

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.297 of 2015
and MP No.1 of 2015

1. The Managing Director,
Tamil Nadu Water Supply & Drainage Board,
Rep. By its Managing Director,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005.
2. The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Maintenance Division,
Alandur, Chennai 600 016. Appellants/Respondents

versus

B.K. Velu Respondent/Petitioner

Appeal filed against the order passed by this Court dated 26.03.2013 passed in W.P.No. 24288 of 2005.

PRAYER IN W.P.No. 24288 of 2005:

Writ Petition filed Under Article 226 of the Constitution of India praying this court for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent in proceedings No.3141-4/EA3/ALR/2004, dated 27.9.2004, and the consequential order of recovery issued by the second respondent in Proceedings No.3141-4/EA3/ALR/2004, dated 24.6.2005, and quash the same and direct the second respondent to restore the pay fixation as existed prior to the issue of the impugned order and grant all consequential benefits to the petitioner

For Appellants : Ms.S.Thamizharasi

For Respondent : Mr.Mohan Raj
for M/s.D.Rajendran

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The appellant Board challenges the order of the learned Single Judge made in WP No.24288 of 2005, in and by which, the learned Single Judge had allowed the Writ Petition quashing the proceedings of the appellant Board dated 24.06.2005. By the said proceedings, the second appellant, viz. the Executive Engineer, Tamil Nadu Water Supply and Drainage Board, Maintenance Division, Municipal Complex, Alandur, Chennai, and directed recovery of a sum of Rs.23,480/- to be made in 59 installments of Rs.390/- each and 60 installments of Rs.470/- from the pay of the respondent. The said order of recovery came to be passed in the following factual back drop.

2. The 1st respondent joined as a Fitter Grade-II, in the respondent Board on 23.03.1972 and his services were regularized with effect from 01.01.1978. On completion of ten years of qualifying service, he was sanctioned Selection Grade Pay in the pay scale of Rs.610-1075. Thereafter, he opted for revised pay scale with effect from 01.06.1998. Accordingly, his pay was fixed on the scale pay of Rs.1200-2040 with effect from 01.06.1998. While so, the 2nd appellant by his proceeding dated 27.09.2004, re-fixed his pay at a lower scale of pay of Rs.1100-1660 with effect from 01.06.1988, as against the previous fixation of Rs.1200-2040. Aggrieved by the said refixation the respondent made a representation dated 12.11.2004 to the Managing Director of TWAD Board viz. the 1st appellant herein. Even during the pendency of the said representation, the 2nd respondent passed the orders of recovery that were impugned in the Writ Petition. Claiming that the fixation of a lower scale of pay at Rs.1100-1660 itself was irregular and the consequent recovery order therefore, cannot be sustained. The 1st respondent sought for quashing of the proceedings dated 27.09.2004 and the consequential recovery order dated 24.06.2005.

3. The said Writ Petition was resisted by the respondent Board contending that the revision of pay scale was done, as per the G.O.Ms.No.304 dated 28.03.1990, the said G.O., according to the appellants was issued to rectify the pay anomaly caused because of the introduction of the Fifth Pay Commission. It is the contention of the appellants that as per the said G.O., the pay of an employee working in Fitter Grade-II cannot exceed the

pay of the promotion post, viz. Fitter Grade-I.

4. A clarification was sought for by the appellant Board in response to which the Government had by its letter dated 20.12.2000 clarified that the scale of pay of the post of Selection Grade Electrician, Grade-II/Fitter, Grade-II has to be fixed at Rs.1100-1660, i.e., the scale of pay of the ordinary Grade of Electrician, Grade-I/Fitter, Grade I, which is the promotion post for Electrician, Grade II/Fitter, Grade II. The said letter also clarified that the rules position has been pointed out in paragraph-4 of G.O.Ms.No.304 dated 28.03.1990. Therefore, according to the appellant, it had only acted in-compliance with the Government Order in G.O.(Ms).No.304 dated 28.03.1990. This contention of the appellants did not find favour of the learned Single Judge. The learned Single Judge allowed the Writ Petition, quashing the order of re-fixation of pay and the consequent orders of recovery.

5. Aggrieved the appellants, challenge the above Writ Petition by way of this intra Court Appeal.

6. We have heard Ms. Thamizharasi, learned counsel appearing for the appellants and Mr.Mohan Raj, learned counsel appearing for M/s.D.Rajendran for the respondent.

7. G.O.(Ms). No.304 dated 28.03.1990 was issued with a view to rectify the pay anomalies that were caused because of the implementation of the recommendations of the Fifth Tamil Nadu Pay Commission. While implementing the recommendations of the Fifth Tamil Nadu Pay Commission, orders were issued by the Government dispensing with the scheme of selection, Special and Senior Grades and advancement to Special Temporary Post, allowing the existing incumbents, who had already moved or entitled to move to these Grades before the date of issue of G.O.Ms.No.666 dated 27.06.1989 with the revised scales of pay as indicated in Appendix VII to the above G.O., till they vacate the post.

8. Since various representations were received by the Government requesting reintroduction of scheme of selection, Special and Senior Grades, the Government decided to improve the present levels of Selection/Special Grade and also to continue the scheme of Selection/Special Grades. The Government had also decided to extend the Selection Grade and Special Grade to all the categories of posts in the scale of pay of Rs.750-945 and above and upto the scale of pay of Rs.2500-4200. Accordingly, the employees in these scales of pay are entitled to move on to Selection Grade, after completion of 10 years service in the ordinary grade and to Special Grade after completion of 10 years in the Selection Grade or a total 20 years service in a post

irrespective of the service in the selection grade post.

9. Accordingly, in partial modification of G.O.Ms.666, the Government directed the scheme of Selection Grade and Special Grade should be allowed to all the employees eligible for movement to Selection Grade and Special Grade indicated in Annexure-I of G.O.304, which replaced Annexure-VII of G.O.Ms.666 dated 27.06.1989. G.O.Ms.No.304 dated 28.06.1990 further provided that wherever the promotion post happens to be on a lower scale of pay than the selection grade scale of pay given in Annexure-I employees in such post are eligible for the Selection Grade Scale as applicable to promotion post only.

10. Relying upon this paragraph in G.O.Ms.No.304, the appellants had issued the impugned proceedings, since the scale of pay for Fitter Grade-I in the appellant Board was Rs.1100-1660. While doing so, the appellant had overlooked the fact that in paragraph 6 of the very same G.O., the Government had observed that if the pay of the employee happens to get fixed at a lesser scale than that has been fixed in the revised selection/Special Grade, the pay of such employee shall be stepped up to the next higher stage, as a special case, to avoid monetary benefits.

11. Ms.Thamizharasi, learned counsel appearing for the appellant Board would contend that the case of the respondent employee is not a special case. This submission, in our considered opinion, is against the very spirit of G.O.Ms.304 dated 28.03.1990. The object of the Government order in G.O.Ms.No.304 Finance (Pay Commission) Department, dated 28.03.1990 is to remove the anomalies in the pay structure, without affecting the already existing pay that is being received by the employee concerned. In fact that G.O. directs that the pay of an employee should be stepped up whenever the same gets fixed at a lesser scale than the scale already fixed in the Selection Grade or Special Grade.

12. Even in paragraph 4 of the said G.O. the Government had stated that wherever the promotion post happen to be on a lower scale of pay than the selection grade scale of pay given in Annexure-I, employees in such posts are eligible for selection grade scale as applicable to the promotion post only. Therefore, it is clear that in cases where an employee in the lower grade is drawing a pay which is higher than the ordinary scale of pay in the promotion post. His pay should be fixed at the Selection Grade Pay allowable to the promotion post. From the Annexure to the said G.O.Ms.No.304, the Selection Grade Pay of Rs.1320-2040 is fixed for the ordinary Grade pay of 1100-1660. It is not in dispute that the ordinary grade pay for Fitter Grade I, which is the promotion post to Fitter Grade-II

in the appellant Board is Rs.1100-1660 and therefore, the selection Grade Pay to the said post would be Rs.1320-2040. The 1st respondent, who has been drawing a higher pay than the ordinary grade pay to the promotion post viz. Fitter Grade-I is entitled to the selection grade pay allowable to Fitter Grade-I i.e. Rs.1320-2040.

13. Admittedly, the pay of the respondent in the Selection Grade was fixed on a scale of 1200-2040 and the same has been reduced and re-fixed at 1100-1660. The said re-fixation in our considered opinion is not in consonance with G.O.Ms.No.304. We, therefore, see no ground to interfere with the order of the learned Single Judge in allowing the Writ Petition. The Writ Appeal has no merits and therefore, it is dismissed. It is made clear that the Board shall refund whatever amount that has been recovered from the respondent, pursuant to the orders of recovery dated 24.06.2005 sans any interest. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

jv

+1cc to Mr.P.RAJENDRAN, Advocate, S.R.No. 43520
+1cc to Mr.S.THAMIZHARASI, Advocate, S.R.No.43578

W.A.No.297 of 2015
and MP No.1 of 2015

BR(CO)
TR(25/07/2018)

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