

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 26-07-2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.27848 of 2012

Khadar Grama Thozhil Variya Soap
Chemists Paniyalargal Sangam,
(Regn.No.76/2012),
represented by its President,
3/248, I Cross Street, ARS Nagar,
Kaveripattinam, Krishnagiri District. ... Petitioner

versus

1. Tamil Nadu Khadri and Village Industries Board,
rep. by its Chief Executive Officer,
Kuralagam Buildings,
Chennai-600 108.
2. The State of Tamil Nadu,
rep. by its Secretary to Government,
Handloom, Handicrafts, Textile and Khadi Department,
Fort St.George,
Chennai-600 009. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the respondents to revise the pay scale of the Soap Chemists in the respondent Board to Rs.5,200-20,200 + Grade Pay of Rs.2,800/- with effect from 01.01.2006 as per G.O.Ms.No.338 dated 26.8.2010 with future revision to Rs.9300-34,800 + Grade Pay of Rs.4200/- with all consequential arrears and other attendant benefits.

For petitioner : M/s.Balan Haridass

For respondents: Mr.S.K.Bose, SC for R1
Mr.T.M.Pappiah, Spl.G.P. for R2

ORDER

The petitioner has filed the present Writ Petition, seeking the following relief:

"To issue Writ of Mandamus, to direct the respondents to revise the pay scale of the Soap Chemists in the respondent Board to Rs.5,200-20,200 + Grade Pay of Rs.2,800/- with effect from 01.01.2006 as per G.O.Ms.No.338 dated 26.8.2010 with future revision to Rs.9300-34,800 + Grade Pay of Rs.4200/- with all consequential arrears and other attendant benefits.

2. The case of the petitioner is as follows:

2.1. The petitioner is a registered association, representing the interest of Soap Chemists employed in the Tamil Nadu Khadi in first respondent Board. There are 35 Soap Chemists employed in the first respondent Board, whose qualification was, pass in S.S.L.C. and training in soap making imparted by either Khadi and Village Industries Commission or State Khadi and Village Industries Board. Identical posts of Soap Chemists are also available in the Social Welfare Department and also in the Prisons Department.

2.3. According to the petitioner association, the method of appointment and qualifications for the post of Soap Chemist in the State Government as well as in the first respondent Board is one and the same. All the instructions, rules and scales applicable to government servants, have been extended to the employees of the first respondent Board also by G.O.Ms.No.147, dated 3.6.1989. In effect, the Soap Chemists in the first respondent Board, for all practical purposes, would be treated on par with the Soap Chemists in Government service. In 1989, on the basis of recommendation of the State Pay Commission, pay scales of Soap Chemist was revised to 1200-2040. However, as far as the Soap Chemists employed in the first respondent Board, the same was revised only in the lower

pay scale of Rs.825-1200. Since there was an anomaly in the pay scale granted to the Soap Chemists in the first respondent Board, the Board has forwarded a representation of the petitioner association for revision and grant of higher scale of pay to the Soap Chemists who were members of the association.

2.4. While matters stood thus, on the basis of recommendation of V Central Pay Commission, the State Government revised the pay scale of the employees vide G.O.Ms.No.162, dated 13.4.1998 as Rs.4000-6000, whereas the pay of the Soap Chemists in the first respondent Board, once again fixed in the lower pay scale, i.e. Rs.2750-4400. Therefore, a wide disparity existed between two sets of employees who were identically placed and hence, in response to the representation of the first respondent Board, a One Man Commission was appointed by the Government to rectify the pay anomaly. Before the One Man Commission, the first respondent Board represented that Soap Chemists employed by them were also entitled to pay revision in the pay scale of Rs.4000-6000 on par with the government servants. Unfortunately, despite One Man Commission's recommendation, while the pay scales of Soap Chemists in government service was revised as 4500-7000, the pay scale of the employees of the first respondent was revised only as Rs.3050-4590 vide G.O.No.557 dated 28.09.1998. Thereafter, on the basis of recommendation of yet another Pay Commission, i.e. VI Central Pay Commission, the State Government issued another Revised Scale of Pay Rules, 2009 through G.O.Ms.No.234 dated 1.6.2009. The pay scale of Soap Chemists in Government service, was revised to Rs.5200-20200 with Grade Pay of Rs.2400 in Pay Band I, whereas, the pay scale of Soap Chemists employed in the first respondent Board, was revised to Rs.5200-20200, but given Grade Pay of Rs.1900 in the same Pay Band I.

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2.5. Aggrieved by the grant of lower grade pay, a few Soap Chemists have filed a writ petition before this Court in W.P.(MD) No.8180 of 2009, which came to be disposed of by this Court vide order dated 19.8.2009, directing the respondents therein to consider the representation of the writ petitioners and pass orders, within a period of eight weeks. However, finally, by communication dated 31.10.2009, the claim of the petitioners came to be rejected. The communication further held that if the employees had any further grievance about the fixation of

their pay, they ought to represent the Board for reference to the One Man Commission for the purpose of rectification of any pay anomaly. While passing the said rejection order, according to the petitioners, the Government had not taken into consideration the specific recommendation of the Board which was conveyed through their letter dated 27.10.2009 that the Soap Chemists in the first respondent Board had been denied parity in the pay scale.

2.6. In the meanwhile, the Government, by order dated 9.9.2009, through G.O.Ms.No.444 appointed another one Man Commission to look into the pay anomalies arising out of G.O.Ms.No.234 dated 1.6.2009 and a report was submitted by the One Man Commission dated 26.8.2010. The Government accepted the said report and issued G.O.Ms.No.338 dated 26.08.2010 for notional revision of pay and monetary benefits with effect from 1.1.2006 and 1.08.2010 respectively. The One Man Commission recommended pre-existing disparities to be set right and step up the pay first, so that the parity can be achieved. Those in the technical posts, like Soap Chemists were considered as supervisory posts and were recommended a revision to Rs.5,200-20,200 with Grade Pay of Rs.2800/- and a future revision of Rs.9,300-34,800 with Grade Pay of Rs.4,200/-. The operative portion of the G.O.Ms.No.338, dated 26.08.2010 is extracted hereunder:

"3) The Government has carefully examined the above recommendations of the One Man Commission and decided to accept the same. Accordingly, Government direct that the scales of pay of the Technical categories (Trade posts) in all Government departments / Local bodies shall be uniformly revised and re-designated as shown below:-

Sl .N o.	Name of the Posts	Existing scale of pay + Grade pay	Revised scale of pay + Grade Pay
1.	Supervisory posts in the pre-revised scale of pay of Rs.4500-7000 re-designated as Supervisor.	5200-20200 + 2800	9300-34800 + 4200
2.	Special Grade Trade Posts in the pre-revised scale of pay of Rs.4300-6000 re-designated as Special Artisan	5200-20200 + 2800	5200-20200 + 2800
3.	Grade-I (promotion posts) in the pre-revised scale of pay of Rs.4000-6000 re-designated as Skilled Assistant Grade-I	5200-20200 + 2400	5200-20200 + 2600
4.	Grade -II (entry level posts) in the pre-revised scale of pay of Rs.3050-4590 re-designated as Skilled Assistant Grade-II	5200-20200 + 1800	5200-20200 + 2000
5.	Other Trade Posts in the pre-revised scales of pay of Rs. 2750-4400 Rs. 2650-4000 Rs. 2610-3540 Rs. 2550-3200 re-designated as Unskilled	4800-10000 + 1650 4800-10000 + 1400 4800-10000 + 1300	5200-20200 + 1900

"4) The Government also direct that the trade posts with practical experience i.e. the category of Unskilled Assistants shall become defunct as and when the existing incumbents vacates the posts. Further all future recruitments to the trade posts in all Government departments / Local bodies shall be made to the post of Skilled Assistant Grade-II (entry level posts) from among the I.T.I certificate holders only by giving due protection to the existing incumbents.

Accordingly, all Heads of Departments and Local bodies are directed to adhere to these orders scrupulously and send necessary proposals immediately to Government (concerned administrative department in Secretariat) for amending the relevant Service Rules as directed in these orders wherever necessary. Based on the above orders, all the administrative departments of Secretariat are requested to take necessary follow-up action and obtain necessary proposals from the Heads of Departments under their administrative control and expedite action to issue necessary amendment to the relevant service rules governing the Technical categories (Trade posts) immediately.

"5) The revision of scales of pay ordered in para -3 above shall take notional effect from 01-01-2006 for the purpose of fixation of pay in the revised scales of pay and with monetary benefit from 01.8.2010. Pending issue of amendment to the relevant service adhoc rules, the Heads of Departments/pay fixing authorities concerned are directed to revise the scales of pay of the existing incumbents in the Trade posts as ordered in para -3 above."

2.7. The grievance of the petitioner association that in spite of issuance of above said G.O., the benefit contemplated therein was not extended to the members of the petitioner association who are the employees of the first respondent Board. In the said circumstances, they have approached this Court, seeking to issue a Writ of Mandamus.

3. Upon notice, Shri S.K.Bose, learned standing counsel entered appearance for the first respondent and filed a detailed counter affidavit, wherein, it is stated that the pay scale recommended by the One Man Commission was accepted and G.O.Ms.No.338 dated 26.8.2010 was issued, which would apply only to the Soap Chemists who are possessing requisite qualification of diploma and as such, the same cannot be made applicable to the petitioners herein. According to the counter affidavit, the qualification prescribed for Soap Chemist Grade III was only a pass in SSLC and must have undergone a training in Soap Industry. In the absence of Diploma qualification,

the petitioners cannot validly claim that they are also entitled to the benefits contemplated in G.O.Ms.No.338 dated 26.8.2010. At this, the learned counsel appearing for the petitioners would submit that the qualification prescribed in the said G.O. is applicable for future recruitment and the same cannot be made applicable to the persons like the petitioners herein. In any event, as per the G.O., it is very clear that all of them have been treated as holding supervisory technical post which included inter alia Soap Chemist as could be seen from the extracted portion of the said G.O.

4. Shri K.Balan Haridass, learned counsel for the petitioners would submit that time and again the Board has recommended the claim of the petitioners since the method of recruitment, qualification, responsibilities and duties of Soap Chemist employed in the Board as well as in the Government service are one and the same and there is no valid difference which can be held to be only in favour of the government employees for the purpose of grant of higher pay scale ignoring the employees of the first respondent Board.

5. This Court has considered the rival submissions of the learned counsels appearing for the parties and also perused the materials and pleadings placed on record.

6. There is considerable force in the contentions put forth by Shri K.Balan Haridass, learned counsel appearing for the petitioners that in spite of the fact that the Soap Chemists employed in the Board are identically placed as that of government employees and they have been treated differently in the matter of pay scale all along. On behalf of the respondents, though counter affidavit has been filed and arguments advanced, nothing has been brought out clinchingly as to how the claim of the petitioners is different from that of the Soap Chemists working in the government sector. In the absence of any distinguishing factors, the grant of lower pay scale to the petitioners has to be considered as one of the discriminatory treatment and offends Article 14 of the Constitution.

7. From the circumstances and the facts as aforesaid, there is no intelligible criteria or qualification for treating the employees of the Board and the employees of the government employees differently in the matter of grant of pay scales. In such event, this Court is left with no option except to interfere with the matter. Although the grant of pay scale falls squarely within the domain of the Executive/Administration, however, the Court cannot be a mute spectator when a set of employees is denied parity in

treatment in violation of Article 14 of the Constitution. In the above circumstances, this Court has no hesitation in allowing the Writ Petition as prayed for.

Accordingly, the Writ Petition is allowed. There shall be a direction to the respondents to revise the pay scale of the Soap Chemists in the respondent Board to Rs.5,200-20,200 with Grade Pay of Rs.2,800/- with effect from 01.01.2006 as per G.O.Ms.No.338 dated 26.8.2010 with future revision to Rs.9300-34,800 with Grade Pay of Rs.4200/- and grant all consequential arrears and other attendant benefits thereof. This direction shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam Buildings,
Chennai-600 108.
2. The Secretary to Government,
The State of Tamil Nadu,
Handloom, Handicrafts, Textile and Khadi Department,
Fort St.George,
Chennai-600 009.

+1cc to Mr.Balanharidas, Advocate sr.52715

+1cc to Mr.S.K.Bose, Advocate sr.53076

+1cc to the Government Pleader sr.53305

W.P.No.27848 of 2012

nm1(co)
ss(14/9/2017)