

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 19.08.2019****CORAM****THE HONOURABLE MR. JUSTICE V.PARTHIBAN****WP.No.16323 of 2019**

P.Chakarapani

...Petitioner

Vs.

1. The Tamil Nadu Khadi and Village Industries Board, rep. by its Chief Executive Officer, Kuralagam, Chennai-600 108.

2. The General Manager, Khadri Craft, Kuralagam, Chennai-600 108.

3. The Assistant Director, Khadri and Village Industries, Khadri Craft, Kuralagam, Chennai-600 108.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings dated 20.05.2019 made in Na.Ka.No.416/A1/2019 passed by the 3rd respondent herein,

quash the same and permit the petitioner to continue to work in the post of Helper Grade II under the respondents till he attains the age of 60 years, i.e. 30.6.2021.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.S.T.S.Moorthy, AAG,
assisted by Mr.S.K.Bose

ORDER

This Writ Petition has been filed, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings dated 20.05.2019 made in Na.Ka.No.416/ A1/2019 passed by the 3rd respondent herein, quash the same and permit the petitioner to continue to work in the post of Helper Grade II under the respondents till he attains the age of 60 years, on 30.6.2021.

2. The petitioner was appointed as Helper Grade II in the Office of the 2nd respondent, having been selected through the Staff Selection Committee of Tamil Nadu Khadi and Village Industries Board, vide Board Proceedings dated 3.9.1997.

Ever since his appointment in 1997, the petitioner has been working as Helper Grade-II. The age of retirement for basic service in the first respondent Board is 60 years as per *proviso* to Rule 56(1) of Fundamental Rules. The issue whether the age of retirement for the last grade servant/basic servant is 58 or 60 years, came up for consideration before a Division Bench of this Court in W.A.No.2410 of 2011. The Division Bench, in its judgment dated 16.6.2014, has held that the post of Helper Grade II belongs to last grade service and therefore, the age of retirement was only 60 years. The observations of the learned Division Bench of this Court as found in paragraphs 9 to 14 of the judgment, are extracted as under:

“9. This Court, after carefully considering the rival submissions and the materials available on record, is of the view that the writ appeal has to be allowed for the following reasons.

10. As rightly contended by the learned counsel for the appellant, the proceedings of

the first respondent dated 20.5.2005 in Rc.No.2887/E.II (2)/2005, clearly disclose that the petitioner, who was working as Helper Grade-II in the office of the General Manager was transferred as Helper Grade-II and posted to work as Office Assistant in the existing vacancy and the said proceedings also make it clear that the posts of Helper Grade-II and Office Assistant are one and the same. Though it is the stand of the official respondents that the proceedings dated 20.5.2005 came to be passed based on the application submitted by the appellant herein, the proceedings does not refer to any application and representation on the part of the appellant herein to move from the post of Helper Grade-II to that of Office Assistant.

11. The said proceedings would also disclose that the scale of pay for both posts are equal and it is interchangeable from the post of Helper Grade-II to the post of Office Assistant and vice-versa. The Special Rules for Tamil Nadu Basic Service and also the first proviso of Fundamental Rules 56 (1) would disclose that the basic service include the service as Office

Assistant, Head Office Assistant, Chobdar or Duffadar and the pay of which, does not exceed Rs.750/- and all other service, is superior service. Admittedly, for the posts of Helper Grade-II as well as the Office Assistant, the scale of pay is same and it is also interchangeable. The petitioner ought to have been superannuated at the age of 60 years i.e. on 30.9.2008, and instead, he has been superannuated on 30.9.2006.

12. In the light of the reasons assigned above, the writ appeal is allowed and the impugned order dated 23.11.2010 made in W.P.No.36448 of 2006 as well as the proceedings of the first respondent dated 27.5.1998 insofar as the appellant/writ petitioner is concerned, are set aside. No costs.

13. The learned Special Government Pleader appearing for the official respondent would submit that the financial position of the first respondent-board is precarious and therefore, the backwages may not be ordered and on the said submission, this Court heard the learned counsel for the appellant/writ petitioner.

14. In the light of the stand taken by the official respondents that the financial condition of the Board is precarious and may not be in a position to pay backwages i.e. from 1.10.2006 to 30.9.2008, this Court is of the view that the appellant is not entitled to any backwages for the said period. But, however, it should be taken into consideration as regular service for the benefit of pay fixation and all other attendant benefits and the first respondent is directed to confer the benefits arising out of this judgment to the appellant herein, within a period of three months from the date of receipt of a copy of this order. Connected miscellaneous petition is closed.”

3. Following the Division Bench judgment, a learned single Judge of this Court in M.P.No.2 of 2015 in W.P.No.22907 of 2015, has passed interim injunction, restraining the respondents therein from retiring the employee therein on his completion of 58 years of age.

4. Mr.S.Senthilnathan, learned counsel appearing for the petitioner would submit that in view of the settled legal position that the post of Helper Grade II belongs to last grade service, the age of retirement is only 60 years, as held by the Division Bench, the issue involved in the present writ petition is no more *res integra* for any fresh adjudication.

5. At this, Shri S.T.S.Murthy, learned Addl.Advocate General would submit that the post of Helper Grade-II belongs to superior grade service and not basic grade service. He would draw the attention of this Court to Tamil Nadu Khadi and Village Industries Board Service Regulations (Revised), wherein, under Category C.2 in Annexure II, the post of Helper Grade II is mentioned along with the post of Development Officer, Asst.Development Officer, etc., and therefore, it cannot be gain said that the post of Helper Grade II belongs to last grade service. The learned Addl.Advocate General would also draw the attention of this Court to Last

Grade Servants mentioned in Category F, wherein, only two posts, namely, Office Assistant and Watchman/Chowkidar were mentioned as Last Grade Servants. Therefore, he would point out that the petitioner who was working as Helper Grade II cannot claim that he belongs to last grade service and is entitled to be retired at the age of 60 years.

6. The learned counsel appearing for the petitioner would submit that the same objection was taken before the learned Division Bench and the Division Bench has discountenanced such submission on the ground that the post of Helper Grade II and Office Assistant were interchangeable and also carries same pay scale and therefore, when there is interchange of posts, the post of Helper Grade II cannot be treated as not belonging to last grade service. He would submit that the Service Regulation relied upon by the learned Addl. Advocate General does not indicate that the post of Helper Grade II belonging to superior grade service, of-course, it was merely mentioned along with the posts of Development Officer,

Chargeman Gr.I, etc. in Category C.2 (Carpentry and Blacksmithy). In any event, all the persons who worked as Helper Grade II in the respondent Board were treated as last grade servants and they retired after attaining the age of 60 years. Therefore, the petitioner cannot be meted out different treatment.

7. Considered the submissions of the learned counsel appearing for the petitioner and the learned Addl. Advocate General appearing for the respondents. Perused the entire materials available on record.

8. As rightly contended by the learned counsel for the petitioner that the issue is no more *res integra* for this Court to adjudicate the claim of the petitioner herein afresh. The Division Bench has clearly held that the post of Helper Grade II being interchangeable with the post of Office Assistant and both the posts carry the same pay scale. The post of Helper

Grade II is to be treated as last grade service and therefore, the petitioner who is working as Helper Grade II, which post being last grade service, is entitled to serve till he attains the age of 60 years.

9. In fact, a learned Judge of this Court also in a similar writ petition, after taking cue from the order passed by the learned Division Bench has granted interim injunction, restraining the Board from retiring the employee therein, on his attaining the age of 58 years. When identically placed Helpers Grade II were allowed to serve till they attained the age of 60 years, this Court is unable to appreciate as to how the Board could adopted a different yardstick in retiring the present petitioner on his attaining the age of 58 years. Once the post of Helper Grade II is interchangeable with the post of Office Assistant which admittedly belongs to last grade service and their pay scale being equal, the resistance put by the respondent Board through the learned Addl. Advocate General appears to be preposterous and the same is not acceptable.

When identically placed persons among the same posts are treated as belonging to last grade service, such treatment cannot be denied to the petitioner as that would only result in violation of Articles 14 and 16 of the Constitution of India. Although an attempt has been made by the learned Addl. Advocate General on a specious plea that the post of Helper Grade II is a superior grade service, this Court is unable to comprehend as to how the post of Helper Grade II can be treated as superior grade service when admittedly it can be interchangeable with the post of Office Assistant and carries the same pay scale which is identified as last grade service.

10. For the above said reasons, this Court has no hesitation to allow the present Writ Petition. Accordingly, the Writ Petition is allowed and the impugned order dated 20.05.2019 made in Na.Ka.No.416/A1/2019 insofar as the petitioner is concerned, is hereby quashed and the respondents are directed to continue the petitioner in service

till he attains the age of 60 years and grant him all attendant benefits. The respondents are directed to pass appropriate orders in this regard within a period of two weeks from the date of receipt of a copy of this order. No costs.

Suk

19.08.2019

To

1. The Tamil Nadu Khadi and Village Industries Board, rep. by its Chief Executive Officer, Kuralagam, Chennai-600 108.

2. The General Manager, Khadri Craft, Kuralagam, Chennai-600 108.

3. The Assistant Director, Khadri and Village Industries, Khadri Craft, Kuralagam, Chennai-600 108.

WEB COPY

V.PARTHIBAN, J.

suk



W.P.NO.16323 OF 2019

WEB COPY

19.08.2019