IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 01.08.2024

Delivered on: 13.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A.Nos. 54 to 56, 98 to 101 & 318 of 2016
and 11 to 13, 58 & 59 of 2017
And
C.M.P.Nos. 561 to 563, 1218 to 1221,16140
to 16151 & 4884 of 2016
and
118,188,189, 190,191,192,946 & 947 of 2017

1. Perambalur Sugar Mills
Eraiyur, Perambalur-621 133 ...Appellant's in W.A.No.54/2016
/17th Respondent

2. Arignar Anna Sugar Mills
Kurungula, Thanjavur-613300 ...Appellant's in W.A.No.55/2016
/18th Respondent

3. National Co-operative Sugar Mills Ltd.,
Mettupatti, Alanganallur via., Vadipatti Taluk
Madurai-625502 ...Appellant's in W.A.No.56/2016
/1st Respondent

4. Ambur Co-operative Sugar Mills Ltd.,
Vadaputhupet, Vellore-635812 ...Appellant's in W.A.No.98/2016
/8th Respondent

5. Cheyyar Co-operative Sugar MillsLtd.,
Anakkavur, Thethandalam,Cheyyar,
Tiruvannamalai ...Appellant's in W.A.No.99/2016
/9th Respondent

6. Tiruttani Co-operative Sugar Mills Ltd.,
Tiruvalankadu,
Thiruvallur-631210 ...Appellant's in W.A.No.100/2016
/13th Respondent

7. Vellore Co-operative Sugar Mills Ltd.,
Ammundi,Gudiyatham Taluk,
Vellore-632519 ...Appellant's in W.A.No.101/2016
/7th Respondent

8. Kallakurichi Co-operative Sugar Mills
Rep. By its Managing Director
Unit-I, Moongilthuraipattu,
Villupuram-605702 ...Appellant's in W.A.No.318/2016
/11th Respondent

9. Kallakurichi Co-operative Sugar Mills
Rep. By its Managing Director
Unit-II, Moongilthuraipattu,
Villupuram-606207 ...Appellant's in W.A.No.318/2016
/12th Respondent

10. Commissioner of Sugar,
Department of Sugar,
Chennai-600035 ...Appellant's in W.A.No.11/2017
/20th Respondent

11. Chengalrayan Co-operative Sugar Mills Ltd.,
Periyasevali, Ulundurpet Taluk,
Villupuram- 607209 ...Appellant's in W.A.No.12/2017
/10th Respondent

12. The Salem Co-operative Sugar Mills Ltd.,
Mohanur, Namakkal -637015 ...Appellant's in W.A.No.13/2017
/2nd Respondent

13. Nadippisai Pulavar K.R.Ramasamy Co-operative Sugar Mills Ltd.,
Thalainayar, Mayiladuthurai Taluk,
Nagappattinam-609201 ...Appellant's in W.A.No.58/2017
/15th Respondent

14. M.R.Krishnamoorthy Co-operative Sugar Mills Ltd.,
Sethaiathope, Chidambaram Taluk,
Cuddalore-608702 ...Appellant's in W.A.No.59/2017
/14th Respondent

Vs

1. The Tamil Nadu All Co-operative
and Public Sector Sugar Mills,
Staff Peravai,
Rep. By its General Secretary ... Respondent in W.A's
/Respondent in W.P's

2. National Co-operative Sugar Mills Ltd.,
Mettupatti, Alanganallur via., Vadipatti Taluk
Madurai-625502 ... Respondent in W.A.Nos. 54 to
55, 98 to101 & 318 of 2016 and
11 to13,58 & 59 of 2017
/ 1st Respondent in W.P's

3. The Salem Co-operative Sugar Mills Ltd.,
Mohanur, Namakkal -637015 ... Respondent in W.A.Nos. 54
to 56, 98 to 101 & 318 of 2016 and
11 to12, 58 &59 of 2017
/ 2nd Respondent in W.P's

4. Amaravathi Co-operative Sugar Mills Ltd.,
Krishnapuram, Udumalapet Taluk,
Coimbatore-642111 ... Respondent in W.A.Nos.
54 to56, 98 to101 & 318 of 2016
and 11 to13,58&59 of 2017
/3rd Respondent in All W.P's

5.Dharmapuri District Co-operative Sugar Mills Ltd.,
Jerthalav Post, Palacode Taluk,
Dharmapuri-638808 ... Respondent in W.A.Nos. 54 to 56, 98 to101 & 318 of 2016 and 11 to 13, 58 & 59 of 2017 /4th Respondent in W.P's

6. Subramania Siva Co-operative Sugar Mills Ltd.,
Gopalapuram, Harur Taluk,
Dharmapuri-636904 ... Respondent in W.A.Nos. 54 to 56,98 to101 & 318 of 2016 and 11 to13,58 & 59 of 2017 /5th Respondent in W.P's

7. Tiruppatur Co-operative Sugar Mills Ltd.,
Kethandapatti, Tiruppathur Taluk,
Vellore-635815 ... Respondent in W.A.Nos. 54 to 56, 98 to101 & 318 of 2016 and 11to13, 58 & 59 of 2017 /6th Respondent in W.P's

8. Vellore Co-operative Sugar Mills Ltd.,
Ammundi, Gudiyatham Taluk,
Vellore-632519 ... Respondent in W.A.Nos. 54 to 56,98 to100 &318 of 2016 and 11 to13, 58 & 59 of 2017 /7th Respondent in W.P's

9. Ambur Co-operative Sugar Mills Ltd.,
Vadapurthupet,
Vellore-635812 ... Respondent in W.A.Nos. 54 to 56, 99 to 101 & 318 of 2016 and 11 to13, 58 & 59 of 2017 /8h Respondent in W.P's

10. Cheyyar Co-operative Sugar MillsLtd.,
Anakkavur, Thethandalam,Cheyyar,
Tiruvannamalai ... Respondent in W.A.Nos. 54 to 56, 98 to 101 & 318 of 2016 and 11 to 13,58 & 59 of 2017 /9h Respondent in W.P's.

11. Chengalrayan Co-operative Sugar Mills Ltd.,
Periyasevali, Ulundurpet Taluk,
Villupuram- 607209 ... Respondent in W.A.Nos. 54 to 56, 98 to101 & 318 of 2016 and 11 & 13,58 & 59 of 2017 /10h Respondent in W.P's

12. Kallakurichi Co-operative Sugar Mills
Rep. By its Managing Director
Unit-I, Moongilthuraipattu,
Villupuram-605702 ... Respondent in W.A.Nos. 54 to 56, 98 to 100 of 2016 and 11 to 13,58 & 59 of 2017 /11th Respondent in W.P's

13. Kallakurichi Co-operative Sugar Mills
Rep. By its Managing Director
Unit-II, Moongilthuraipattu,
Villupuram-606207 ... Respondent in W.A.Nos. 54 to 56,98 to 101 of 2016 and 11 to13, 58 & 59 of 2017 /12th Respondent in W.P's

14. Tiruttani Co-operative Sugar Mills Ltd.,
Tiruvalankadu,
Thiruvallur-631210 ... Respondent in W.A.Nos. 54 to 56, 98 to 101 of 2016

and 11 to 13,58 & 59 of 2017
/13th Respondent in W.P's

15. M.R.Krishnamoorthy Co-operative Sugar Mills Ltd.,
Sethaiathope, Chidambaram Taluk,
Cuddalore-608702 ... Respondent in W.A.Nos. 54 to 56,98 to 101 of 2016 and 11 to 13 & 58 of 2017
/14th Respondent in W.P's

16. Nadippisai Pulavar K.R.Ramasamy Co-operative Sugar Mills Ltd.,
Thalainayar, Mayiladuthurai Taluk,
Nagappattinam-609201 ... Respondent in W.A.Nos. 54 to 56, 98 to101 of 2016
and 11 to 13 & 59 of 2017
/15th Respondent in W.P's .

17. Madhuranthagam Co-operative Sugar Mills Ltd.,
Padalam, Kancheepuram-603308 ... Respondent in W.A.Nos. 54 to 56, 98 to 101of 2016 and 11 to 13, 58 &59 of 2017
/ 16th Respondent in W.P's

18. Arignar Anna Sugar Mills
Kurungulam, Thanjavur-613300 ... Respondent in W.A.Nos. 54 & 56,98 to 101 of 2016 and 11 to13 & 59 of 2017
/18th Respondent in W.P's

19. Madura Sugars
Pandiarajapuram, Vadipatti Taluk,
Madurai-624209 .... Respondent in All W.A's
/ 19th Respondent in W.P's

20. Commissioner of Sugar,
Department of Sugar,
Chennai-600035 . ... Respondent in All W.A's/ 20th

Respondent in W.P's

21. The Presiding Officer,
Industrial Tribunal, Chennai. ... Respondent in All W.A's / 21st Respondent in W.P's

Common Prayer In W.A.No. 54 to 56, 98 to 101 & 318 of 2016 and 11 to 13, 58 & 59 of 2017: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 22.04.2015 made in W.P.Nos.2325 of 2004.

For the Appellant's in the W.A.Nos.54 to 56/2016 : Mr.V.Venkadasalam

For the Respondents in the W.A.Nos.54 to 56/2016 : Mrs. D.Geetha for R1
M/s. M.Geetha Thamaraiselvan for
R4,6,7,8,9 &14 in W.A.No.54/2016
& R2,3to8&13 in W.A.No.56/2016&
R10,11,13,15to18 in W.A.No.55/2016
Mr.M.R.Raghavan for R5
Mr.S.Ravi Kumar
Special Government Pleader
for R10,to,12, R14 to 18 in W.A.No.54 & 56/2016
Others-No Appearance

For the Appellant's in the W.A.Nos.11to13/2017 : Mr. P. Kumaresan
Additional Advocate General
Asst by

Mr.T.Cheylian
Additional Government Pleader
in W.A.No.11/2017
Mr.R.Bala Ramesh in
W.A.Nos.12&13/2017

For the Respondents
in the W.A.Nos.11to13/2017 : Mrs. D.Geetha for R1
Mr.Ravi Kumar, Special Government
Pleader
for R10,11,12& 14 to 18
R 2 to 9,13,19 & 20 - No Appearance
R 21-Court

For the Appellant's in
W.A.Nos.58&59/2017 : Mr.P.Kumaresan
Additional Advocate General Asst by
Mr.R.Bala Ramesh

For the Respondents
in W.A.Nos.58&59/2017 : Mr.Ravi Kumar, Special Govt Pleader
for R10,11,13,15 to18 in
W.A.No.58/2017
& R10,11,13,15 to 18 in
W.A.No.59/2017
Mrs. D.Geetha for R1.

For the Appellant's in
W.A.Nos.98to101/2016 : Mr.M.S.Palanisamy

For the Respondents
in W.A.Nos.98to101/2016 : Mrs. D.Geetha for R1
Mr.Ravi Kumar Special Government Pleader
for R9,10,12,14 to 18
Mr.P.Kumaresan
R2 to 8,11,13&19-Given Up

Asst by Mr.T.Cheylian, Additional Government Pleader for R2

For the Appellant's in W.A.No.381/2016 : Mr.K.Krishnan

For the Respondents in W.A.No.381/2016 : Mrs. D.Geetha for R1
Mr.Ravi Kumar Special Government Pleader
for R9,10,11,13 to 17

COMMON ORDER

The present writ appeals had been filed challenging the order dated 22.04.2015 made in W.P.No. 2325 of 2004.

2. The case of the Appellant is that in the year 1984, the Tamil Nadu Government established the Common Cadre System for cooperative and public sector sugar mills, aiming to create a mobile workforce among top managerial positions. It was introduced through G.O. Ms. No. 806 on 25.07.1984. This system allowed transfers of top-level managers between sugar mills within the state. Employees under the Common Cadre System would be subjected to transfer and they would retire at the age of 58, while the employees under non-common

cadre system would retire at the age of 60 and would not be transferable. This system provided employees under the Common Cadre System with pay scales and benefits equivalent to those of government employees, while non-common cadre employees received wages set by the Wage Board, creating a dual wage system.

3. In 1997, the Government in G.O.Ms.No.834 Industries Department, dated 8.12.1997 abolished the common cadre system and permitted the Co-operative and Public Sector Sugar Mills to absorb the erstwhile common cadre employees after obtaining their consent. Even after the common cadre system was abolished, these employees continued to receive the same pay and benefits, which created disparity between them. Thus, the non-common cadre employees disputed the same before the Industrial Tribunal as ID.No.48/2000, seeking equal pay, Dearness Allowance, House Rent Allowance, and other similar benefits as received by the former common cadre officers.

4A. The Industrial Tribunal passed an award dated 21.02.2002, stating that the respondent's union must adhere to a previous settlement (Ex.W23) and cannot demand higher wages until its expiration on 31.03.2003. They can seek pay parity only after the expiry date; the request put forth cannot change the agreed-upon wages. The Tribunal suggested two methods for achieving pay parity that is by raising the wages of non-common cadre workers to match those of erstwhile Common Cadre System (CCS) employees or reducing the CCS employees' wages. The first method was deemed impractical, so the Tribunal chose to lower the CCS employee's pay and classified the excess as personal pay to be adjusted against future benefits. This decision aimed to maintain existing settlements and improve the financial stability of the Co-operative Mills, which were operating at a loss, while allowing for future pay restructuring for former CCS employees.

4A. The respondent's Association, unsatisfied with the Tribunal's method for achieving pay parity for erstwhile Common Cadre System (CCS) employees, filed a writ petition in W.P.No.2325 of 2004. During the pendency of writ petitions, some non-common cadre employees had their pay revised following High Court orders. The Commissioner of Sugars reported that the mills were suffering significant losses, making it difficult to meet demands for a government-scale pay structure. On 12.12.2008, the Commissioner increased the Dearness Allowance for former CCS employees from 47% to 54%, aligning with government employees. The Association argued that this widened the pay disparity and filed another writ petition in W.P. No.30656/2008 to challenge the same. In the meantime, several other writ petitions were also filed to challenge the award passed in the ID.No.48/2000.

5. Pending the writ petitions, the Government constituted a High-Level Committee on 01.03.2011, under G.O.(Ms) No.69 to examine the pay fixation for employees of Cooperative and Public Sector Sugar Mills. The committee, which included various officials, were also tasked with submitting a report within a month, without affecting the pending High Court cases. On 01.08.2011, the committee recommended aligning the pay structure of these employees with that of government employees. This proposal was sent to the Principal Secretary of the Industrial Department on 29.02.2012, clarifying that the mills would fund the pay adjustments through improved efficiency, without seeking government assistance. The Learned Single Judge passed an order dated 22.04.2015 directing the relevant

authorities to modify the award passed by the Industrial Tribunal in I.D.No.48 of 2000 to enhance the pay of the respondents Association's members to align with that of the erstwhile CCS employees and consequently dismissed the W.P.No. 30656 of 2008. Aggrieved against the same, the present Writ Appeal had been filed.

6. Per Contra the learned counsel appearing for the respondents submitted that the Government introduced a Common Cadre System (CCS) for employees in cooperative and public sector sugar mills in the year 1984. In 1989, 11 employee categories (CCEs) were added to the CCS without government approval, and their pay was aligned with government employees. Non-CCE employees requested similar pay parity, which was denied. Against the same, the union raised a dispute seeking parity for all the cadre of sugar mills. Despite, the CCS being abolished in the year 1997, former CCEs continued receiving pay comparable to the government servants. The dispute was referred by the government and was taken up by the Industrial Tribunal in I.D.No.48 of 2000, which ruled that parity could be achieved by either raising non-CCE pay or reducing CCE pay, suggesting CCE pay could be protected but adjusted to ensure parity.

7. The Government accepted the said award and reduced CCE pay to match non-CCE levels, but the CCEs challenged the same before this court in W.P.Nos. 32770 and 34423 of 2003. The court upheld their higher pay, aligning it with government employees. Meanwhile, the union filed a petition W.P.No. 2325 of 2004 to raise their pay on par with the CCE levels. The court vide order dated 22.04.2015 modified the award passed by the tribunal and directed the government to increase non-CCE pay for parity. This decision is being challenged by the Commissioner of Sugar and the Sugar Mills through these present writ appeals which is liable to be dismissed.

8. The learned counsel for the appellants submitted that the matter of parity between the common cadre and the Non Common cadre System employees was already considered by the Division Bench of this Hon'ble Court in Writ Appeal Nos.450 to 457 of 2010. The basic facts of the case are alike to the facts of the present case and the Division Bench considered all the aspects and passed a

Common Order dated 02.12.2010 and dismissed the Appeal.

9. In these Writ Appeals, the prime issue is with regard to the legality and correctness of the claim made by a section of employees of various sugar Mills for inclusion of their posts in the common cadre service subsequent to the abolition of the Common Cadre system, which came to be rejected by the Director of Sugar and also on the part of the legality of the claim for the inclusion in the common cadre, applying the doctrine, " Equal pay for Equal work".

10. Firstly, none of the employees who filed their respective writ petitions to include them in the Common Cadre, has not raised any issues against their non-inclusion at any point of time between 1984 to 2006. Admittedly, the Common Cadre System was abolished on 3.12.1997. It was only the pay protection given to the erstwhile employees under the common cadre, which prompted these employees to make a claim to include them in the Common Cadre system, well knowing that the Common Cadre itself was abolished. Therefore, their intention was only to get the benefits of the Common Cadre without the risk of transfer to the other Societies as done in respect of the employees in the Common Cadre.

Some of these employees have already enjoyed the benefit of the retirement age at 60 years, even though it was 58 years in the case of employees under the Common Cadre. Therefore, these employees wanted both the benefits of Common Cadre as well as regular cadre. In fact, they were sitting on the fence. Therefore, there is no question of including these posts in the Common Cadre after abolishing the same.

11. It was only in the year 2006 and that too after the decision of the Division Bench in Chandra's case, the employees started filing representations claiming inclusion of their posts under the Common Cadre System. In fact, the said observation cannot be taken in general manner for the purpose of contending that the very benefits of Chandra's case would accrue to the employee's working in non-cadre. The correctness of the decision taken to include various posts in the common cadre service, with reference to the nature of duties, qualification, pay scale, etc., were not the subject matter of the Chandra's case. The learned Single judge was not justified in allowing the writ petitions on the basis of Chandra's case. Therefore, on that ground no relief could be granted to the employee's.

12. Secondly, while discussing the issue on part of the " Doctrine of Equal

pay for equal work", the counsel representing the Appellants relied on the following dictum' laid down by the Hon'ble Apex court in the Judgment reported in **Union of India v. T.V.L.N. Mallikarjuna Rao, 2015 3 SCC 653,** "*the classification of posts and determination of pay structure comes within the exclusive domain of the Executive and the Tribunal cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service.*" Also in another case the Hon'ble Supreme Court observed in **Shyam babu verma and ors., vs Union of India and ors., 1994 (2) SCC 521,** that "*The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification*".

13. As per the said principles, a mere difference in service conditions does not amount to discrimination. Unless there is a complete and wholesale/wholesome identity between the two posts they should not be treated as equivalent and the court should avoid applying the principle of equal pay for equal work. The application of the principle of equal pay for equal work requires consideration of the various dimension of a given job. The accuracy required and the dexterity of a

given job may entirely differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any such event, the party who claims the parity of pay under the doctrine of equal pay for equal work has the onus to establish the discrimination by the employer. On considering the same, the impugned order passed in the Writ petition is liable to be set-aside.

14. The learned counsel for the appellants would further contend that the Writ Petition was filed in the year 2003 and the award passed in ID No.48 of 2000 dated 21.2.2002 clearly reveals that the respondents are bound by the terms of the Settlement and receiving the wages in accordance with the Settlement entered between them. At that time the said settlement was in existence till 2003 and subsequently, they also entered into fresh settlement which would be in existence till 2026. That being so, the association has no right to file a Writ Petition when

the individual employees as well as other major trade unions have accepted the salaries payable to them based on the settlement. Further, the Labour Court did not grant award for increase of salary to the Non Common Cadre people equivalent to that of Common Cadre system as the non- common cadre people are governed by the wage board settlement. Thus, when the Labour court did not increase the salary of non common cadre people then the High court ought not to have modified the award and granted relief to the claimants in the writ petition. Therefore, the learned Single Judge has totally erred in modifying the award.

15. It is also contended by the learned counsel for the appellants that the issue of parity is already dealt by the Division Bench of this Court in W.A 450 of 2010 and the order dated 02.12.2010 has become final since, the appellants therein did not prefer any appeal. Further, the issue in hand seeking parity with the erstwhile common cadre system is squarely covered by the above order of the Division Bench. The award of the Labour Court which was modified by the Writ Court does not require any interference at the hands of this Court. It is well settled principle that this writ court could not interfere with the findings of the Labour Court while exercising the power under Article 226 of the Constitution of India.

16. The learned counsel for the appellants would submit that the implementation of the orders passed in W.P.No.2325 of 2004 would totally endanger the financial existence of majority of the Co-operative and Public Sector Sugar Mills as making payment even to the cane growers and the Payment of existing salary is a herculean task requiring utmost financial management and recurring financial assistance from Government and if the Writ Petition order is allowed to implement, then the Appellant's mills will have to close down its operation and sell all its assets to pay the arrears of salary. Initially the respondents had filed their claim in the year 2000 only for 297 employees but sought orders for all the employees of all the sugar mills existing in the State of Tamil Nadu. Even those 297 employees also would have retired and some of them would have died by this time and to substantiate the same, the respondents failed to give the name list of those 297 employees too.

17. The learned counsel for the respondents-employees argued that these current appeals are not maintainable as they failed to challenge the award passed in the ID and also the order passed by the learned Single Judge. The appeals challenging the decision to implement a single pay structure is an attempt

to maintain an unfair dual pay system. The dual pay structure within one establishment is highly arbitrary, illegal, and is a violation of constitutional rights. It is submitted that the CCE's challenged the award of the labour court by way of separate writ in W.P.No. 32770 of 2003, which was allowed vide order dated 29.08.2013. The court set aside the Tribunal's direction to reduce the CCEs' pay and allowances. However, the remaining portion of the award that ordered raising the pay of Non-CCE employees remained unaltered. Since the Appellants accepted the Tribunal's award, they cannot now challenge the writ petition order, which merely reaffirmed the relief outlined in the award.

18. It is submitted that the Sugar Mills and the Commissioner of Sugar implemented the Industrial Tribunal's award by re-fixing the pay of erstwhile Common Cadre Employees (CCEs). This decision was challenged by the Tansugar Common Cadre Officers Association in a writ petition in W.P.No. 34423 of 2003, but the Appellants accepted the Tribunal's award and did not contest the court ruling that favoured the CCEs. As a result, the award became final. A High-Level Committee report dated 01.08.2011 also acknowledged the existence of a dual

wage structure in the sugar mills and recommended aligning all employee's wages with government pay scales.

19. The learned counsel for the respondent contended that the claim of the respondents in the judgment decided by the Division bench of this Court in W.A.No.450 of 2010(batch) relied on by the Appellants, is for inclusion of the respondent employees in the Common Cadre System (CCS) and equal pay with other 'C category Supervisory Staff' who were part of that system. Their claim was denied by the Division Bench, which ruled that they could not seek inclusion after 10 years of the CCS's abolition. For which, the Appellants argued that the writ was not maintainable due to an alternative remedy under the Industrial Disputes Act. In the current appeal, the dispute centers on extending wages, which were already being paid to some employees in the sugar mills as comparable to Government workers. Consequently, the circumstances of this appeal differ significantly from those in the previous case, which focused on the inclusion in the CCS and equal pay for equal work, making the earlier judgement inapplicable to the current case.

20. The learned counsel for the respondents contended that the reliance

placed by the appellants in the decision in W.A.No.450 of 2010 (batch) is that in that case, the respondents sought inclusion in the Common Cadre System (CCS) and equal pay with other 'C category Supervisory Staff,' but their claim was denied due to the CCS's abolition 10 years earlier. The Appellants in that case had argued that the writ was not maintainable because an alternative remedy existed under the Industrial Disputes Act. However, the current appeal differs, as it centers on extending government-level wages already being paid to some employees to all sugar mill workers. Therefore, the previous judgment is not relevant to the present case.

21. However, the claim of changing the wage structure would financially burden them is inaccurate. The tribunal found that wages only account for 7.44% of production costs and adjusting wages would add just 2% to the existing costs. The Director of Sugars confirmed that labour costs currently represent 14.35% of sugar production costs, with raw materials at 75%. The proposed wage increase to match government employees would add 28.08 crores annually, raising labour costs to 16.90% a minimal increase of 2.55%. The Commissioner of Sugar's

arguments is found to be as contradictory to the earlier submissions to the High-Level Committee.

22. The learned counsel for the respondents referred to the following judgments of the Hon'ble Supreme Court which has upheld similar demands for pay parity.

(i) ***South Malabar Gramin Bank Vs Coordination Committee of SMGB Employees Union and others- 2001(4) SCC 101***

(ii)The Special Officer, Salem Co-operative Sugar Mills Matric Higher Secondary School Vs All Teachers Front in WA.No.1962 of 2005 (batch) dated 28.04.2008.

23. It is also argued by the learned counsel for the respondents that the claim that the employees are covered under the wage settlements is inaccurate because the wage revisions during ongoing legal disputes were implemented through government orders rather than settlement agreements.

24. The learned counsel for the respondents also raised contention in respect of the permissibility of the Dual Pay Structure and relied on the judgment ***Union of India Vs Dineshan.K.K, reported in (2008) 1 SCC 586, wherein***, the Supreme Court has ruled that equal pay for equal work is a fundamental right, emphasizing that employees can seek redress against arbitrary pay structures despite the executive's prerogative in determining pay scales. Therefore, on considering the above aspects the present writ appeals, be dismissed.

25. We have carefully considered the rival submissions with reference to the wage structure and the case law relied upon by the counsel on both sides.

26. The background of the above factual and legal aspects will give rise to the following analysis:-

(i) Tribunal upheld the claim of the respondent association by giving direction that (a) enhancing the pay of the petitioners and alternatively (b) reducing the pay of the erstwhile CCS.

(ii) Tribunal further observed that pay once given need not be reduced. It can be protected.

(iii) Tribunal given the remedy to protect the pay to the extent that parity workout, among other employees of equal status; residue of higher pay that the erstwhile CCS employees enjoyed, can be termed as personal pay susceptible for adjustment with future benefits.

(iv) Tribunal pointed out that pay should be rationally restructured when the system was abolished.

Thereafter, Government brought down the pay of CCE as that of Non CCE. Aggrieved employees filed writ petition and this court directed the Government to extend pay as that of Government servants of their respective cadre. In the writ petition filed by the Association, this court modified the award of the Tribunal to bring parity by increasing the pay of non CCE on par with the erstwhile CCE. Now, Sugar Mills challenged the same.

27. In so far as the contention regarding equal pay for equal work not followed by the appellant which has been sought to be implemented by the Tribunal as well as the learned Single Judge, is concerned, in our considered view,

the pay disparity is a gross violation of Article 14 of the Constitution of India.

28. The next contention of the learned counsel for the respondent Association, which appears to be the most powerful weapon in the hands of the Association, is that pay disparity based upon the the classification made by the appellant Sugar Mills, which in our considered view, is only unconstitutional. Even after the abolition of common cadre system, the CCE employees have been restored to their original cadre of service. In view of the pay protection given to the Common Cadre employees, the respondent Association employees are also entitled for such pay.

29. Therefore it is clear that the dual pay within one establishment is highly arbitrary. Having regard to the constitutional mandate of equality and inhibition against discrimination in Article 14 and 16, in service jurisprudence, the doctrine of equal pay for equal work has assumed status of a fundamental right. The learned Single Judge, in the impugned order dated 22.04.2015, pointed out that the employees of the petitioner Association even after the expiry of more than one

decade, are not able to get any benefit under the award for no fault on their part. The learned Single Judge further observed that from the date of award till date, nearly 2000 employees retired and were out of service and it could not be ascertained how many of them alive who were fighting for more than one decade, for enjoying the benefit. The said order is challenged in these writ appeals and now another 9 years lapsed.

30. It is a constitutional mandate for the State to ensure there should be equal pay for equal work. Article 39(d) of the Constitution included in Part IV contains a "Directive Principle of State Policy", which reads as follows:

39. The State shall, in particular, direct its policy towards securing

(a) ...

(b)...

(c)...

(d) that there is equal pay for equal work for both men and women;

Though the Directive Principles of State Policy are not enforceable in the Courts and they do not create any justiciable rights in favour of individuals, the violation of a fundamental right, arising out of the Directive Principles may be enforced in a Court of Law. Therefore, the respondent association seek to place their claim of equal pay for equal work. The appellants cannot reject the said claim.

31. The learned Single Judge directed the Commissioner/Director of Sugar to remove the disparity by enhancing the pay of non common cadre system employees of the Sugar Mills on par with the erstwhile Common Cadre System Employees with effect from 01.04.2003. However, the fruits of benefit is not enjoyed by the respondent-association employees. The ratio of law laid down in the cited judgments and the mandate of the Constitution is, mutatis mutandis, and is applicable to the instant writ appeals and is a complete answer to the issue in hand.

32. For all the above reasons, we find no merits in the appeals. Consequently all the appeals are dismissed. The appellants are directed to carry out the direction stipulated by the learned Single Judge as directed in the order

dated 22.04.2015, within two months from the date of receipt of a copy of this order. No Costs. Consequently connected miscellaneous petitions are closed.

[J.N.B.,J.]   [P.D.B.,J.]

13.11.2024

Index:Yes/No

nvsri

To
1. Commissioner of Sugar,
Department of Sugar,
Chennai-600035

2. The Presiding Officer,
Industrial Tribunal, Chennai.

J.NISHA BANU,J.

AND

P.DHANABAL, J.

nvsri

**W.A.Nos. 54 to 56, 98 to 101 & 318 of 2016
and 11 to 13, 58 & 59 of 2017**

13.11.2024