondent Corporation from the date of the writ petition, in view of the statutory obligation on the part of the second respondent to run a canteen under the Factories Act.

18. In the result, this writ petition is allowed and the impugned order dated 24/7/2009 passed by the first respondent in Na.Ka.No.7815/Sa.Tho.2/2009 is hereby quashed. No costs. Consequently, the connected Miscellaneous Petitions are closed.



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Index : Yes/No
Neutral Citation: yes/No

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DR. D.NAGARJUN,J

vca/mvs.

Pre-delivery order made in
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