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Writ Appeal Nos.346 to 349 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.09.2023

Delivered on : 21.12.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal Nos.346 to 349 of 2020 &
CMP.Nos.5778. 5794 & 5783 of 2020**

R.Srinivasan	... Appellant in W.A.No.346 of 2020
K.Jayavelu	... Appellant in W.A.No.347 of 2020
M.Veerassamy	... Appellant in W.A.No.348 of 2020
A.Alphonse	... Appellant in W.A.No.349 of 2020

Vs

- 1.The Secretary to Govt.,
Finance Department,
Fort St., George,
Chennai – 9
- 2.The Special Secretary to Govt.,
Finance (CMPC) Department,
Fort St., George,
Chennai -9.
- 3.The Principal Secretary to Government,
Public Works Department,



Writ Appeal Nos.346 to 349 of 2020

Chennai -9.

4.The Engineer-in-Chief (WRO) and
Chief Engineer (General)
Public Works Department,
Chepauk, Chennai -5. ... Respondents in all W.As.,

COMMON PRAYER Writ Appeal filed under Clause 15 of Letter Patent against the order dated 29.08.2019 made in W.P.Nos.16631,16629, 16632, & 16633 of 2010.

For Appellants : Mr.K.Doraisami Sr. counsel for
Mr.S.Arunachalam in W.As

For Respondents : Mr.R.Kumaravel AGP for RR1 to 4 in W.As

COMMON JUDGMENT

Mr.K.KUMARESH BABU.,J.

These Intra-Court Appeals had been preferred by the unsuccessful Writ Petitioners wherein the Writ Petitions were dismissed and the reason that had been assigned by the learned Single Judge was that the appellants herein had not produced any evidence to substantiate their claims that the duties and the responsibilities of Work Inspectors in Public Works



Writ Appeal Nos.346 to 349 of 2020

Department (PWD) and the Tamil Nadu Water Supply and Drainage Board (TWAD Board) are identical.

2.Heard Mr.K.Doraisami, learned Senior counsel appearing for Mr.S.Arunachalam, learned counsel appearing for the appellants and Mr.R.Kumaravel, learned Additional Government Pleader appearing for the respondents 1 to 4.

3.The learned Senior counsel would submit that the appellants are all working as Work Inspectors with the PWD. During the year 1971, the State of Tamil Nadu had enacted Tamil Nadu Water Supply and Drainage Board Act, 1971, under which the TWAD Board was established. On the creation of the TWAD Board, employees of the PWD were deployed to the TWAD Board. He would submit that the nature of work undertaken by the Work Inspectors both under the PWD and TWAD Board are basically to be involved in the civil construction and maintenance work. He would submit that the Work Inspectors under the PWD was in the pay scale of Rs.975-1660. However, the TWAD Board had revised the pay scale of Work Inspectors Grade-II employed under it as Rs.1200-2040, pursuant to



Writ Appeal Nos.346 to 349 of 2020

the orders passed by this Court dated 07.03.1997. Thereafter, the association namely Tamil Nadu Public Works Department Employees Association to which the appellants were members, had made representations to the respondents seeking to implement the same scale of pay to Work Inspectors Grade-II in PWD as equal to the Work Inspector Grade II in the TWAD Board. The Association had also filed an Original Application in O.A.No.3005 of 1999 before the Tamil Nadu State Administrative Tribunal. The Tribunal by order dated 18.06.1999, had directed the respondents to dispose of the representation made by the Association. The respondents by its letter dated 20.10.1999, had rejected the request of the Association which again came to be challenged before the Tribunal in O.A.No.993 of 2000. The said Original Application was allowed by the Tribunal on the basis of “equal work equal pay” concept. Being aggrieved against the same, the Government had filed W.P.No.45230 of 2002, and this Court by order dated 08.12.2005, allowed the Writ Petition by setting aside the orders passed by the Tribunal. Aggrieved against the same, the Association had filed a Civil Appeal before the Hon'ble Supreme Court in Civil Appeal No.1620 of 2007, and the Hon'ble Apex Court



Writ Appeal Nos.346 to 349 of 2020

by its order dated 26.03.2007, had set aside the order passed by this Court and also the Tribunal and had remanded the matter back to the Tribunal for fresh consideration.

4.He would further submit that after the remand, the functioning of the Tribunal was abolished and therefore, the Original Application was transferred to the file of this Court and was renumbered as W.P.No.4911 of 2010. When the Writ Petition came up for hearing before this Court and in view of the fact that an objection was taken as to the maintainability of the Writ Petition by the Association, the Association sought permission of this Court to withdraw the Writ Petition with a liberty to the members of the Association to move the appropriate forum for appropriate relief. Thereafter, the petitioners/appellants had all moved this Court in W.P.No.16629 to 1663 of 2010 and the matter was taken up by the learned Single Judge and by order dated 29.08.2019 without considering the various factors, had dismissed the Writ Petitions.

5.He would further submit that the learned Single Judge had



Writ Appeal Nos.346 to 349 of 2020

overlooked the letter addressed by the Joint Chief Engineer General of the TWAD Board, in reply to the query raised by the Chief Engineer General of the Public Works Department, wherein he had in clear terms to the query raised with regard to the duties and responsibilities of Work Inspector Grade II in TWAD Board, had informed that the responsibilities and duties that had been explained by the Government in G.O.Ms.No.1064, dated 05.06.1980, which had been prescribed for the PWD has also been followed for Work Inspectors Grade II. When that being so, he would submit that the learned Single Judge had wholly erred in giving a finding that the appellants have failed to produce any evidence whatsoever to substantiate their claim for equal pay.

6.He would further submit that the communication issued by the Joint Chief Engineer to the fourth respondent herein was subsequent to the disposal of the Special Leave Petition filed by the Association, when such is the document that was relied upon by the appellants, the learned Single Judge even without looking into the aforesaid document had fixed the onus on the appellants, which is wholly contrary to the facts available on record and



Writ Appeal Nos.346 to 349 of 2020

therefore, he would seek indulgence of this Court to interfere with the order passed by the learned Single Judge.

7. Countering his argument, Mr. R. Kumaravel learned Additional Government Pleader would submit that the TWAD Board is an independent body and the salary paid to the employees of the TWAD Board cannot be sought to be applied to the Government Department. He would submit that the qualification of a Work Inspector Grade-II is totally different from that of the similarly placed persons in the PWD department. He would further contend that the appellants in spite of ample opportunities had not produced any piece of evidence to claim that they are also performing the same duties as that of the Work Inspector Grade II in the TWAD Board. He would further submit that even during the earlier round of litigation such proof had not been filed before the Court only for such reasons, the Division Bench of this Court had interfered with the order of the Tribunal, which even though has been set aside by the Hon'ble Apex Court, the Hon'ble Apex Court had given an opportunity to the association of which the appellants were members to substantiate their claim. In spite of such opportunity having been giv-



Writ Appeal Nos.346 to 349 of 2020

en to the appellants, the appellants had not produced any piece of evidence and therefore, he would submit that there is no infirmity in the order passed by the learned Single Judge. That apart, he would also submit that the service conditions of the appellants are totally different from that of the Work Inspector Grade II at TWAD Board, as they are governed by the Special Rules.

8.We have heard the rival submissions made by the respective counsel on either side and perused the materials placed on record.

9.The case of the appellants is that they are working as Work Inspector Grade II at the PWD and that on formation of the TWAD Board, some of the Work Inspectors who were working in PWD, were deployed to the TWAD Board. The Work Inspectors who were working in both the Department were receiving the same scale of pay, until the Work Inspectors working at the TWAD Board, had approached this Court in Writ Petitions wherein they were directed to fix a higher pay scale. All that what was sought to be implemented by the appellants is the equal pay to that of



Writ Appeal Nos.346 to 349 of 2020

the Work Inspectors employed in the TWAD Board. The said request came to be rejected by the Government in its letter dated 20.10.1999. A perusal of the aforesaid letter would show that the said request of the appellants have been rejected for the following:-

a) That it was not aware under what circumstances the TWAD Board had adopted a higher scale of pay;

b)The TWAD Board's pay scale need not be adopted by the Government, as it is the Board under the control of the Government should adopt the orders passed by the Government Department;

c)“ **The working conditions service Rules and pay scales in the TWAD Board are different**”. (*emphasis supplied*)

10.From the perusal of the orders passed in the earlier round of *lis*, it could be seen that the Division Bench of this Court had set aside the positive order passed by the Tribunal solely on the ground that the



Writ Appeal Nos.346 to 349 of 2020

Association had not proved that the duties and responsibilities of the Work Inspector of PWD and TWAD Board are one and the same. The Hon'ble Supreme Court considering the fact that the Tribunal had not looked into the said aspect which had been the basis of the order of the Division Bench, giving an opportunity to the association, had set aside the order of the High Court as well as the Tribunal and had remanded the matter back to the Tribunal and such order came to be passed on 26.03.2007.

11. Admittedly after the remand, the Tribunal was abolished and the Original Application had been transferred to this Court. The transferred Writ Petition however has been withdrawn by the Association when an objection was made that an Association cannot maintain a Writ Petition. While allowing the request for withdrawal, this Court had protected the petitioners in that case and also the right of an Association to seek for further relief. Pursuant to such liberty, the appellants had filed the Writ Petitions in which impugned orders were passed. An attempt was made by the learned Additional Government Pleader to claim that the Writ Petitions would be hit by latches. We do not find any merits on the ground of latches,



Writ Appeal Nos.346 to 349 of 2020

as the Writ Petitions were continuation of an earlier proceedings which came to be initiated by the association immediately after the fixation of pay scale by the TWAD Board.

12.It was also brought to our notice that the fourth respondent herein had sent a communication dated 01.10.2010 to the Chairman and Managing Director of the TWAD Board seeking information about the qualification, scale of pay, experience, duties and responsibilities and other details prescribed for the post of Work Inspector Grade II with reference to the Writ Petitions that had been filed by these appellants. The said letter had evoked a response from the Joint Chief Engineer General of the TWAD Board, which had been addressed to the fourth respondent herein through letter dated 18.10.2010. For better appreciation of the said letter, the same is extracted hereunder:-

பார்வையில் கண்ட தங்களின் கடிதத்தில்
கேட்கப்பட்டுள்ள விவரங்கள் இத்துடன்
இணைத்து அனுப்பப்படுகிறது. மேலும்
இவ்வாரியத்தில் பணிபுரியும் பணி
ஆய்வாளருக்குக் கடந்த ஊதியக்குழுவின்படி ரூ
4000-100-6000 என வழங்கப்பட்டு வந்தது.



Writ Appeal Nos.346 to 349 of 2020

தற்போதைய ஊதியக்குழுவின்படி ரூ.5200-20200
தர ஊதியம் ரூ.2400/- என வழங்கப்பட்டு
வருகிறது. மேலும், இவ்வாரியத்தில் தற்போது
பணி ஆய்வாளர் பதவியிடம் வாரியப்
பயன்பாட்டிற்கு தேவையற்றது என
முடிவெடுக்கப்பட்டு, தற்போது பணியில் இருந்து
வரும் பணி ஆய்வாளர்கள் ஓய்வு பெறும் வரை
மட்டுமே இப்பதவியிடங்கள் அங்கீகரிக்கப்பட்டு
வருகிறது என்பதனால், இப்பணியிடத்திற்கு பதவி
உயர்வோ, பணிநியமனமோ வழங்கப்படுவதில்லை
என கனிவுடன் தெரிவித்துக் கொள்ளப்படுகிறது.

இணைப்பு : 1. பொ.ப.து.அரசாணை எண்.1064

05.06.1980

2.வாரிய நடைமுறை விதி 1972.

13.From a perusal of the letter, it could be seen that for the details that had been called for by the fourth respondent, enclosures were attached to the said letter. The enclosures that had been attached to the said letter are as follows :-

- a) G.O.Ms.No.1064, dated 05.06.1980;
- b) Board's Rule of Procedure

14.From the said enclosures, it could be safely presumed that the



Writ Appeal Nos.346 to 349 of 2020

Government Order in G.O.Ms.No.1064, had been followed by the TWAD Board, which envisages the duties and responsibilities of a Work Inspector of Public Works Department for the Work Inspector Grade II in its employment. That would mean that the duties and responsibilities of the Work Inspector both the PWD and the TWAD Board are one and the same. When such a communication had been placed before this Court, we are not able to understand as to how the learned Single Judge had come to a conclusion that the appellants had not produced any materials whatsoever to substantiate their claim for “equal work equal pay”. The letter issued by the Joint Chief Engineer of TWAD Board would also go against the reasonings assigned by the Government in the year 1999, as to a statement that the duties and the responsibilities of Work Inspector Grade II working in PWD are different from the TWAD Board. In such circumstances, the order that had been impugned in the Writ Petitions is liable to be interfered with.

15.In fine, these Writ Appeals are allowed and the order passed by the learned Single is set aside as well as the order impugned in the Writ Petitions are also set aside. The claim made by the appellants are remanded



Writ Appeal Nos.346 to 349 of 2020

back to the second respondent herein for fresh consideration in the light of the letter issued by the Joint Chief Engineer, TWAD Board, dated 18.10.2010, made in letter No.054565/வேநி201/2010. Such exercise shall be completed by the second respondent within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. However there shall be no order as to costs.

(R.S.K.,J.)

(K.B., J.)

21.12.2023

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

pbn



Writ Appeal Nos.346 to 349 of 2020

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1. The Secretary to Govt.,
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WEB COPY



Writ Appeal Nos.346 to 349 of 2020

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Writ Appeal Nos.346 to 349 of 2020

21.12.2023