
(2011) 08 MAD CK 0420

In the Madras High Court

Case No : Writ Petition No. 23022 of 2009

P. Sivasamy and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 08 MAD CK 0420

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Kavitha Deenadayalan, for the Appellant; V. Subbiah, Special Government Pleader for Respondents 1 and 2, G. Thilakavathi, for Respondents 4, 5, 7, 8, 10 and 12 and Malarvizhi Udayakumar, for S.V. Udayakumar, for Respondents 3, 6, 9, 11 and 13 to 15, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—These 81 writ Petitioners working as Cane Assistants in various co-operative sugar mills in the State of Tamil Nadu have filed the present writ petition seeking a direction to the respective sugar mills to amend the special bye-laws relating to the service conditions of those Cane Assistants, so as to bring them on a par with the Supervisors engaged in the Mechanical Department of the Sugar Mills. Realising that such a direction cannot be granted by this Court, they had sought a direction from Respondents 1 and 2 to the Sugar Mills to make appropriate amendments to the special bye-laws.

2. The writ petition was admitted on 11.11.2009. Their application for grant of interim order was denied by this Court. On notice from this Court, the second Respondent/Commissioner of Sugars has filed a counter affidavit dated 23.11.2010 rejecting the request made by the Petitioners.

3. Heard the arguments of Ms. Kavita Deenadayalan, learned Counsel for the Petitioner, Mr. V. Subbiah, learned Special Government Pleader for Respondents 1 and 2, Ms. Malarvizhi Udayakumar, appearing for Mr. S.V. Udayakumar for

Respondents 3, 6, 9, 11, 13, 14 and 15 and Mrs.G. Thilakavathi appearing for Respondents 4, 5, 7, 8, 10 and 12.

4.1. The contention raised by the Petitioners was that as Cane Assistants they have got a Diploma in Agriculture given by Gandhigram Rural Institute, which is a deemed university. In respect of other diploma holders in the sugar mills, viz., Supervisors in the Mechanical Department, the scale of pay was fixed higher than the Cane Assistants. The Cane Assistants, being diploma holders, were performing almost the functions of Assistant Agricultural Officers working in the Department of Agriculture and, therefore, they should not be treated lower than the other Supervisors, for which the educational qualification was almost equal.

4.2. They also stated that the Joint Director of Agriculture (Sugars) recommended the case of Cane Assistants stating that the job performed by them is almost akin to Assistant Agricultural Officers working in the Agriculture Department. They also stated that the only avenue of promotion for Cane Assistant is Cane Development Officer, but in respect of Mechanical Supervisors, they have very many avenues of promotion such as the Shift Engineers to Chief Engineers and they are likely to get salary to the range of ` 35,000/- to ` 40,000/-, in case they are promoted.

4.3. It is also stated that Supervisors were treated under the Common Cadre Service and they are getting higher pay, whereas for Cane Assistants working in the sugar mills the salary fixed by the Sugar Wage Board is paid, which is on the lower side. But despite their making several representations, the Respondents have not given them different scales of pay. Therefore, on the ground that their educational qualification is Diploma and also their performance is almost akin to other Supervisors, it is contended that there is no justification for grant of different scale, especially considering that their promotional avenues are bleak. It is under these circumstances, the writ petition came to be filed.

5. Opposing the case of the Petitioners, the second Respondent/ Commissioner of Sugars, in the counter affidavit in paragraph [10], had summarized the reasons for rejecting the case of the Petitioners, which are as follows:

10. It is further submitted that the prayer of the Petitioner cannot be granted for the following reasons.

a. The request of the Petitioners to give Government scale of pay and Dearness Allowance will dilute the entire system. It is pertinent to mention that the Sugar Wage Board scales are followed by all Sugar Mills in India including Private Sugar Mills. Hence there cannot be further demand by comparing a different cadre and demanding the same scale.

b. The Industrial Tribunal considering the merits of the issue has adjudicated that the best way to arrive at points is to reduce the higher pay unnecessarily given to officers even after abolishing of common cadre system.

c. The Industrial Tribunal award has become final.

d. The total accumulated loss of 15 Cooperative and two Public Sector Sugar Mills as on date is Rs. 1652 crores. Revising the pay of different cadre and fixing Government pay scale and Dearness Allowance to certain categories will financially affect the sugar mills, thereby resulting in unrest among sugar cane growers.

e. The request of the Petitioners to revise the pay scale and for restructuring their pay and promotion will have serious adverse impact at an all India level.

f. The Labour Court has already made a very elaborate study of the salary system and rejected the request of the workers to fix Government pay scale and Dearness Allowance and has categorized 11 categories as common cadre officers.

g. Above all, as the Common Cadre System itself has been abolished as per G.O. Ms. No. 834, Industries (MIC-2) Department Dt: 8.12.1997, inclusion of certain categories of employees after a lapse of 13 years in the above cadre, which is not in existence, is not possible.

6. In the light of the rival stand, it has to be seen whether the Petitioners' grievance can be redressed by this Court. First of all, the prayer of the Petitioners seeking amendment of the bye-laws of the respective sugar mills cannot be countenanced by this Court. Under Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988, the bye-laws will have to be amended taking into account the nature of business, volume of transaction and financial position and it has to have prior approval of the Government. The special bye-laws so framed will have to take into account the cadre strength, classification of various categories of posts and the qualifications required thereof for each such post and the method of recruitment of each post. The scale of pay and allowances of each post will have to be prescribed in that bye-laws with the approval of the competent authority prescribed under the Rules.

7. It must be noted that under the Tamil Nadu Co-operative Societies Act, 1983 there is no power vested on the State Government to grant any direction to the co-operative societies and the only power that is available is u/s 182 of the Act. In that provision, there is no power to give direction to frame any special bye-laws relating to service conditions. Even relating to the the power of the Registrar (in the present case, in respect of the co-operative sugar mills the Commissioner for Sugar Mills), it is stated that the Registrar, if he is satisfied that in public interest or for the purpose of securing proper implementation of co-operative production and other development programmes approved or undertaken by the Government or to secure the proper management of the business of the society, can give direction either generally or specifically.

8. Therefore, looking into the provisions under Sections 181 and 182, there is no power vested on the two authorities against whom the Petitioners have sought the present direction. The only case where the State Government comes into play is in case any common cadre is constituted in terms of Section 75 of the Act. Then the service conditions of those common cadre employees can be

governed by the Rules framed by the Government. Admittedly, in the present case, the Cane Assistants do not come under Common Cadre System. On the other hand, their service conditions are determined from time to time on the basis of the Sugar Wage Board recommendations and the settlement signed between the unions and the management and, therefore, the Petitioner can neither seek a direction to the co-operative societies to amend any bye-laws through the orders of this Court, nor they can seek for a direction to Respondents 1 and 2 to give appropriate direction to the co-operative sugar mills.

9. As correctly stated in the counter affidavit, the Industrial Tribunal which went into the issue has determined the wage structure of the co-operative sugar mills and the award passed by the Tribunal had become final in respect of I.D. No. 48 of 2000 and therefore, unless and until such award is replaced by another settlement or award, the Petitioner cannot get over the said impediment in seeking for a direction.

10. The Supreme Court in *Transport and Dock Workers Union v. Mumbai Port Trust* 2011 2 SCC 575 has categorically held that in case a matter is covered by the provisions of the Industrial Disputes Act, the High Court should not interfere in terms of Article 226 of the Constitution of India and the parties must be directed to avail the remedy by way of industrial adjudication.

11. Apart from these insurmountable difficulties, even assuming that on face value the Petitioners have made out a case for comparison, the Supreme Court in *S.C. Chandra and Ors. v. State of Jharkhand and Ors.* 2007 8 SCC 279, in paragraphs [24] to [26], observed as follows:

24. The principle of equal pay for equal work was propounded by this Court in certain decisions in the 1980s e.g. *Dhirendra Chamoli v. State of U.P.* 1986 1 SCC 637, *Surinder Singh v. Engineer-in-Chief, CPWD* 1986 1 SCC 639, *Randhir Singh v. Union of India* 1982 1 SCC 618, etc. This was done by applying Articles 14 and 39(d) of the Constitution. Thus, in *Dhirendra Chamoli* case this Court granted to the casual, daily-rated employees the same pay scale as regular employees.

25. It appears that subsequently it was realised that the application of the principle of equal pay for equal work was creating havoc. All over India different groups were claiming parity in pay with other groups e.g. government employees of one State were claiming parity with government employees of another State.

26. Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. Hence, in subsequent decisions of this Court the principle of equal pay for equal work has been considerably watered down, and it has hardly ever been applied by this Court in recent years.

In the same judgment, Markandey Katju, J., in his own supplementing opinion, held that the grant of pay scale is a purely executive function and the Court

should not interfere with the same. He also reiterated the well known principle of separation of powers and in paragraphs [33] to [35], it was held as follows:

33. It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd.*, .

34. There is broad separation of powers under the Constitution, and the judiciary should not ordinarily encroach into the executive or legislative domain. The theory of separation of powers, first propounded by the French philosopher Montesquieu in his book *The Spirit of Laws* still broadly holds the field in India today. Thus, in *Asif Hameed v. State of J&K* 1989 (2) SCC 364 a three-Judge Bench of this Court observed (vide paras 17 to 19): (SCC pp. 373-74)

17. Before advertng to the controversy directly involved in these appeals we may have a fresh look at the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

18. Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of *Trop v. Dulles* 356 US 86 (1958) observed as under: (US pp. 119-20)

All power is, in Madison's phrase, "of an encroaching nature". "Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint".

Rigorous observance of the difference between limits of power and wise exercise

of power"between questions of authority and questions of prudence"requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail, to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorised the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do."

19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

(emphasis supplied)

35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).

In the light of the above, there is no case made out to entertain the writ petition. Hence, this writ petition stands dismissed. No costs.