

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2018
PRONOUNCED ON : 14.02.2018

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.7456 of 2009

1. K.Kumaravel
2.A.Krishnan
3.T.Pari
4.R.Kandasamy
5.Liliyan Swarana Kalai
6.M.Kumar
7.C.Rajendran .. Petitioners

vs.

1. The Secretary to Government
Housing and Urban Development Department
Fort St. George, Chennai.
2. The Member Secretary,
Chennai Metropolitan Development Authority
Chennai. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the proceedings of the 1st respondent in Letter No.21418/UD11 (2) /2007-3 dated 24.02.2009 as communicated by the first respondent in its No.E1/14466/2006 dated 20.03.2009 and quash both the orders and consequently direct the respondents to revise the pay scales of community officers to that of Rs.10000-325-15200/- (Prayer amended as per order dated 08.10.2013 in M.P.Nos.1 and 2 of 2013 in W.P.No.7456 of 2009)

For Petitioner : Mr.V.Vijay Shankar
For Respondents : Mr.T.M.Pappiah (R1)
Special Government Pleader
Mr.C.Johnson (R2)

ORDER

The petitioners herein have been appointed as Community Officers in the second respondent organisation. They were appointed on various dates from 1979 to 1984. As per the service rules, the required qualification for appointment of community officers is M.A. in social work. Admittedly, all the petitioners were in possession of the said qualification at the time of their appointment. Ever since, their appointment they have been working as community officers and the second respondent authority had not provided any promotional avenue to the post of Community officer.

2. According to the petitioners, those in other cadres such as planning Assistant, Superintendent etc., which carry lesser pay scale than the post of community officers were provided with proper promotional avenue. The qualification prescribed for appointment to those posts was inferior to the qualification prescribed for community officers. Since the petitioners herein have been languishing in the same position for years together, they submitted a joint representation to the second respondent authority on 12.09.2002 for upgradation of their pay scale.

3. The request of the petitioners was placed before the second respondent Authority and the Second respondent Authority by its resolution No.189/2002 dated 18.10.2002 recommended for grant of scale of pay of Rs.10,000-15,200. The said recommendation was based on the qualification prescribed for the post of Community Officers and also on the basis of nature of duties performed by the petitioners herein. Subsequent to the recommendation/resolution, the second respondent by the proceedings dated 05.11.2002 forwarded the proposal to the first respondent department for grant of higher pay to the petitioners cadre. The approval of the Government was sought for on the basis of G.O.Ms.656 dated 13.11.1998, as the Government Order provided for Government's approval for any proposal to upgrade or create positions in the pay scale of 10,000/- and above.

4. In the above circumstances, the petitioners were fervently hoping that in view of the strength of recommendation of the competent authority viz., the second respondent, a due approval will be granted for upgradation of pay scale. However, the petitioners were informed by proceedings dated 01.07.2003 that there was a ban of recruitment and therefore, the creation of new posts was not acceptable and the proposal sent by the second respondent was rejected forthwith.

5. The petitioners were at a loss to understand as to the legal basis of the return of proposal by the Government, since the upgradation of pay scale did not involve creation of posts

and it was merely upgradation of pay scale for the communal officers, in any event, hoping that eventually their proposal would be approved by the Government once, once the ban is lifted, the petitioners waited for passage of time. The Moratorium imposed by the Government banning recruitment was lifted in the year 2006 and thereafter once again, the petitioners by their joint representation dated 28.07.2006 voiced their grievance, as they were still stagnating in the same pay scale without any scope for promotion, under the service rules. Once again the second respondent forwarded the representation to the Government by the proceedings dated 20.07.2006. In response to the proposal, the Government in its turn wanted the second respondent authority to submit a comprehensive proposal in that regard. In response to the Government's requirement, the second respondent authority had submitted a comprehensive proposal to enhance the pay scale of the cadre of the Community Officers.

6. While matters stood thus, the second respondent by proceedings dated 20.03.2009 informed the petitioners that the Government vide their letter dated 24.02.2009 had returned the proposal without any revision of their pay. In fact, no reasons were spelt out disclosing the basis for rejection, particularly when the competent authority, the second respondent herein has forwarded its recommendation for revision of pay scale.

7. In the stated circumstances, the orders passed by the second respondent and the rejection of proposal by the first respondent are put to challenge in the Present Writ Petition.

8. Mr.V.Vijayshankar, learned counsel for the petitioner would strenuously contend that the rejection of proposal by the first respondent, without disclosing the legal basis or any valid reason cannot be justified, when the fact of the matter is that for several cadres like Assistant Planner, Deputy Planner, Deputy Financial Analyst, Chartered Accountants, Law officer, Junior Accounts Officer etc., there was upgradation of their pay scales which infact was approved by the Government. In fact some of the upgradation in respect of certain category of position had taken place during the ban period. In such circumstances, the rejection of the petitioners requirement for upgradation of pay scale is per se discriminatory and unreasonable and also irrational and therefore violative of Article 14 of the Constitution of India.

9. The learned counsel for the petitioner with equal vehemence would submit that once the competent authority is of the opinion that the qualification for higher revision of pay scale is justified on the basis of qualification of the

petitioners and the nature of duties performed and discharged by them, it is not open to the Government to negative such proposal without there being compelling and plausible reasons questioning the rationale and the authority of the second respondent. In the absence of any reasons, the rejection by the first respondent, vide the impugned proceedings has to be discountenanced, as being invalid and untenable

10. The learned counsel for the petitioner would also submit that in any event approval or the concurrence of the Government is not required in the first place, since the second respondent is a statutory body constituted under Tamil Nadu Town and Country Planning Act and it is not a public sector undertaking or board functioning under the control of State Government. According to the learned counsel for the second respondent, the authority enjoys absolute autonomy in the matters of filling up of posts, creation of posts and creation of scale of pay etc., He would draw the attention of this Court to the power of authority to make regulation as found in Clause 124 of the regulation prescribed under the Tamil Nadu Town and Country Planning Act, 1971. The said Clause is reproduced below for understanding the submissions made by the learned counsel for the petitioner.

"124. Power to make regulations-
(1) Any planning authority may, with the previous approval of the Government, make regulations, [whether prospectively or retrospectively] not inconsistent with this Act and the rules made thereunder for enabling it to perform its functions under this Act or the rules made thereunder. "

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for--

(a) the time and place of meeting of the planning authority, the procedure to be followed in regard to transaction of business at such meeting and the quorum necessary for the transaction of such business at a meeting;

(b) the powers and duties of the officers and servants of the planning authority;

(c) the salaries, allowances and conditions of service of officers and servants of the planning authority;

(d) the terms and conditions for

the continuance of use of any land used otherwise than in conformity with a development plan;

(e) the maintenance of minutes of the planning authority and the transmission of copies thereof to Government;

(f) the person by whom and the manner in which payments, deposits and investments may be made on behalf of the planning authority;

(g) the custody of moneys required for the current expenditure of the planning authority and investment of moneys not so required;

(h) the maintenance of accounts.

(3) The Government may, by notification, rescind any regulation made under this section and thereupon, the regulation shall cease to have effect."

11. The learned counsel for the petitioner particularly would rely upon clause 124 (2) (c) wherein the power to regulate the salaries, allowances and conditions of service of officers and servants is mentioned. He therefore would submit that the second respondent authority need not make any reference to the Government nor is required to obtain approval of Government for revision of pay scales of the employees. The power to revise the pay scale falls entirely within the domain of the second respondent and such power vested with the authority cannot be abdicated in favour of the Government.

12. The learned counsel for the petitioner initially drawn the attention of this court to the proceedings of the second respondent authority dated 05.11.2002 which are extracted below:

"I am to state that the Authority in A.R.No.189/2002, dated 18.10.2002 (copy enclosed) has resolved to upgrade the post of Community Officers in the scale of pay of Rs.10000-325-15200.

2. As per G.O.Ms.No.656, Finance (BPE) Department, dated 13.11.98, prior sanction of Government has to be obtained for creation/upgradation of posts in the scale of pay of Rs.10000-325-15200 and above. As the post of Community Officers have to be upgraded to the scale of pay of Rs.10000-325-

15200 the prior sanction of Government is required for upgradation of this post.

3. Hence, I request you to move the Government for issue of orders upgrading the post of Community Officer to the scale of pay of Rs.10000-325-15200 as resolved by the Authority in the reference cited.

4. I request early orders of Government in the matter. "

13. The learned counsel for the petitioner would submit that as a matter of fact, the authority had taken a positive decision for upgradation of pay scale of the community officers in the pay scale of 10,000/--15,200/- and required the Government to pass orders on the proposal. Having taken conscious decision to upgrade the pay scale of the Community Officers, it is not open the the authority to turn down the request of the petitioner by shirking its statutory responsibility, which is also contrary to their decision taken in their proceedings dated 05.11.2002. In fact the learned counsel for the petitioner who draw the attention of this Court to various orders passed by the second respondent authority granting upgradation of pay scale of Deputy Planner, Junior Accounts Officer, Law officer, Deputy Financial Assistant etc. He would therefore submit that depriving the cadre of community officers of the higher pay scale commensurate with the qualification prescribed for the post, cannot be countenanced both in law and on facts and such discriminatory treatment does not advance the cause of good and fair administration.

14. Upon notice Mr.C.Johnson learned counsel has entered appearance on behalf of the second respondent and filed the counter affidavit. In the counter affidavit filed on behalf of the second respondent, it is merely stated that the first respondent Government was not inclined to accept the proposal and therefore the petitioners could not be granted the reliefs.

15. In any event, it is not open to the second respondent to resist the claim of the petitioners herein, having consciously taken a decision for grant of higher pay to community officers. As regards the first respondent is concerned, despite sufficient opportunities given, no counter has been filed. In any event, this Court has to see whether the counter affidavit by the first respondent officer in the first place is required in view of the submissions of the learned counsel for the petitioners, as above.

16. The learned counsel for the petitioner would rely upon the following decisions in support of his contention that once power is vested with an authority, the same has to be exercised by the said authority.

(i) Chandrika Jha Vs. State of Bihar and others reported in (1984) 2 SCC 41. Paragraph 14 of the Said Judgement is is extracted below.

"14. Neither the Chief Minister nor the Minister for Cooperation or Industries had the power to arrogate to himself the statutory functions of the Registrar under bye-law 29. The act of the then Chief Minister in extending the term of the Committee of Management from time to time was not within his power. Such action was violative of the provisions of the Rules and the bye-laws framed thereunder. The Act as amended from time to time was enacted for the purpose of making the cooperative societies broad-based and democratizing the institution rather than to allow them to be monopolized by a few persons. The action of the Chief Minister meant the very negation of the beneficial measures contemplated by the Act."

(ii) Anirudhsinhji Karansinhji Jadeja and another Vs., State of Gujarat reported in 1995 5 SC 302. Paragraphs 11 and 14 of the said Judgment are extracted hereunder .

"11. The case against the appellants originally was registered on 19th March, 1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20A (1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has

been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20A (1) was not exercised by the DSP at all.

14. The present was thus a clear case of exercise of power on the basis of external dictation. That the dictation came on the prayer of the DSP will not make any difference to the principle. The DSP did not exercise the jurisdiction vested in him by the statute and did not grant approval to the recording of information under TADA in exercise of his discretion. "

17. This Court has considered the rival submissions of the counsels and perused the relevant materials and pleadings placed on record.

18. In regard to the submissions made by the learned counsel for the petitioner, the second respondent alone is competent to take a decision in respect of regularizing the service conditions of its employees, including the pay and allowances, this Court is in agreement with the submissions, as clause 124 of the Tamil Nadu Town and Country Planning Act, 1971 vests complete power with the second respondent authority and once the second respondent authority is formed, it enjoys unbridled power to regulate its own functions including the regularisation of service conditions of the employees. Once such power is vested with the authority, as rightly contended by the learned counsel for the petitioner, the same cannot be made over to any other authority, including the State Government. In the instant case, the second respondent authority is under a legal misconception that approval is necessary for revision of pay scale of the cadre of community officers. In fact, the action of the second respondent authority in this regard suffered from fundamental flaw on two grounds.

1) That the proposal which originally emanated in the year 2002 by proceedings of the second respondent dated 05.11.2002 which was shelved on the ground that there was a ban on recruitment. First of all the upgradation of pay scale did not involve creation of posts or increase of cadre strength. It is a mere revision of pay scale and the ban as such cannot be

extended to such enhancement of pay scale.

2) Approaching the Government for approval would tantamount to jettisoning clear power vested with the second respondent authority when no such approval is required legally. The second respondent authority therefore has misdirected itself by approaching the Government oblivious to the power enjoined the statutory regulations. Such action on the part of the second respondent is contrary to the legal principle as laid down by aforementioned decisions cited by the learned counsel for the petitioners.

19. As regards the justification of the grant of higher pay scale to the cadre of community officers i.e. Rs.10,000-15,200, the second respondent having taken a conclusive decision, cannot oppose the relief being granted to the petitioners. Even otherwise once various other cadres working in the second respondent authority had been granted upgradation of pay scale which cadres had carried lesser qualification, lesser pay scale and duties, the cadre of the community officers alone cannot be viewed differently and in the matter of upgradation of their pay scales. An argument was also advanced on behalf of the respondents that the petitioners were granted selection and special grades on completion of qualifying years of service, but such an argument cannot be countenanced by this Court for the simple reason that the grant of selection or special grades cannot be a due and proper compensation for the higher qualification possessed by the petitioners while they were recruited as community officers. Admittedly there was no avenue of promotion provided to the cadre of community officers and in the absence of proper promotional prospects, individual efficiency of the officers would take a beating and will ultimately result in negation of good and efficient administration.

20. As stated above, the decision taken by the second respondent authority appeared to be well founded and the decision could not be pursued to its logical, only because of the misconception on the part of the second respondent that the Government approval was necessary. It has now been demonstrated before this Court that the Government approval is not necessary or required, there is no legal impediment for the second respondent authority to implement its own resolution for upgrading the pay scale of the petitioners i.e. 10,000-15,000, as any other decision will be a travesty of justice to the cadre of community officers.

21. Having taken a positive decision for upgradation of pay scale to the community officers as early as in the year 2002, the second respondent is estopped from taking any other decision contrary to their own resolution. This Court is of the

considered view that the approval of the Government is not necessary. There is no legal impediment or obstacles for the second respondent to implement its own resolution by granting upgradation of pay scale to the petitioners. This Court, therefore, holds that objections if any to be raised on behalf of the first respondent does not legally make any difference for adjudicating the issues raised in the writ petition.

22. For the above said reasons, the Writ Petition is allowed and the impugned orders of the first respondent dated 24.02.2009 and 20.03.2009 are set aside and there shall be a consequential direction to the second respondent to upgrade the pay scale of the community officers to that of Rs.10,000-325-15200/-retrospectively with effect from 18.10.2002 with consequential arrears. The direction of this Court shall be complied with by the second respondent, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-iii)

//True Copy//

Sub Assistant Registrar

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To,

1. The Secretary to Government
Housing and Urban Development Department
Fort St. George, Chennai.
2. The Member Secretary,
Chennai Metropolitan Development Authority
Chennai.

+1cc to Mr.C.JOHNSON, Advocate, S.R.No. 11371
+1cc to Mr.V.VIJAYASHANKAR, Advocate, S.R.No. 11227
+1cc to the Government Pleader, S.R.No. 11776

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order made in
W.P.No.7456 of 2009

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