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Rev.A.Nos.24 and 25 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2023

RONOUNCED ON : 01.06.2023

C O R A M :

The Hon'ble Mrs. Justice **J. NISHA BANU**

Rev.Application Nos.24 and 25 of 2020
and WMP.Nos.4602/2020 & 4421/2020

R.Balakrishnan

..Applicant in Rev.No.24 of 2020

B.Selvam

..Applicant in Rev.No.25 of 2020

Vs

1. Managing Director,

Tamil Nadu Water and Drainage board,

Chennai – 600 005

..Respondent No.1

in both Review Appns.

2. The Executive Engineer (TWAD Board)

Maintenance Division (Siruvani),

Coimbatore

..Respondent No.2

in Rev.24/2020

3.The Executive Engineer

Maintenance Division

Tamil Nadu Water and Drainage Board

Thiruvavarur

..Respondent No.2



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in Rev.25/2020

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Prayer : Review Applications filed to review the order passed in W.P.No.27369/2010 dated 17.10.2012 and W.P.No.15798/2010 dated 17.10.2012.

For Petitioners : Mr.S.Muthukrishnan

For respondents : Mr.S.Silambanan, Addl.Advocate General
Asst by Ms.S.Shakila Banu, Standing counsel

COMMON ORDER

The above review applications are filed by the petitioners seeking to review the order passed in W.P.No.27369/2010 and W.P.No.15798/2010 dated 17.10.2012.

2. The petitioners are seeking to implement G.O.762 and B.P.505 pay scale on the basis of the award passed in I.D.No.147 of 1993 on the file of Labour Court, Tirunelveli, wherein, the Tamilnadu TWAD Board Employees Union filed a petition for the benefits of G.O.762 and



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3. It is averred in the Review Application No.25 of 2020 that W.P.No.27369 of 2010 was dismissed on 17.10.2012. The writ petitioner/Balakrishnan filed writ Appeal and the Division Bench granted liberty to file review petition and so present review has been filed.

4. It is also a matter of fact that this review applicant/Balakrishnan filed W.P.No.23366 of 2014 as against the impugned order passed by the second respondent, which writ petition has also been dismissed holding that the impugned order passed dated 07.08.2014 cancelling the revision of scale of pay is based on the undertaking given by the writ petitioner.

5. The argument of the learned counsel for the review applicant/Balakrishnan is that as per G.O.762 & B.P.505, SSLC pass and ITI certificate qualification is considered for revision of pay scale and



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since he possess the said qualifications, irrespective of whether he worked as Assistant driller or not, he should be given the said pay scale.

6. As far as another Review Applicant/Selvam is concerned, it is averred that he worked as Rig-helper and redesignated as Assistant driller and threfore he is entitled for the pay revision as per ID award and G.O.762 and B.P.505 as he also possess SSLC and ITI certificate.

7. The learned counsel for the review applicants would submit that in W.P.(MD).No.6033/2012, respondents were directed to revise the pay scale to the drillers in accordance with the award passed by the Labour Court in I.D.No.146 of 1993. When the said order was challenged in W.A.(MD).No.174/2018, the Madurai Bench of Madras High court, partly allowed the appeal filed by the TWAD Board and modified the order passed in W.P.(MD).No.6033 of 2012, directing the respondents to confer financial and other benefits from the date of issuance of B.P.Ms.No.547 dated 04.12.1997. However, review application was filed



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as against the order passed in W.A.(MD).No.174/2008. The said review was allowed the the order passed in W.P.(MD).No.6033 of 2012 was restored.

8. In the present review applications, the respondent-TWAD board filed counter affidavit and submitted that the Labour Court, Tirunelveli in order dated 07.11.1996 ordered scale of pay for Assistant Driller with SSLC passed + ITI and fixed as Rs.610-1075 and that order has been passed for the parties in the ID. For Rig Helper re-designated as Assistant Drillers, the scale of pay is fixed as Rs.950-1500 with effect from 01.06.1988 notionally and monetry benefit effect from 01.04.1992.

9. It is also submitted that G.O.762/Finance (Pay Cell) Department dated 20.08.1986, recommended revision of qualification and pay scale for trade post in various departments. G.O.762 dated 20.08.1986 had been implemented to employees of Tamil Nadu Water Supply and Drainage Board in B.P.Ms.No.505 dated 12/12/1986.



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10. The respondent-TWAD Board has submitted that in the case of present review applicants and two others, since the writ petition filed by them was dismissed, the pay anomaly was set right by B.P.547 dated 04.12.1997 by the TWAD Board for Assistant Drillers. It is stated that since the petitioners accepted the pay fixed as per B.P.547/dated 04.12.1997, they are not entitled to claim the pay as per B.P.505 dated 12.12.1986.

11. The respondent Board's submission is that the present review petitions are filed based on the wage refixtion in respect of some of the employees. As far as Review Petitioner B.Selvam is concerned, he joined as Helper in Mechanical Division, Madurai on 22.05.1987 and not worked as Assistnat Driller and he had been working as Driver in TWAD, Trichy. As he was in long absence from 07.08.1993 to 31.12.2004 and the same has been regularised as Extra Ordinary Leave without pay and allowances for the period above stated, it is treated as



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non duty period, hence, he is not eligible for the pay for Assistant Driller having qualification SSLC passed + ITI.

12. Heard both sides and perused the records carefully.

13. A careful reading of the records placed before this court would go to show that the review applicants joined as Rig helper on 05.06.2987 (Rev.applicant.24/2020) and as Helper on 22.05.1987 (Rev.applicant.25/2020) and in both the cases, they were re-designated as Assistant Driller on the same date of their joining. That apart, the benefit of the award in I.D.No.147/1993 was extended to all the employees including the employees who are not parties to the I.D. But the respondent-TWAD board suppressed those facts which led to the dismissal of the writ petitions filed for the said relief. As against the dismissal of the writ petition, writ appeal has been filed. The said writ appeal has been dismissed by this court granting liberty to the petitioner to file review application. Therefore, the present review applications came to be filed.



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14. The Review Applicants passed SSLC + ITI and even though they were originally appointed as Rig helper and Helper, on the same day, redesignated as Assistant Helper and Assistant Driller and therefore, they are eligible for revision of pay as per I.D.No.147/1993. It is very clear that when similarly placed persons are granted the said benefits, the review applicants cannot be denied the same stating that they accepted the pay fixed as per B.P.547 dated 04.12.1997. Another reason to grant the benefit of pay scale revision to the review applicants is that when the order in I.D. is being implemented to the similarly placed persons, the said benefit should also be extended to the review applicants herein as these review applicants are similiary placed employees, with necessary qualifications and so they are entitled to get benefit of I.D.No.147/1993. When the review applicants post and qualifications are fulfilled as per the terms of the proceedings in G.O.Ms.No.762 B.P.505, the respondent-TWAD board overlooking those criteria and refusing the pay revision based on the undertaking of the petitioner or the period of absence which



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has been regularised thereafter, cannot be accepted.

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15. The review applicants approached this court for the extension of benefit which was extended to the similarly placed employees and in such circumstances, these applicants alone cannot be treated in discrimination and denied those benefits. The rejection of revision of pay scale to the review applicants by the TWAD board is legally unsustainable.

16. It is settled proposition of law that the onus is always on the employee to prima facie substantiate the plea of discrimination or arbitrary exercise of power on the part of the respondent, then only the State or its instrumentality/agency or the public body (the employer) can be called upon to show that its decision is non-discriminatory, non-arbitrary, fair and in public interest. In the case on hand, it is very clear that time and again the Principal Bench of this court and the Madurai Bench, allowed the matters in favour of employees who are similarly placed employees to get the benefit of award in I.D.No.147 of 1993. The



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Writ Appeal order partly modifying the order passed in W.P(MD), also has been set aside in the Review Application and the WP order has been restored with a direction to the respondents to extend the benefit to the petitioner therein as that of similarly placed employees.

17 The learned counsel for the Review Applicants brought to notice of this court the order passed in Rev.Apl.Nos.26 and 27 of 2020 dated 03.08.2022. The said review applications have been filed by the applicants/writ petitioners as against the common order dated 17.10.2012. The learned single Judge allowed the Review Applications and held as under:-

“ 6. Considering the above submission made by the learned counsel on either side and also, the Judgment passed by the Division Bench of this Court in writ appeal Nos.1710 & 1711 of 2014 dated 01.08.2018, the last two paragraphs viz., 15 & 16 of the earlier order in W.P.Nos.15799 & 15800 of 2010 dated 07.10.2012 is reviewed as hereunder:

“15. The petitioners having accepted a different pay scale on the basis of a particular Board Proceedings, cannot turn round at this point of time and make a claim



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to obtain the benefits of the earlier Board proceedings. However, the -TWAD BOARD- has revised the salaries of the similarly placed persons under B.P.No.505 dated 12.12.1986 with effect from their original appointment. Hence, the petitioners are also entitled for the benefits stipulated under B.P.No.505 dated 12.12.1986.

16. In the result, the writ petitions are allowed and the respondents herein are directed to implement the Board-s order in B.P.No.505 dated 12.12.1986 and grant all the benefits to the petitioners herein in accordance with G.O.Ms.No.762 dated 20.08.1986. No costs. Consequently, connected Miscellaneous Petitions are closed.?

7. In the result, this review application is allowed and the earlier order dated 07.10.2012, passed by this Court in W.P.Nos.15799 & 15800 of 2010 is reviewed as above. Consequently, connected miscellaneous petitions are closed.”

18. In the above cited Review Applications, this court recorded the submission of the learned Additional Advocate General appearing for the respondent-Board that the Board is willing to implement the proceedings in B.P.No.505 dated 12.12.1986 in accordance with G.O.Ms.No.762 dated 20.08.1986 and grant all the benefits to the petitioners.



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19. In view of the above observations, the Review applications are allowed. The order passed in W.P.Nos.27369/2010 and 15798 of 2010 is reviewed to the effect that the petitioners are entitled for the benefits stipulated under B.P.No.505 dated 12.12.1986. No costs. Connected WMPs are closed.

01.06.2023

nvsri

J.NISHA BANU, J.

nvsri

To

1. Managing Director,
Tamil Nadu Water and Drainage board, Chennai – 600 005.



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2. The Executive Engineer (TWAD Board)

Maintenance Division (Siruvani), Coimbatore.

3. The Executive Engineer, Maintenance Division

Tamil Nadu Water and Drainage Board, Thiruvarur.

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