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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.03.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.3237 of 2012

1.M.Arunachalam

2.C.Gunasekaran

3.S.Venkatesh

... Petitioners

Vs.

1. The Development Commissioner of Handloom,
Ministry of Textiles,
Udyog Bhawan, New Delhi.

2. The Director,
Indian Institute of Handloom Technology,
Thillai Nagar, Foulke's Compound,
Salem - 636 001.

... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to upgrade the scale of pay of the Expert Weaver (Senior) in the Indian Institute of Handloom Technology, Salem on par with the weavers working as Grade I in the Institute of Handloom Technology, Guwathi.

For Petitioners : Mr.Avinash
for Mr.V.Raghavachari

For Respondents : Mr.D.Simon
Central Govt. Standing Counsel

ORDER

The prayer sought for herein is for a writ of mandamus directing the respondents to upgrade the scale of pay of the Expert Weaver (Senior) in the Indian Institute of Handloom Technology, Salem on par with the weavers working as Grade I in the Institute of Handloom Technology, Guwathi.



2.The petitioners were working as Expert Weavers (Senior) in the second respondent Institute. The next avenue of promotion for them is Design Duplicator. For getting such promotion, certain specification of qualification etc. having been fixed, those promotion has been delayed and in this regard, in order to actuate the long stagnation of promotion for those who are in the feeder category, the Government of India has come forward to issue a Scheme called 'Assured Career Progression Scheme' in the year 1999, subsequently, it has been modified as 'Modified Assured Career Progression Scheme' (in short both are called "ACP Scheme" and "MACP Scheme" respectively).

3.In this context, it is the case of the petitioners that, though they are working in the second respondent Institute in the first respondent Department, they have not been conferred with the ACP benefits or the equal pay or correct pay, that has to be otherwise fixed on them for the post of Expert Weaver (Senior). Whereas those working similar to that of petitioners in yet another Institute at Guwahati in the same first respondent Department, those benefits have been conferred on them. In this regard, by stating the aforesaid facts, Mr.Avinash Wadhvani, learned counsel appearing for the petitioner is able to point out, by relying upon the communication issued by the Indian Institute of Handloom Technology (I.I.H.T.) at Guwahati issued on 26.06.2001, where, an Expert Weaver (Senior) like the petitioners, who was appointed so on 09.12.1986 was fixed the scale of pay at Rs.3,050 - 4590/-, after the first upgradation under ACP Scheme, the pay was enhanced to Rs.4000 - 6000/- with effect from 09.08.1999. The said benefit of upgradation of pay conferred on a similarly placed Expert Weaver or Weavers working in the Institute at Guwahati have not been conferred on the petitioners. Therefore, in order to get such conferment of stepping up of pay or enhancement of pay by conferring the benefit of ACP Scheme or MACP Scheme on par with the similarly placed persons, who were working at Guwahati Institute, the petitioners, since had approached unsuccessfully by making representations, were triggered to file this writ petition with the aforesaid prayer.

4.Mr.Avinash Wadhvani, learned counsel appearing for the petitioner has relied upon the communication issued by the Guwahati Institute dated 26.06.2001 and the relevant portion of the said communication reads thus:

"On the recommendation of the Departmental Promotion Committee, the 1st upgradation under A.C.P. Scheme in respect of the undermentioned technical Group 'C' & 'D' incumbents of Indian Institute of Handloom Technology, Guwahati in the organisation of Development Commissioner for Handlooms, New Delhi is hereby granted in terms Department of Personnel and Training, New



Delhi's O.M.No.35034/1/97-Estt.(D) dated 09.08.1999 as amended from time to time in the grade and with effect from the date shown against each:-

Sl. No.	Name of the incumbents	Particulars of appointment on direct recruitment		Date from which 1st upgradation under ACP Scheme and scale of pay is granted		Whether up - graded scale is promotional/ isolated scale of pay
		Date of appoint ment	Grade Scale of Pay	Date of 1st up	Scale of gradation	
01.	Sh.B.R.09.12.86 Kalita.	Expert 3050- Weaver 4590/- (Sr.).		09.08.99	4000- 6000-	Upgraded scale is promotional scale of pay.

5.By relying upon the same, the learned counsel would submit that, though in this regard several representations have been made from the year 2006 till 2011 i.e., just before filing this writ petition seeking the conferment of same benefit of enhanced pay by conferring the benefit under ACP Scheme or MACP Scheme, nothing was forthcoming and no consideration has been shown, therefore, the petitioners had filed this writ petition.

6.The learned counsel would also submit that, absolutely there is no reason for denying such benefit to the petitioners who are working in the Salem Institute, whereas the same benefits have been extended to the similarly placed persons working in the Guwahati Institute, hence, it is not only a discrimination, but also a pay anomaly as the petitioners and others, who are working in the Salem Institute and Guwahati Institute are on in same pedestal. Therefore, there should be only one set of pay to these employees and there cannot be two different set of pay for the same position or category of employees working in a similar Institute in the same Department. Therefore, it is a clear pay anomaly, therefore, the petitioners are entitled to get the relief of fixing the correct pay by enhancing or conferring the benefit of ACP Scheme or MACP Scheme.

7.However, Mr.Deva Baktha Simon, learned Standing Counsel appearing for the respondents, by relying upon various averments made in the counter affidavit filed by the respondents, would vehemently contend that, in order to get the benefit of ACP Scheme or MACP Scheme, these petitioners, since have been working as Expert Weaver (Senior), must have fulfilled the qualification to hold the next higher post in the hierarchy i.e. Design Duplicator, without such qualification, such higher pay



which is meant for Design Duplicator cannot be conferred on them.

8.He would also submit that, insofar as such conferment of higher pay or benefits given or extended to the Guwahati Institute employees are concerned, the same have been made pursuant to the recommendation made by the head of the Institute at Guwahati and this, in fact, is against the guidelines issued by DoPT and therefore, in order to review the same, already directions have been given, therefore, once the benefit already extended or conferred on a similarly placed persons working in Guwahati Institute is withdrawn, the petitioners cannot raise any issue on disparity in this regard, therefore, such a wrong conferment made by extending to the similarly placed persons at Guwahati cannot ultimately give right on the present petitioners, who are working in second respondent i.e. Salem Institute. Therefore, the learned counsel appearing for the respondents would contend that, the plea raised by the petitioners cannot be countenanced, therefore, the writ petition is liable to be rejected.

9.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10.In order to appreciate the contention raised by the respondents, the following averments made in the counter affidavit filed by the second respondent can be usefully pressed into service.

"7.It is submitted that as per IIHT, Salem Recruitment Rules, an Expert Weaver (Senior) has to necessarily fulfill the minimum eligibility criteria for being promoted to the Post of Design Duplicator, the same is as reproduced below:

"Matriculation or its equivalent. Diploma in Handloom Technology or its equivalent, two years experience in Textile Designing including Cloth Analysis and transfer of designs to point paper."

The Government has introduced Assured Career Progression in the year 1999. This Scheme has been superseded by Modified Assured Career Progression Scheme. However the ACP Scheme was relevant for deciding the crux of this case. ACP Scheme was subject to certain conditions vide Annexure-I of the Scheme. Condition No.6 thereof is as extracted below:-

Fulfillment of normal promotion norms (bench mark Departmental Examination, Seniority-cum-fitness etc.,) for grant of financial upgradation, performance of such duties as are entrusted to the employees together with retention of old designation, financial upgradation as personal to the incumbent for the



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stated purposes and restriction of the ACP Scheme for financial and certain other benefits (HBA, allotment of Government accommodation, advance etc.,) only without conferring any privileges related to higher status. (Example - invitation to ceremonial function, deputation to higher post etc.,) shall be ensured for grant of benefit under ACP scheme.

Therefore to be benefited by ACP Scheme, an Expert Weaver (Senior) must fulfill the normal promotional norms which are submitted above. Then only Expert Weavers (Senior) could be upgraded to the scale of pay of the Post of Design Duplicator.

13.The Respondent No.1 Development Commissioner for Handlooms, New Delhi vide their letter No.18014/3/2012-DCH/Estt.II dated 3rd May, 2012 has submitted that, the decision of Departmental Screening Committee (DSC) of IIHT, Salem, which has not recommended the financial upgradations under ACP Scheme (Old) to the Expert Weavers (Senior) of your Institute, due to non-fulfillment of promotional norms as per Recruitment Rules, viz., possessing educational qualification of Diploma in Handloom Technology (DHT) is in accordance with the DoPT guidelines regarding ACPS.

However, DSC of IIHT, Guwahati has recommended financial upgradation under ACPs to Expert Weavers (Senior) of their Institute, in the promotional grade of Design Duplicator (Pay Scale 4000-6000) even though they do not possess the prescribed qualification of DHT, which is in contravention of DoPT guidelines regarding ACP Scheme. Accordingly, IIHT, Guwahati is being advised to hold Review DPC Meeting to take suitable corrective action as per the DoPT guidelines."

11.It was claimed by the respondents that, the feeder category for the post of Design Duplicator is Expert Weaver (Senior) where the petitioners are working, if at all they want to get the benefit of ACP Scheme or MACP Scheme, they must have fulfilled the qualification to hold the post of Design Duplicator and since those qualification have not been fulfilled by these petitioners, they are not even eligible to be considered for conferring the benefits under ACP Scheme or MACP Scheme, therefore, they cannot seek for any claim for higher pay by conferring the ACP benefit or MACP benefit.

12.However, for denial of such ACP benefit, the reason cited by the second respondent is reflected in para 13 of the counter affidavit, which has been quoted herein above. If we look at the same, it is very peculiar reason, where, it is



stated that, the head of the Institute at Guwahati has recommended for conferring the ACP benefit to the Expert Weaver (Senior) working at Guwahati Institute, therefore, that benefit has been conferred on these employees, whereas such a recommendation or request was not made by the head of the Institute at Salem Institute i.e., the second respondent, therefore, such benefit has not been conferred on them.

13.He would further submit that, such a recommendation made by the Head of the Guwahati Institute, pursuant to which, the benefits conferred on them working at Guwahati Institute would be reviewed in the DPC meeting and if the same is reviewed and the benefit conferred on them is already withdrawn, the petitioners who are working in Salem Institute may not seek any parity along with the people at Guwahati, therefore, on that ground, they cannot make any ground of discrimination or pay anomaly.

14.The said submission, of course by relying upon the averments made in the counter affidavit, made by the learned Standing Counsel appearing respondents may appear to be a justifiable one, but in practical and in view of the implementation having been made already in respect of Guwahati Institute it cannot be accepted, because, if the arguments advanced by the learned Standing Counsel appearing for the Respondents, of course by relying upon the counter affidavit of the second respondent, is accepted, that would lead to a clear discrimination of similar set of employees working in the same Department.

15.It is also to be noted that, even though it was claimed on behalf of the respondents that, the benefits conferred on the Guwahati people would be reviewed, so far the same has not been reviewed and they have been continuously extending the benefit, in fact, the benefit has been conferred atleast from 26.06.2001, for which, the order issued by Guwahati Institute has been filed before this Court by the petitioners and the relevant portion also has been quoted herein above.

16.Since from 2001 till date for nearly about 20 years or more, the benefit already conferred on the Guwahati people have not been withdrawn, reviewed or modified, the reason stated by the second respondent in paragraph 13 of the counter affidavit cannot be countenanced and based on which, the benefit sought for by the petitioners, for which otherwise they are entitled, cannot be denied also.

17.If at all it is the stand of the respondents that, to get the higher pay by getting the benefit of ACP Scheme or MACP Scheme on par with a next higher post i.e., Design Duplicator,



certain qualification should have been fulfilled, awaiting such conditions since conferment of the benefit have already been made in respect of people working at Guwahati Institute, the same formula can be accepted in the case of the persons working in Salem Institute also like the petitioners as both the Salem Institute and Guwahati Institute are similarly placed or similar persons working are coming under the very same first respondent Department.

18. Therefore, the plea raised by the petitioners that there has been a clear discrimination between the petitioners and the similarly placed persons working in Guwahati Institute and therefore, it is a pay anomaly, is well founded and accordingly, it is to be accepted unless and until a uniform decision is taken by the first respondent Department in respect of both the institutions to confer such benefit or to withdraw if it is not properly conferred.

19. Therefore, as of now the petitioners are entitled to get the benefit as has been conferred to the similarly placed persons or their colleagues at Guwahati Institute, as in both the Institute, the job nature is same and the designation is also the same, i.e. Expert Weaver (Senior). Therefore, the said benefit now sought for by the petitioners are liable to be accepted or to be conceded, hence, this Court has no hesitation to hold that the petitioners are entitled to get a direction from this Court.

20. In view of the above said, this Court is inclined to dispose of this writ petition with the following directions.

(i) That the respondents are hereby directed to consider the request of the petitioners, which had been made by way of representation on 23.11.2006 and 23.03.2011 and accordingly, confer the benefit of ACP/MACP Scheme by stepping up or enhancing the pay for them in the cadre of Expert Weaver (Senior) on par with the next higher pay, which is meant for the post called 'Design Duplicator' with effect from the date when such a benefit had been first conferred to any similarly placed persons at Indian Institute of Handloom Technology at Guwahati, where at least one order has been produced, where the benefit has been conferred from 26.06.2001 and accordingly, the pay difference shall be calculated and arrears shall be paid to these petitioners.

(ii) In this regard, it is made clear that, subsequently, during the pendency of the writ petition, if any ACP benefit has been conferred on the petitioners, correspondingly, for the remaining period



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from 26.06.2001 till such conferment was made to these petitioners, the aforesaid benefit can be extended to the petitioners as indicated. The needful, as indicated above, shall be undertaken and completed within a period of twelve weeks from the date of receipt of a copy of this order.

21. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

Sgl

To

1. The Development Commissioner of Handloom,
Ministry of Textiles,
Udyog Bhawan, New Delhi.
2. The Director,
Indian Institute of Handloom Technology,
Thillai Nagar, Foulke's Compound,
Salem - 636 001.

+1cc to Mr.V.Raghavachari, Advocate SR.No.18885

+1cc to Mr.D.Simon, Advocate SR.No.18682

W.P.No.3237 of 2012

RSV(CO)

RLP(22/07/2021)