(2015) 04 MAD CK 0391

In the Madras High Court

Case No : Writ Petition Nos. 2325 of 2004

Tamil Nadu All Co-operative and Public Sector Sugar Mills	APPELLANT
Vs	
National Co-operative Sugar Mills Ltd. and Others	RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Citation : (2015) 3 LLJ 339

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : Mohan for D. Geetha, for the Appellant; S. Gomathinayagam, A.A.G., assisted by R. Balaramesh, G.R. Swaminathan and A.S. Thambusamy, Advocates for the Respondent

Judgement

K.B.K. Vasuki, J—The petitioner Association by name Tamil Nadu All Co-operative and Public Sector Sugar Mills Staff Peravai has come forward with the writ petition in W.P. 2325/2004, challenging the impugned award made in I.D. No. 48/2000, in and under which, the 21st respondent Industrial Tribunal, though upheld the claim of the petitioner Association regarding parity in pay scale between the employees of erstwhile Common Cadre System (CCS) and the employees of non-common cadre system (non - CCS) in the Co-operative and Public Sector Sugar Mills in Tamil Nadu, has in order to achieve the parity, refused to enhance the pay of non-Common Cadre System employees on par with the erstwhile employees of Common Cadre System, but directed to restructure the pay of the erstwhile employees of common cadre system on par with other employees of equal status and directed the residue of higher pay that the erstwhile Common Cadre System employees enjoyed to be termed as personal pay susceptible for adjustment with future benefits. Aggrieved against that part of the award relating to the mode of achieving the parity, the petitioner Association has filed the present writ petition for issuance of a writ of Certiorarified Mandamus, to quash the same and to direct the respondents 1 to 19 to pay the scale of pay, dearness allowance and house rent allowance and other benefits to non CCS employees on par with the erstwhile CCS employees of the respondent Mills, who are being paid all the benefits on par with the Government employees. During the pendency of W.P. No. 2325 of 2004 and when the issue raised in the writ petition is referred for mediation, the Commissioner/Director of Sugar passed an order dated 12.12.2008, thereby raising the Dearness Allowance payable to the erstwhile common cadre employees from 47% to 54% on par with DA payable to the Government employees, without allowing one such revision to non CCS employees. Challenging the same, W.P. No. 30656 of 2008 came to be filed by the petitioner Association to set aside the same and to direct the Commissioner/Director of Sugar not to widen the disparity in pay structure between two set of employees in the respondent Co-operative and Public Sector Sugar Mills.

2. The circumstances under which the reference was made before the 21st respondent Industrial Tribunal, are as follows:

During 1985, common cadre system was created, covering few posts, such as Chief Engineer, Chief Chemist, Chief Cane officer, Chief Accountant, Internal Auditor, Deputy Chief Engineer, Deputy Chief Chemist, Cane Development officer, Lab Chief, Medical Officer, Office Manager and Labour Welfare Officer and subsequently, Senior Manager and Accounts Officer have also been brought under common cadre system. Thereafter, during 1989, 11 more categories of officers were included in common cadre system. Since 1985, duel wage structure was adopted for the individuals covered under common cadre system and the employees covered under non-common cadre system. While the members and officers of the common cadre system were sanctioned the benefit of scale of pay and other benefits on par with Government servants, the members of non common cadre system were permitted to draw the pay scale as determined by the Wage Board. While so, 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 officers in either of the mills after obtaining necessary option from the concerned individual. Even after abolition of common cadre system, the pay scale of the common cadre officers was protected by allowing them to continue to enjoy the same benefits under erstwhile common cadre system. In view of the double standard so adopted in respect of the workmen of the same respondents sugar mills, the workmen belonging to non-common cadre system represented by the petitioner Association raised an Industrial Dispute before the Industrial Tribunal demanding the Government scale of pay, Dearness Allowance, House Rent Allowance and other benefits on par with the erstwhile common cadre officers, who were entitled to draw their pay on par with the Government employees. The dispute so raised was taken up as I.D. No. 48/2000. The dispute was seriously opposed by the respondents herein by raising various objections, which are reiterated in the counter filed in the same.

3. The 21st respondent has passed the impugned award, while deciding the dispute raised before the same, which reads as follows:

"Whether the demand that the workman (staff) employed in 1 to 19 respondents mills be paid scale of pay, Dearness Allowance, House Rent Allowance and other benefits on par with the employees of the respondents Mills, falling under the erstwhile common cadre, who are being paid the aforesaid benefits, such as, wages, DA, HRA and other benefits, on par with Government employees, is justified. If so to give appropriate directions".

4. The Industrial Tribunal, after going into the issue in detail, in the light of the respective contentions raised on both sides, arrived at a categorical finding that the object and reason for formation of common cadre system and inclusion of only some of the posts in the same, enhancement of pay and the abolition of the same in 1997 and protection given to the pay scale in view of such abolition, disclose the mala fide and biased attitude of the management behind the formation of CCS and the formation of CCS is only with an ulterior motive to create different colour and un-equality in the pay structure among the similarly placed staffs of the respondents mills and the inclusion of only 11 categories in A, B and C without any rationale behind this classification amounts to discrimination and therefore, parity should be reasonably achieved in respect of all the staff numbering about 2000.

5. The Industrial Tribunal, while upholding the claim for parity, suggested two methods for working out the same; (i) enhancing the pay of the petitioners on par with erstwhile CCS employees; and alternatively (ii) reducing the pay of erstwhile CCS employees. The Industrial Tribunal, after suggesting so, not preferred to adopt the first method on the ground that there is no possibility to do the same and directed the second method by reducing the pay of erstwhile CCS employees and accordingly passed the award. The Industrial Tribunal ultimately in order to reach parity and to protect the pay which was already given to the erstwhile employees of CCS, passed the award by directing the authority concerned, to rationally restructure the pay by treating the residue of higher pay of erstwhile CCS employees as personal pay susceptible for adjustment with future benefits. It is observed by the Industrial Tribunal that the above methodology is the only remedy for not only achieving the parity even without disturbing the terms of settlement, but also strengthening the fiscal position of the Co-operative Mills, which are now said to be running in loss. The Industrial Tribunal has also held that the petitioners are entitled for higher pay by way of parity after the date of expiry of Ex. W23 settlement arrived at between the parties, i.e., 31.3.2003. Thus, as per the award passed by the Industrial Tribunal, the claimants are entitled to pay parity with effect from 1.4.2003 and the same can be achieved by restructuring the pay scale of erstwhile CCS employees, thereby treating the residue of higher pay as personal pay susceptible for adjustment with future benefits. Aggrieved against the award insofar as it relates to the methodology adopted for reaching the parity by restructuring the pay scale of erstwhile CCS employees in the manner as stated above, the petitioner Association has filed the present writ petition in W.P. 2325/2004.

6. Pending the writ petition in W.P. 2325/2004, the pay structure was revised in respect of few individuals in non-common cadre system either on the strength of the orders passed by the High Court in writ proceedings or by way of separate proceedings passed by the appropriate authority. The learned single judge of this court also passed an interim order in W.P. Nos. 32770/2003, 2325/2004 and 1837/2006 and 16586/2000 for referring the matter to Tamil Nadu Mediation and Conciliation Centre for mediation, wherein, it is stated by the Commissioner of Sugars that as there was huge loss as there was huge loss as on 31.3.2008, there is no possibility to implement the demands of workers and staff for fixation of pay in Government scale of pay. As there was no amicable settlement arrived at between the parties, the matter was remitted back to the High court for disposal as per law and the writ petition has been pending.

7. At this juncture, the Commissioner of Sugar, Chennai passed another order on 12.12.2008, thereby raising the Dearness Allowance payable to the erstwhile common cadre employees from 47% to 54% on par with DA payable to the Government employees, which according to the petitioner Association, further widened the disparity. The petitioner Association has therefore come forward with another writ petition in W.P. No. 30656/2008 for setting aside the impugned order dated 12.12.2008 and for consequential direction to the Commissioner of Sugar, not to widen the disparity in pay structure between erstwhile common cadre employees and non-common cadre employees in the co-operative and Public Sector Sugar Mills.

8. In the mean while, there were other writ petitions, challenging the impugned award made in ID. No. 48/2000 (i) W.P. No. 34423/2003 filed by TNSUGAR Common Cadre Officers Association (representing Co-operative and Public Sector Sugar Mills) whose members were erstwhile common cadre employees, which was dismissed as infructuous; (ii) W.P. No. 19361 of 2003 filed by Tamil Nadu Co-operative and Public Sector Sugar Mills Agricultural Graduate Association and the same is pending; (iii) W.P. No. 32770 of 2003 preferred by the Tamil Nadu Co-operative and Public Sector Sugar Mills Agricultural Graduate Association, challenging that part of the award for reducing the pay and allowance of its members on par with the members of the petitioners Association and the same was after due contest allowed by the learned single judge of this court by accepting their contention and by observing that the award so passed in ID. No. 48/2000, in which the members of the petitioner graduate Association was not party, without affording any opportunity to them is arbitrary in nature and is liable to be set aside. (iv) W.P. No. 1837 of 2006 preferred by the General Secretary, Tamil Nadu All Co-operative and Public Sector Sugar Mills Staff Peravai and the same was dismissed as withdrawn and (v) W.P. No. 14332/2009 filed by the Tamil Nadu All Co-operative and Public Sector Sugar Mills Staff Peravai and the same was dismissed as infructuous.

9. Pending the present writ petitions, the Government under G.O.(Ms) No. 69 Industries (MIC 2) department dated 1.3.2011 constituted a High Level

Committee consisting of Commissioner of Sugar, Joint Secretary (P), Industries Department, Additional Director of Sugar, Chief Accounts Officer, Tamil Nadu Sugar Corporation Ltd., Chief Executive of one Co-operative Sugar Mills and one Public Sector Sugar Mills, Joint Director (BPE) Finance, to go into the details of pay fixation of the employees/workers of Co-operative & Public Sector Sugar Mills and submit its report to Government within a period of one month from the date of issuance of the order, without prejudice to the pending cases in the High Court. The High Level Committee has filed its report dated 1.8.2011 thereby recommending the pay structure for the employees of all co-operative and public sector sugar mills on par with the Government employees getting Government pay scale and the same has been forwarded to the Principal Secretary to Government, Industries Department for accepting the same by way of proposal dated 29.2.2012. While forwarding the recommendation by way of proposal, it is clarified that mills will not come to Government for any assistance relating to pay and allowances and it will be entirely met out by the mills by improving the technical efficiency and financial performance and the mills will not approach the Government for funds towards the expenditure arising due to the wage revision. The Principal Secretary to Government, Industries Department, Chennai has already forwarded the same by way of note file to the Finance Department and the same is pending for decision by the Government.

10. The facts as above referred to would now disclose the following material factors. In the impugned award, the Industrial Tribunal has found that the formation of CCS covering 11 categories of employees in A, B, C categories of staff in respondent mills and the enhancement of their pay on par with the Government employees thereby adopting wage board pay scale for non-CCS employees is vitiated by mala fide, biased and also discriminative in nature. The Industrial Tribunal felt it necessary to reach parity either by enhancing the pay structure of non CCS employees or by reducing the pay structure of erstwhile CCS employees and to achieve the same directed the respondent sugar mills to adopt the second method by notionally restructuring the pay scale of erstwhile CCS employees in the manner as indicated in the award. It is relevant to point out at this juncture that neither of 19 respondents, who are arrayed as respondents therein nor the Commissioner of Sugar, Department of Sugar, Chennai thought it fit to challenge the correctness of the impugned award. The operative portion of the same was challenged by both the petitioner Association and by the Tamil Nadu Co-operative & Public Sector Sugar Mills Agricultural Graduate Association having erstwhile CCS employees as its members by way of W.P. 2325/2004 and W.P. No. 32770/2003 respectively. Though the learned brother judge by order dated 29.8.2013 allowed W.P. 32770/2003, thereby setting aside that part of the award, relating to reducing the salary of erstwhile CCS employees on par with the pay of the present petitioner Association, the same was not challenged by either of the respondents therein. As far as the present writ petitioner as claimant in ID No. 48/2000 is concerned, the relief sought for in W.P. No. 2325/2004 is to set aside the operative portion of the

impugned award for reduction of pay and allowance of erstwhile CCS employees and for consequential direction to enhance the pay and allowance of the members of the petitioner Association on par with erstwhile CCS employees.

11. Thus, the finding of the Industrial Tribunal regarding existence of disparity in pay structure and necessity to bring in parity among all employees remains not challenged and accepted and acted upon by the respondent mills and by the Government through respondent mills through formation of high level committee only on the strength of the impugned award passed by the Industrial Tribunal. That means, the impugned award and the findings of the Industrial Tribunal insofar as it relates to disparity in pay scale and the findings for bringing down the disparity have now become final and binding on the respondent mills and on the Government, as such the objections raised in the counter filed by the 20th respondent/Director of sugar thereby justifying the formation of CCS and enhancement of their pay and protection of pay after abolition of CCS etc. cannot now be permitted to be re-agitated herein. Having failed to challenge the award and having taken steps to implement the award, the respondents have left with no other option but to take steps to achieve parity by other mode suggested in the impugned award. As rightly argued by the learned counsel for the petitioner Association, the Industrial Tribunal, after having rendered a specific finding that the formation of CCS and inclusion of 11 categories in the same, thereby creating dual wage structure for staff of same categories is discriminative in nature and after having negatived the contention raised on the side of the respondent mills for inability to implement the same wage structure due to loss sustained by the respondent sugar mills, ought to have extended the benefit given to the erstwhile CCS employees to the petitioner Association and ought not to have reduced the pay scale of erstwhile CCS employees on par with the pay of employees of petitioner Association. There is absolutely no reason given in the award for holding that it is not possible to adopt the first methodology for enhancing the pay scale of the members/non CCS employees.

12. As already referred to, the parity cannot be by virtue of the order passed by this court in W.P. No. 32770/2003 now achieved by reducing the pay structure of erstwhile CCS employees. The only mode available to give effect to the direction given by the Industrial Tribunal for the dispute referred to is by way of enhancing the pay and allowance of non CCS employees, failing which, the petitioner Association may not be able to enjoy the fruits of the award. In that event, it is likely to deprive the petitioner Association of the benefit of the award and it will indirectly amount to negativing their claim and upholding the impugned act of the respondent authority which was specifically found to be mala fide, biased and discriminative in nature and without any legal support. The Government though thought it fit to constitute one High level committee and though received its report recommending the Government pay scale for entire staff of respondent sugar mills, for the reasons best known to them, has till date not approved the same and pass appropriate final order for refixation of pay of entire staff of the sugar mills. The respondent authority, having failed to challenge the award, has

shown passive attitude for implementing the award by either of the modes suggested in the award or any other mode.

13. It is relevant to point out at this juncture 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. As per the particulars furnished herein, 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. In this factual situation, this court is but compelled to issue suitable direction to the authority concerned by modifying the impugned award for enhancing the pay of the members of the petitioner''s Peravai on par with the erstwhile CCS employees with effect from 1.4.2003, the date from which the members of the Petitioner Peravai are held to be entitled to claim parity of pay scale. The above direction, in my considered view, is the only way to remove the serious disparity complained of herein. While doing so, the pay scale and allowance extended to erstwhile CCS employees need not be disturbed.

14. Accordingly, W.P. No. 30656 of 2008 is dismissed. No costs. In the result, the award dated 21.02.2002 made in I.D. No. 48/2000 passed by the Presiding officer, Industrial Tribunal, Chennai is modified by directing the respondents 1 to 20 to remove disparity by enhancing the pay of non-Common Cadre System (CCS) employees of the respondents Mills on par with the erstwhile CCS employees with effect from 1.4.2003. The whole exercise shall be completed within a period of three months from the date of receipt of the copy of this order. W.P. No. 2325/2004 is accordingly ordered. Consequently, connected miscellaneous petition is closed. No costs.