

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.10.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.3456 of 2015 and
M.P.No.2 of 2015

1.V.Duraimanickam
2.C.R.Subramaniam
3.V.Purushothaman
4.S.A.Natarajan
5.M.Sivam
6.G.Mani
7.K.Govindasamy
8.K.Subramani
9.T.Udaiyar
10.A.K.Ramanujam
11.R.Kuppusamy
12.A.V.Sengali
13.K.Manivannan
14.S.Subramani
15.E.Bakthan
16.V.Needhirajan
17.R.Manesh
18.V.Janaki Raman
19.M.Ezhumalai
20.A.Ganesan
21.T.Mahendran
22.A.Kalathi
23.D.David Raja
24.P.Lakshmanan
25.M.Ansari
26.Y.Bakkiyanathan
27.N.Sabapathi
28.M.Rajammal
29.M.Ayyadurai

....Petitioners

Vs

1. The Secretary to Government
Housing and Urban Development Board,
Fort St.George,
Chennai - 600 009
2. The Secretary and Personnel Officer,
Tamil Nadu Housing Board,
Anna Salai,
Nandanam,
Chennai - 600 035

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order of the second respondent passed in Letter No.P.T.5/5810/2013 dated 29.10.2014 quash the same, and consequently direct the respondents to revise the basic pay of the petitioners in accordance with pay revision in G.O.Ms.No.304 Finance (Pay Commission) Department dated 28.03.1990 with all subsequent revisions on par with Assistants, Wiring Inspector, Building Inspector, Time Keeper in the second respondent department.

For Petitioners : Mr.Veera Kathiravan
for M/s.S.T.P.Kuilmozhi

For Respondents : Mr.V.Kadhirvelu,
Special Government Pleader
for R1

: M/s.Narmadha Sampath,
Additional Advocate General
Asst. by Mr.V.Anandhamurthy
for R2

ORDER

The petitioners were working under the Housing and Urban Development Board as skilled and semi skilled employees and from 11.11.1974 their service regularised with the scale of pay of 250-10-400 with all other service benefits granted to permanent staff of the Board. Their such pay was equivalent to the scale of pay of Assistant in the establishment during the Second Pay Commission, Third Pay Commission and Fourth Pay Commission. However, during the Fifth Pay Commission revision of pay their pay was reduced inasmuch as they were granted 1100-25-1150-30-1660 whereas the Assistants were granted a scale of pay of Rs.1200-30-1560-40-2040. The petitioners therefore made grievance before the second respondent claiming the pay on par with the Assistant as they were getting the same during the Fourth Pay Revision Commission Award. Their such representation however was rejected on 29.10.2014, hence they came to file this writ petition challenging the rejection of their prayer made to be illegal and arbitrary inasmuch as the same is violative of the 'right to equality' granted under the Constitution of India. Hence, the writ petition be allowed and the respondents be directed to revise their scale and grant the monetary and pensionary benefit to the petitioners in the said scale.

2. Reply affidavit has been filed wherein though it is not disputed that the petitioners were getting identical scale of pay with Assistant during the second, third and fourth Pay Commission recommendation but in the fifth Pay Commission pay being fixed taking into consideration the qualification, nature of duties and responsibilities and in such pay revision more than one scale having been prescribed for identical pay of scale for different posts in the fourth Pay Commission the claim of the petitioners were rejected. The petitioners had also approached earlier this Court vide W.P.No.9989 of 1993 wherein this Court had directed to examine the grievance of the petitioners and accordingly the same was examined and refused to extend the scale of pay claimed by the petitioners. Therefore the claim of the petitioners in this writ petition being without any substance, the same is liable to be dismissed.

3. In the rejoinder filed, the petitioner has taken the ground that non revision of their scale of pay on par with the Assistant is violative of Articles 14, 19 and 21 of Constitution of India, inasmuch as their service rendered by them is not inferior to the service rendered by other establishment staffs of the Board and also this Court in WP No.10120 of 2002 and WP No.21886 of 2003 vide order dated 23.07.2007 have extended the benefit of Tamil Nadu Government servants pension Rules to such skilled and semiskilled employees like other permanent staffs of the establishment and writ appeal against the same has since been dismissed.

4. During the course of hearing, it is submitted by the learned counsel appearing for the petitioners that since the petitioners were getting identical scale of pay with Assistant till Fourth Pay Commission there was no apparent reasons not to make revision of their pay on par with the scale granted to the aforesaid employees of the Board. Therefore the same could not have been denied to them, more particularly when this Court in W.P.No.19672 of 2000 in similar facts and situations so far as the regular time keepers and work charged absorbed time keepers are concerned, had held the same being discriminatory directed to grant equal pay to them. Therefore, the writ petition be allowed and the petitioners be granted the relief.

5. In response, the learned counsel appearing for the respondents, submits that the petitioners work and the work of the Assistant in the establishment are different and distinct. Their qualification is also different. No doubt in earlier pay Commission recommendation, they were getting identical scale along with the Assistants but in the Fifth Pay Commission even if employees in holding different post were getting identical scale, different scale were granted to them

taking into consideration their nature of work, qualification, etc. Basing on the said, the aforesaid recommendation of the pay commission scale was granted to the petitioners who were semiskilled / skilled workers which is less than the scale granted to the post getting identical scale earlier but holding different post and discharging different nature of duties. The petitioners' grievance in this regard was rejected dates back in 1993. The petitioners then did not challenge the same. They retired from the service. But after disposal of the aforesaid writ petition they made a representation and their such prayer having not been acceded to they have filed this writ petition. The writ petition is devoid of merits for the reasons that the petitioners' case is not covered by the principle of equal pay for equal work. The claim is also stale one and as such liable to be dismissed.

6. As it appears from the averments made, the petitioners have already retired from service. The difference in the aforesaid scale of pay was occurred during the Fifth Pay Commission. The petitioners' representation in this regard was rejected in 1993, taking note of the fact that the said scale fixed based on the Fifth Pay Commission recommendation made taking note of the duties, qualification. The petitioner thereafter made no grievance and retired from service. But suddenly they again made an attempt to resurrect their such dead and stale claim by filing a representation. It is well settled that the repeated representation does not keep alive dead and stale cause of action. Therefore, the case of the petitioners is liable to be dismissed on the ground of delay and laches. Otherwise also the decision cited supra is of no assistance to the petitioners inasmuch as the same was a case of equal pay for equal work. In the said case, persons discharging the similar duties that is absorbed Time Keeper work charged establishment and Time Keeper regular establishment being granted different scale of pay, the aforesaid order was passed whereas the case of the petitioners is not covered by the said principle, inasmuch as they cannot claim to have been discharging similar nature of work with the Assistant.

7. For the aforesaid reasons, I am of the view that the prayer made by the writ petitioners is without any substance. Accordingly, the writ petition is devoid of merits and hence stands rejected. Consequently connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

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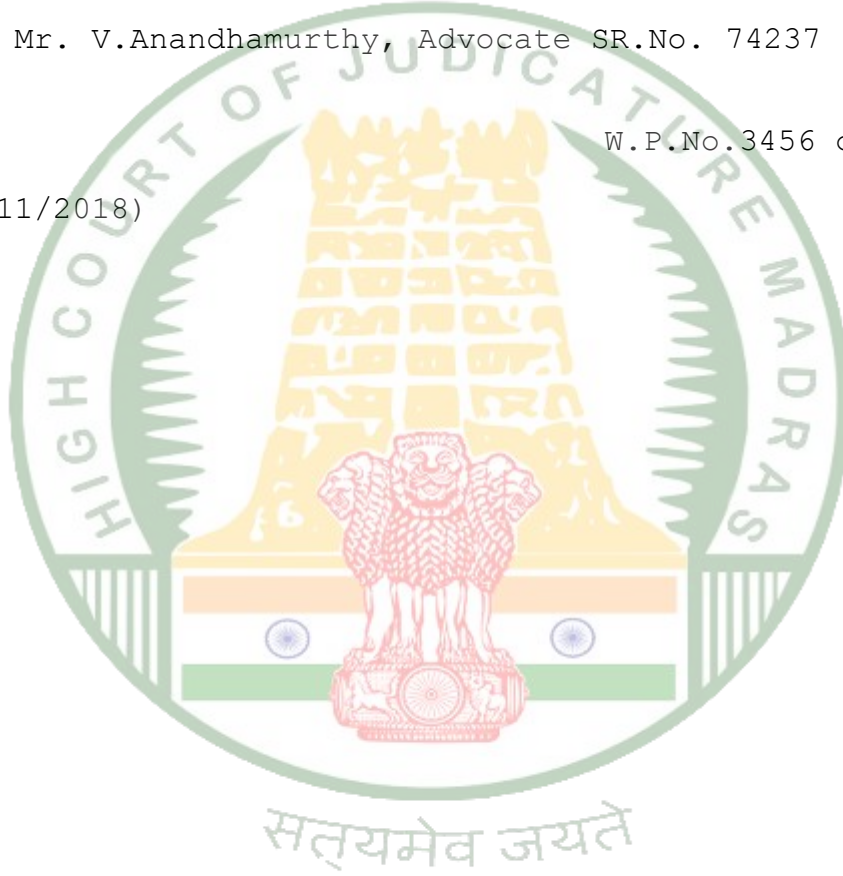
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To

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2. The Secretary and Personnel Officer,
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Nandanam,
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+1cc to Mr. V.Anandhamurthy, Advocate SR.No. 74237

W.P.No.3456 of 2015

ASK(15/11/2018)



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