

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.13025 of 2007

V.Shanmugam

... Petitioner

-Vs-

1.The State of Tamil Nadu, rep.by its
Secretary to Government,
Environment and Forests Department
Fort St.George, Chennai 600 009.

2.The Managing Director,
Arasu Rubber Corporation Ltd.,
Vadassery, Nagercoil.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the first respondent issued in Govt. Lr.No.8700/FR 8/2006-2 Environment and Forests department dated 29/07/2006 and quash the same and consequently direct the respondents to fix the scale of pay for the post of Lineman at Rs.610-1075 from 01/06/1988 and subsequent fixations and to fix 5% personal pay from 01/08/1992 onwards.

For Petitioner : Mr.M.Ravi

For Respondents:Mr.S.Prabhu, Addl Government Pleader

O R D E R

The prayer sought for herein is to to call for the records of the first respondent issued in Govt. Lr.No.8700/FR 8/2006-2 Environment and Forests department dated 29/07/2006 and quash the same and consequently direct the respondents to fix the scale of pay for the post of Lineman at Rs.610-1075 from 01/06/1988 and subsequent fixations and to fix 5% personal pay from 01/08/1992 onwards.

2. The short facts which are required for the disposal of the writ petition are as follows:-

That the petitioner was appointed as Lineman in the second respondent Arasu Rubber Corporation Limited (hereinafter referred to as the 'Corporation') on 27.05.1988 in the scale of pay of Rs.555-970. The Corporation has got its own Service Rules and the same have been approved by the first respondent vide G.O.Ms.No.46, Environment and Forests Department, dated 11.08.1988.

3. Since the petitioner was having the qualification as prescribed by the Government to hold the post of Lineman and as per the Corporation's Rules, the pay and allowances are to be fixed on par with the Government Servants fixed for the same post in various Departments, especially in the context or import of G.O.Ms.No.762 Finance (Pay Cell) Department dated 20.08.1986, the scale of pay of all those who passed S.S.L.C., plus I.T.I Certificate was fixed at Rs.610-1070 for ordinary grade and for selection grade it was fixed at Rs.705-1230 and as per G.O.Ms.No.739, Finance (CMPC) Department dated 18.12.1996 for the post of Lineman and Electrician the scale of pay was fixed as, for ordinary grade Rs.610 -1075 and for selection grade Rs.705 - 1230 and this Government Order has been given effect to notionally from 01.10.1984 and with monetary benefits from 01.04.1986.

4. With the aforesaid background, it is claimed by the petitioner that, since he is having the qualification of S.S.L.C., plus I.T.I., and since it is the requisite qualification for fixation of pay as has been envisaged in the aforesaid two Government Orders, he sought for such re-fixation of pay.

5. The said plea made by the petitioner seems to have been placed before the Board Meeting of the second respondent Corporation. However, it seems that, though the Board was of the view that, the plea of the petitioner or like persons or employees of the Corporation could be accepted, they wanted a clarification to that effect from the Government probably because of G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996, which is the basis under which the petitioner / employee seeks the benefit of re-fixation of pay, where the benefits conferred under G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 to various Government Servants whether is extended or not to various employees working under Public Sector Undertakings such as the second respondent, is a question which was to be clarified or answered by the Government. That probably might be the reason for referring the matter to seek clarification from the Government.

6. When that being the position, the Government by way of clarification issued a communication on 29.07.2006, wherein the Deputy Secretary to the Government, Department of Environment and Forests (FR VIII), Secretariat, Government of Tamil Nadu, Chennai 600 009 has passed the following order.

" I am directed to invite a reference to your letter cited, and to state that the address issued in the G.O., first cited have not been extended to any State Public Sector Undertakings. I am also to point out that, there are variations between the Government Departments and State Public Sector Undertakings in respect of the duties and

responsibilities and in the area of operation also."

7. By thus, the plea raised by the petitioner for revision of scale of pay on par with the Government employees by extending the benefits conferred under the G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 referred to above to the employees of the respondent Corporation has been turned down for the reasons stated therein as quoted above. Aggrieved over the same, the petitioner has filed the present writ petition, challenging the said order dated 29.07.2006.

8. Heard Mr.M.Ravi, learned counsel for the petitioner, who has straight away taken this Court to the import of G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996. By relying upon the said two Government Orders, the learned counsel would submit that, the pay benefits conferred by the said Government Orders are extendable to all those employees who are working in the second respondent Corporation. In support of his contention, he relied upon Rule 34 under the Head - Pay and Allowances of the Arasu Rubber Corporation Service Regulations / Rules. He would also submit that, a similar issue was raised by an employee of the very same second respondent Corporation, where, whether the Rule 34 of the Service Regulations of the second respondent Corporation which govern the service conditions of the petitioner and like employees, would govern the issue and it will have an overriding effect was raised, and the said issue has been extensively discussed by a learned Judge of this Court in a similar writ petition in W.P.No.41316 of 2005 in the matter of "S.Karunanidhi -Vs- Government of Tamil Nadu and another" wherein the second respondent was the very same Arasu Rubber Corporation Limited, ie., the second respondent herein, where the learned Judge of this Court, having considered the import of Rule 34 has held as follows,

"7. A mere perusal of the above resolution clearly shows that the petitioner, while holding the post of Computer Programmer, has been doing tremendous work single handedly in the second respondent-Corporation than the other Computer Programmers working in TAF CORN and various other departments. In fact the total number of employees working in the second respondent-Corporation being 1915, the same is greater than the employees working in TAF CORN, which is only 455. The proposal also shows that the petitioner has been handling the entire computerisation work single handedly, whereas in TAF CORN, in addition to Computer Programmer, there is one more Computer Operator working. Further, in the second respondent-Corporation, as there is reduction of many posts, there is dearth of officers. In spite of the fact

that the petitioner is the single Computer Programmer, it has been evaluated by the second respondent in their proposal that he is successfully performing all such works. Further, when the proposal also clearly mentions that the Computer Programmers appointed in the TAFCON and in the second respondent-Corporation were having the same educational qualification, in my considered opinion, the first respondent, on receiving the proposal made by the second respondent, should have considered the same in favour of the petitioner, for the reason that the proposal also specifically states that the petitioner need not be considered for further promotion to the post of EDP Manager, as that post is not in existence in the second respondent-Corporation. When the proposal also says that the qualification possessed by the Computer Programmers working in the second respondent-Corporation, TAFCON and various other departments is one and the same viz., B.Sc., in Computer Science, which has been possessed by the petitioner and when the said proposal also states that the petitioner need not be considered for the post of EDP Manager, in the light of Rule 34 of the Service Rules of the second respondent-Corporation, as highlighted above, the first respondent should have accepted the proposal and should have left to the second respondent to bear the financial burden. In this context it is pertinent to extract Rule 34 of the Arasu Rubber Corporation Limited (Service Rules) as follows:

"34. Pay and allowances

Pay and allowances, such as Dearness Allowance, House Rent Allowance, Rural Incentive Allowance, Project Allowance etc. will be paid to the Corporation employees at the rates applicable to State Government employees from time to time."

A mere reading of the above Rule clearly shows that the pay and allowances will be paid to the Corporation employees at the rates applicable to the state Government employees from time to time. Therefore, when the request of the petitioner is in fine tune with Rule 34, impugned order cannot refuse to accept Rule 34. Therefore, this Court, having seen that the educational qualification possessed by the petitioner is equal to the educational qualification possessed by the other Computer Programmers in TAFCON and various other departments, EPFO etc., in the light of Rule 34 of the Service Rules, this Court finds no impediment to give a direction to the first respondent to

sanction the proposal already made by the second respondent for enhancement of the salary of the Computer Programmer working in the second respondent-Arasu Rubber Corporation Limited.

8. For all the aforesaid reasons, the impugned order is set aside and the writ petition is ordered by directing the first respondent to sanction the proposal already made by the second respondent for revising the pay scale of the petitioner in the post of Computer Programmer working in the second respondent-Arasu Rubber Corporation Limited at Rs.2200-75-2800-100-4000 from the date of his initial appointment and pay the consequential benefits of revision to the petitioner out of the funds of the second respondent-Corporation within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs."

9. By relying upon the aforesaid judgment, where Rule 34 of the Service Regulations of the Corporation also has been extracted, the learned counsel would contend that, since Rule 34 has made it very clear that the pay and allowances with all such allowances will be paid to the Corporation Employees at the rates applicable to the State Government employees from time to time. Since this Rule is very clear and unambiguous, applying the very same Rule, whatever benefits conferred on the Government Servants, on par with the same, the employees of the second respondent Corporation also shall be entitled to get.

10. Therefore, the present decision which has been communicated through the impugned order on behalf of the Government stating that, the benefits conferred under G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 is not extendable to Public Sector Undertakings, is totally untenable and unjustifiable, as it runs contra to Rule 34 of the Service Regulations. Therefore, learned counsel for the petitioner contended that, on that ground itself the impugned order is not sustainable and the consequential relief sought for in this writ petition for a direction to the second respondent Corporation to extend the benefit as sought for by the petitioner can be issued.

11. Learned counsel for the petitioner also submitted that, insofar as the second respondent Corporation is concerned, it is an independent entity as it is a Corporation, where the highest policy making body is the Board, before which the issue was placed and it is apparently not known as to whether the Board was against the proposal of conferring the benefit of G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 to the employees and for what

reason the issue was referred to the Government, and based on which the Government has issued the impugned clarification dated 29.07.2006, which is against the Rule as has been quoted above. Therefore, the learned counsel would submit that, a direction can be given to the second respondent Board to review the issue once again and accordingly the benefits which have been conferred under G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 can very well be extended to the petitioner and accordingly the pay benefits can be revised, he contended.

12. Per contra, the learned Additional Government Pleader appearing for the respondents, by relying upon the averments made in the counter affidavit filed by the second respondent, would submit that, in the 91st Board Meeting of the second respondent Corporation dated 24.03.2006, the issue was placed where, after having threadbare discussion, it was decided to refer the matter to the Government for getting necessary clarification. In this context, the clarification has to be given only by the Government because, the benefits conferred under G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 are only meant for Government Servants and therefore, whether such benefits can be extended to employees of Public Sector Undertakings like the second respondent is an issue that has to be discussed by the Government and accordingly the issue was raised to the Government, where the Government, after having considered all the aspects, has clarified the position stating that, the benefits conferred under the relevant G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 cannot be extended to the Public Sector Undertakings and therefore, based on such clarification, the Board has decided not to extend the benefit of pay revision to the employees of the second respondent Corporation and accordingly the plea raised by the employees of the second respondent is rejected and therefore, the impugned communication is fully sustainable and it does not require any interference from this Court, he contended.

13. Learned Additional Government Pleader would also contend that, insofar as the duties and responsibilities are concerned, there is variation between the direct Government employees and the employees of the Public Sector Undertakings and therefore, considering the rigorousness and other aspects of the duties and responsibilities of the State Government employees, such kind of benefits have been conferred on the State Government employees through the referred Government Orders. Therefore such a benefit on par with the State Government employees cannot be expected to be extended to the employees of the Public Sector Undertakings, where the onerous of the duties and responsibilities are less.

14. I have considered the submissions made by the learned counsel appearing for the petitioner and the learned

Additional Government Pleader appearing for the respondents and also perused the materials placed on record.

15. Now the issue raised in this writ petition is in a very narrow compass as to whether the petitioner being the employee of the second respondent Corporation is entitled to get the benefits that have been conferred to the Government Servants under G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996.

16. In this context, it is not in dispute that under G.O.Ms.No.762 dated 20.08.1986, the scale of pay for various categories have been fixed and in this regard it is to be noted that the scale of pay for those who passed S.S.L.C., plus I.T.I., was fixed at Rs.610-1070 for ordinary grade and for selection grade it was fixed at Rs.705-1230. Like wise, under G.O.Ms.No.739 dated 18.12.1996, for the post of Lineman and Electrician the scale of pay was fixed as, for ordinary grade Rs.610 -1075 and for selection grade Rs.705 - 1230 and these Government Order has been given effect to notionally from 01.10.1984 and with monetary benefits from 01.04.1986.

17. Therefore, the benefits conferred to the Government employees under the aforesaid Government Orders, are not in dispute. Now the only question is whether the benefits conferred to the Government employees would be extendable to the employees of the Public Sector Undertakings.

18. In this context, it is to be noted that, the service conditions of the employees of the second respondent Corporation are governed by the Service Regulations called Arasu Rubber Corporation Limited Service Rules.

19. Under the said Rules, Rule 34 speaks about the pay and allowances, which reads thus,

"34. Pay and allowances
Pay and allowances, such as Dearness Allowance, House Rent Allowance, Rural Incentive Allowance, Project Allowance etc. will be paid to the Corporation employees at the rates applicable to State Government employees from time to time."

20. In view of the language used in Rule 34 of the Service Rules quoted above, learned counsel for the petitioner vehemently contended that, the petitioner who is an employee of the second respondent Corporation certainly would be entitled to get the pay benefits on par with the Government employees in view of the aforesaid Rule.

21. In this context, the learned Additional Government Pleader appearing for the respondents would submit that,

unless and until the benefits conferred to the Government employees in the Government Orders referred to above ie., G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 is extended to various Public Sector Undertakings, it cannot be sought for as a matter of right by any employee of the Public Sector Undertakings like the second respondent and seek such benefits on par with the Government employees.

22. The said argument made by the learned Additional Government Pleader is not appealing to this Court for the following reason.

23. First of all, G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 are issued under the executive power of the Government under Article 162 of the Constitution of India.

24. Wherever there is legislature, under which if the State Legislature legislate the Law, where, if there is an area of vacuum, where immediate legislations could not be brought in, the Government, by exercising the executive power under the said Article 162 of the Constitution of India, can issue Government Orders from time to time. No doubt, if such Government Order is issued under the Executive Power of the State, it will have the same effect as that of a legislation competently made by the State Legislature in the particular field.

25. Here in the case on hand, G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 are issued invoking the executive power of the Government. While issuing the said Government Orders, though the benefits conferred therein are conferred only to the Government employees, there is no whisper in the said Government Orders to state that, the benefits conferred under the particular Government Orders shall not be extended to the employees of Public Sector Undertakings functioning in the State. However, in the Service Regulations governing the employees of the second respondent Corporation especially Rule 34 has made it clear that, the pay and allowances will be paid to the employees of the Corporation at the rates applicable to the State Government employees from time to time.

26. If we put the Rule 34 of the Service Regulations as well as G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 in juxtaposition, this Court feels that, unless and until the State Government thought to issue the Government Orders by incorporating the non-obstante clause in the said Government Orders stating that, "notwithstanding anything contained in other Service Regulations in any Public Sector Undertakings, the pay benefits conferred under the Government Orders shall not be extended to the employees of the Public Sector Undertakings", the benefits under the said Government Orders certainly will be applicable to such Public Sector

Undertakings also.

27. No such exclusion has been explicitly made under the aforesaid Government Orders and therefore unless and until such an explicit exclusion is made in the Government Orders ie., G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996, this Court is of the considered opinion that, Rule 34 of the Service Regulations which is governing the service conditions of the employees of the second respondent Corporation would certainly prevail over. In that case, in order to have a harmonious construction with the benefits conferred under the Government Orders as well as the Rules of the Service Regulations of the employees to claim the benefits conferred under the Government Orders to get on par with the Government employees, as contemplated under Rule 34, the same shall be given effect. Therefore, insofar as the interpretation now sought to be given through the impugned order of the first respondent stating that, the benefits conferred under G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996 is not extendable to any Public Sector Undertaking is concerned, such kind of interpretation is not available to the State Government as the same cannot be culled out from the language used in G.O.Ms.No.762 dated 20.08.1986 and G.O.Ms.No.739 dated 18.12.1996.

28. Therefore, this Court feels that, in view of Rule 34 of the Service Regulations, certainly the employees of the second respondent Corporation would be entitled to get the pay and allowances on par with the State Government employees from time to time. This in fact has been considered by the learned Judge in the aforesaid judgment cited supra, where the very same Rule 34 has been quoted and accordingly the plea raised by the petitioner therein was accepted by the learned Judge and the writ petition was allowed. I am in respectful agreement with the view taken by the learned Judge in the aforesaid judgment, as in that case, the very same Government as well as the second respondent were the party respondents. Therefore, assuming that the judgment is between the parties, that will bind on the respondents herein especially the State Government, Environment and Forests Department as well as the second respondent Arasu Rubber Corporation Limited.

29. Therefore, for all the reasons stated above, this Court feels that, the present decision conveyed by the impugned order herein stating that, the benefits conferred under the relevant Government Orders are not extendable to the employees of the Public Sector Undertakings including the second respondent Corporation, is totally untenable and unjustifiable. Therefore, the impugned order is liable to be quashed and it is accordingly quashed.

30. In the result, this writ petition is ordered with a direction also to the second respondent Corporation to take

the plea raised by the petitioner for revision of pay and other benefits and accordingly pass necessary orders for extending such pay benefits to the petitioner within a period of two months from the date of receipt of a copy of this order. Needless to mention that once such revised pay is ordered in favour of the petitioner, the arrears payable to him shall also be calculated and paid to him within the time frame. Accordingly, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

KST

To

- 1.The Secretary to Government,
Environment and Forests Department
Fort St.George, Chennai 600 009.
- 2.The Managing Director,
Arasu Rubber Corporation Ltd.,
Vadassery, Nagercoil.

+1cc to Special Government Pleader SR.No.5038

W.P.No.13025 of 2007

RK(CO)

GMV(02/07/2021)

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