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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :29.10.2021

PRONOUNCED ON :23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

WA.Nos.484 of 2014 and 2183 of 2021
MP.No.1 of 2014 and CMP.No.13777 of 2021

(Through Video Conferencing)

Government of Tamil Nadu, represented by
Secretary to Government,
Environment and Forests
Department fort St. George
Chennai-600 009

Appellant-WA.484/14/
2nd Respondent in W.A.No.2183/2021
Vs

1.S.Karunanithi, Computer Programmer,
M/s.Arasu Rubber Corporation Limited
Kanyakumari R1-Both WAs

2.M/s.Arasu Rubber Corporation Limited
represented by its Managing Director,
Kanyakumari

R2-WA.484/14 and
Appellant-WA.2183/21

Prayer:- These Writ Appeals are filed, under Clause 15 of the Letters Patent, against the order, dated, 23.04.2013, made in WP.No.41316 of 2005, by the learned Single Judge of this Court.

Prayer:- in WP.No.41316 of 2005

Petition filed under Article 226 of the Constitution of India Praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the first Respondent relating to letters No.7218/FR-8/10-B dated 30/03/2011 and Government Lr. No. 472/ FR.8/2003 - 11 Environment and Forests Department dated 13.02.2004 quash the same and issue consequential orders to the Respondents to grant the scale of pay of Rs. 2200-75-



2800-100-4000 to the petitioner from the date of his initial appointment as Computer Programmer in Arasu Rubber Corporation i.e. from 5.9.1991 with consequential benefits and to consider the name of the petitioner for up gradation as E.D.P. Manager in the Corporation.

(Prayer amended as per order dated 23/04/2013 in WPMP.No.128 OF 2013 in WP.No.41316 of 2005)

For Appellants : Mr.K.V.Sanjeevkumar, GA-WA.484/14
Mr.Vigneswaran for
Mr.Stalin Abhimanyu-WA.2183/21

For Respondent s : Mr.M.Ravi-R1-Both Was
Mr.K.V.Sanjeevkumar, GA for R2
in W.A.No.2183/2021
Mr.Vigneswaran for
Mr.Stalin Abhimanyu-WA.484/2014

JUDGEMENT

(Judgement of the Court was made by A.A.Nakkiran, J.)

1.These Writ Appeals are filed, against the order, dated, 23.04.2013, made in WP.No.41316 of 2005, of the learned Single Judge of this Court. For the sake of convenience, the parties herein after are referred to as they were arrayed in the Writ Petition, viz. the Petitioner, 1st Respondent/ Government Department and the 2nd Respondent/ Corporation/Board.

2.The facts, in brief, leading to filing of these Writ Appeals and germane for the disposal of these Writ Appeals, are as follows:-

a) The Petitioner, having a Bachelor Degree in B.Sc. (Computer Science), had joined in the services of the 2nd Respondent Corporation, as a Computer Programmer, on 05.09.1991, in the Pay Scale of Rs.1400-40-1600-50-2300, pursuant to the order, dated, 04.09.91. On coming to know the anomalies and disparities in his Pay Scale and the Pay Scales, which are being given to the other similarly placed persons, working in the other Departments, such as, TAF CORN (Tamil Nadu Forest Plantation Corporation Limited), EPFO (Employees Provident Fund Organisation), etc., he had brought the same to the notice of the 2nd Respondent Corporation, by way of a representation, seeking to grant the Pay Scale to him on par with such other similarly placed persons. By the letter dated, 22.02.1993, he was informed that his request would be considered. Thereafter, by the Resolution dated, 27.09.1993, of the 2nd Respondent Corporation, it was resolved to recommend and revise the Pay Scale of the



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Petitioner. When the matter was referred to by the 2nd Respondent to the 1st Respondent, by order dated, 03.05.1995, the Pay Scale for the Computer Programmer was revised to Rs.1600-5-2300-60-2600. However, another proposal, recommending to revise the Pay Scale of the Petitioner sent by the 2nd Respondent Corporation was rejected by the 1st Respondent, by order dated, 13.02.2004.

- b) Hence, aggrieved over the anomalies in such Pay Scales, contending that when similar persons, having similar qualifications and in similar posts, in the other Government Departments, are getting higher salary than that of him and considering the work load, his Pay Scale also ought to have been revised, on par with them, the Writ Petition had been filed, initially seeking to quash the order, dated 13.02.2004 of the 1st Respondent and to fix the Pay Scale at Rs.2200-75-2800-100-4000, from the date of his initial appointment, as the Computer Programmer in 2nd Respondent Corporation, i.e. 05.09.1991, with consequential monetary benefits and to consider his name for upgradation as an EDP Manager.
- c) Pending the Writ Petition, since another proposal, recommending to revise the Pay Scale of the Petitioner was said to have been placed before the Board of Directors of the 2nd Respondent Corporation, on 23.03.2010, this Court, by order dated, 31.01.2011, directed the 2nd Respondent Corporation to place the said proposal before the Government and accordingly, it was placed before it, but, it was rejected by the 1st Respondent Government, by order dated, 30.03.2011. There was also a proposal for promotion to the post of EDP Manager made by the 2nd Respondent Corporation. Consequently, at the instance of the Petitioner, the prayer in the Writ Petition was amended to that effect.
- d) The Writ Petition was contested by the Respondents therein, by filing a counter affidavit, contending that though the educational qualifications for the Post of Computer Programmers in the other Departments is one and the same, namely, B.Sc. (Computer Science), on the basis of higher qualification, viz. M.Sc. (Computer Science), the Post of Computer Programmer was regulated in the other Departments and that as per the Rule 34 of the Service Rules of the Corporation, which deals with the allowances only, the Pay Scale of the Petitioner on par with the other employees working in the State Government offices cannot be revised, since the alleged proposals of the 2nd Respondent Corporation, had been proceeded on the wrong basis and that even if the Pay Scale of the Petitioner is revised, he



cannot be promoted to the post of EDP Manager, as the said post is not available and consequently, he cannot also claim for higher salary.

e) Since, in and by the impugned order, the Writ Petition was ordered, setting aside the impugned orders therein and directing the 1st Respondent Government to sanction the proposal already made by the 2nd Respondent, recommending to revise the Pay Scale of the Petitioner in the post of Computer Programmer, at Rs.2200-75-2800-100-4000, from the date of his initial appointment and to pay the consequential monetary benefits, these Writ Appeals have been filed by the 1st Respondent Government and the 2nd Respondent Corporation, respectively.

3.This Court heard the learned counsel on either side.

4.The learned Government Advocate for the 1st Respondent/Government Department, would advance arguments, supporting the impugned order, contending that the 2nd Respondent Corporation cannot be equated to TAFCON, since the qualifications prescribed by both the Establishments are different, that too, when the TAFCON had prescribed higher qualification, for the post of Computer Programmer and minimum experience of 3 years and also when the volume of work and number of staff are higher than that of the 2nd Respondent Corporation. He would further submit that as per the Articles 33 of the Articles of Association of the 2nd Respondent Corporation, the 1st Respondent is the Competent Authority to take a decision on the affairs of the 2nd Respondent Corporation and as per the Rule 6 of the Service Rules of the 2nd Respondent Corporation, it is the 1st Respondent, who can take a final decision in this regard. He would further submit that already the Pay Scale of the Petitioner was revised by the 1st Respondent, without comparing the Pay Scale of the TAFCON and that the Rule 34 of the Service Rules of the 2nd Respondent Corporation, does not provide for revision Pay Scale and that after examining all merits, the impugned orders in the Writ Petition were passed, rejecting the request of the Petitioner and for such reasons, he would pray for dismissal of these Writ Appeals. In support of contentions, he would rely on the decisions reported in 2003 6 SCC 490 (Officers and Supervisors of IDPL Vs. Chairman and Managing Director of IDPL), 2007 8 SCC 279 (S.C.Chandra and others Vs. State of Jharkhand and others), 2002 6 SCC 72 (State of Haryana Vs. Haryana Civil Secretariat Personal Staff Association), 1996 11 SCC 348 (Union Territory, Chandigarh Vs. Krishan Bhandari), 2001 10 SCC 54 (Secretary to Government Vs. C.Muthu) and 2019 3 SCC 547 (Punjab State Power Corporation Limited Vs. Rajesh Kumar Jindal).



5. The learned counsel for the 2nd Respondent/ Corporation, by filing a counter affidavit, would advance arguments in the same lines as that of the 1st Respondent Government.

6. The learned counsel for the Petitioner has submitted that there was gross misinterpretation of the Rule 34 of the Service Rules of the 2nd Respondent Corporation on the part of the Appellants and that as per the said Rule 34, apart from other allowances, the Pay would also be paid to the Corporation employees on par with the State Government Employees, from time to time and as such, the rejection of the proposal made by the 2nd Respondent Corporation to increase the Pay Scale of the Petitioner, by the 1st Respondent Government is unjust and unfair and that on an earlier occasion, in WP.No.3093 of 1998, this Court, by order dated 16.10.2003, had given a categorical finding in respect of the educational qualification in favour of the Petitioner and that even the 2nd Respondent Corporation, by its letter dated, 22.02.93, had informed that his request for revision of the Pay Scale would be considered, after some time. The learned counsel would further submit that considering the nature of work of the Petitioner, namely, looking after and supervising the entire computerisation work in the 2nd Respondent Corporation and finding that the educational qualification possessed by the Petitioner is equal to the qualifications possessed by the Computer Programmers, working in TAF CORN and the other departments and also the Pay Scale being to given to other similar persons, in similar post, in the other Departments, the learned Single Judge of this Court had rightly directed for revision of his Pay Scale on par with the other such similar persons, by the impugned order, which warrants no interference by this Court. He would rely on the judgement, of the Madurai Bench of this Court, dated 04.10.2016 made in WA(MD)No.1411 of 2015.

7. This Court considered the submissions of the learned counsel on either side and also carefully scrutinised the materials placed on record.

8. In this case, now, the point that arises for consideration is as to whether the Petitioner, being the Employee of the 2nd Respondent Corporation, is entitled to get the revision of Pay Scale, on par with the other Employees of the other Departments of the State Government, as prayed for and if so, whether the 1st Respondent Government is to be directed to approve the proposal, recommending to revise the Pay Scale of the Petitioner, of the 2nd Respondent, adhering to the Service Rules of the 2nd Respondent Corporation.

9. From 05.09.1991, the date on which, the Petitioner had joined the services of the 2nd Respondent Corporation, as a Computer



Programmer, he has been receiving the monthly emoluments in the Pay Scale of Rs.1400-40-1600-50-2300. Admittedly, the service conditions of the Petitioner, are governed by the Arasu Rubber Corporation Limited Service Rules.

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10. At the time of appointment, the Petitioner had possessed B.Sc. (Computer Science) and Level-2 Course in Computer Programming. Admittedly, during his tenure of service, he had acquired higher educational qualifications, viz. PGDCA in 1996, MCA Degree in 2001, PG Diploma in Material Management in 2002 and a Master Degree in Business Administration in 2006.
11. According to the Petitioner, though he was appointed as the Computer Programmer in the 2nd Respondent Corporation, there was no computer installed there and he had taken all measures to introduce the computerisation, including personnel data management, preparation of various bills for the labourers, EPF Accounts computerisation, sales related works, accounting system, production system, communication systems, etc.
12. TAF CORN and TAN TEA are the sister Concerns of the 2nd Respondent Corporation. It is also not in dispute that the Pay Scales of the Computer Programmers in the other Departments, such as, TAF CORN, Forest Department, PWD, Employment and Training, Commercial Taxes, EPFO, are Rs.2200-75-2800-100-4000.
13. According to the Petitioner, his salary package is not in commensurate with the work load handled by him and the services rendered by him and his educational qualifications and as such, the 2nd Respondent Corporation and the 1st Respondent Government ought to have applied the principles of 'Equal Pay' for 'Equal Work' and the Rule 34 of the Service Rules of the 2nd Respondent Corporation and revised the Pay Scale of the Petitioner. On noticing his pay anomalies with that of the Computer Programmers, working in TAF CORN, EPFO, etc., the Petitioner had made representations to the 2nd Respondent Corporation, quoting Rule 34 of the Service Rules of the 2nd Respondent Corporation, to revise his Pay Scale at Rs.2200-75-2800-100-4000 on par with the Computer Programmers working in the said TAF CORN, the sister concern of the 2nd Respondent Corporation and the other State Government Departments.
14. By Resolution dated, 27.09.1993, it was proposed by the 2nd Respondent Corporation to revise the Pay Scale to Rs.2000-3000 and to recommend the said proposal to the 1st Respondent for its approval. However, by order dated, 03.05.1995, of the 1st Respondent, his Pay Scale was ordered to be revised only to Rs.1600-50-2300-60-2600. Thereafter, the Petitioner had also sent several representations to the 2nd Respondent Corporation, seeking to revise his Pay Scale on par with other such similar



persons. By letter dated, 01.08.1999, it was informed that his request was rejected by the 1st Respondent. Again, the Government by letter dated, 14.05.2003, informed that the revision of Pay Scale of the Petitioner cannot be done.

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15. In the order dated, 16.10.2003, made in WP.No.3093 of 1998, it was found by this Court that the basic qualification required is the same qualification prescribed by the TAFCON and the letter dated, 14.05.2003 was passed on wrong assumption that the requisite qualification for Computer Programmer was different. Again, by the impugned order, dated 13.02.2004, the request of the Petitioner was rejected.
16. As envisaged in Article 39(d) of the Constitution of India, there should be 'Equal Pay' for 'Equal Work'. The Pay Scale must be in commensurate with the work load to be performed and the responsibility to be undertaken by a holder of the post. 'Equal Pay' for 'Equal Work' is not a mere demagogic slogan, but it is a constitutional goal, capable of attainment through constitutional remedies, by the enforcement of constitutional rights. Articles 14 and 19 of the Constitution of India guarantee, respectively, the fundamental rights to equality before the law and equality of opportunity in the matter of public employment. Articles 14 of the Constitution of India enjoins the State, not to deny any person equality before the law or the equal protection of the laws. Article 16 of the Constitution of India declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any Office under the State.
17. Though, 'Equal Pay' for 'Equal Work' is a fundamental right, but it must depend upon the nature of work done. Further, 'Equal Pay' for 'Equal Work' does not mean that all the members of a cadre must receive the same Pay Package, irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. However, it must be remembered that the burden is upon such persons to establish their right to 'Equal Pay'.
18. The Hon'ble Supreme Court in a judgment reported in AIR 2019 Page 2521 (in the case of State of Bihar Vs. Bihar Secondary Teachers Struggle Committee, Munger) in para 68 has held as follows;
"68. Analysis of the decisions referred to the above shows that this Court has accepted following limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work'.
(i) The doctrine of 'equal pay for equal work' is not an abstract doctrine.



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(ii)The principle of 'equal pay for equal work' has no mechanical application in every case.

(iii)The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.

(iv)The application of the principle of 'equal pay for equal work' requires consideration of various dimension of a given job.

(v)Thus normally the applicability of this principle must be left to be evaluated and the determined by an expert body. These are not matters where a writ Court can lightly interfere.

(vi) Granting pay scales is a purely executive function and hence the Court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.

(vii)Equation of posts and salary is a complex matter which should be left to an expert body.

(viii)Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.

(ix) Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.

(x)In a given case, mode of selection may be considered as one of the factors which may make a difference"

19.The aforesaid judgment has been referred to by one of us (SVNJ) in a Division Bench in W.A.Nos.2088 and 2043 of 2021, W.P.Nos.21901 and 22226 of 2019, 13308 & 13324 of 2020 decided on 20.12.2021 and this Court declined to grant the relief thereunder. However, on the basis of the judgment of the Supreme Court in the case of Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others, reported in (2002) 3 SCC 533, we have observed that there are certain exceptions, whereby equal pay for equal work may be extended. The relevant paragraph of the judgment, reported in (2002) 3 SCC 533 reads as follows:

"Courts should not place reliance on decisions without discussing as to how the factual situation



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fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

20. In the present case on hand, finding some genuineness in the claim of the Writ Petitioners, Arasu Rubber Corporation Limited has passed a resolution, whereby recommendations have been made. Since the Government, being aggrieved by the order of the learned Single Judge, preferred an appeal, Arasu Rubber Corporation Limited, in order to safeguard their own skin, have preferred an appeal belatedly, which is highly deprecated.

21. In this case, the Petitioner is seeking the revision of Pay Scale on par with the persons in similar Post and on the basis of his nature of work, as narrated above. In order to apply the principle of 'Equal Pay' for 'Equal Work', to the case on hand, it is appropriate to refer to the Resolution, dated, 28.06.2010, of the 2nd Respondent Corporation, wherein it is stated thus:-

"The representation of the petitioner has merit. The workload in TAF CORN is not more than in Arasu Rubber Corporation. In fact the total number of employees in Arasu Rubber Corporation (1915) is greater than in TAF CORN (455). The petitioner has been handling the entire computerisation work single handedly whereas in TAF CORN in addition to Computer Programmer, there is one Computer Operator also. Further, in Arasu Rubber Corporation as a result of reduction of many posts, there is dearth of officers. So many works (other than computer related works) have been entrusted to him and he is successfully performing those works also. The appointment of the Computer Programmer both in TAF CORN and Arasu Rubber Corporation were done on the basis of same educational qualification. So, the request of the Computer Programmer to grant him the scale of pay on par with the scale of pay of Computer Programmer in TAF CORN i.e., Rs.2200-75-2800-100-4000 from the date of his appointment may be agreed to. However, his request for upgradation as EDP Manager in the next higher scale of pay need not be agreed to. Hence the following resolution is proposed for approval. The financial implication of the proposal if the following resolution is accepted



works out to Rs.13.20 lakh approximately for the payment of arrears and the Corporation can meet the expenditure on its own.

Resolution

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Resolved to recommend to Government to revise the scale of pay of Thiru S.Karunanithi, Computer Programmer in Arasu Rubber Corporation Limited to Rs.2200-75-2800-100-4000 with effect from 5.9.91 (the date of his appointment as Computer Programmer in Arasu Rubber Corporation Limited) and to refix his pay correspondingly in the new scales as per the 6th Pay Commission (Central Government) and 6th Pay Commission (Central Government) G.O's with effect from the applicable dates i.e., in Rs.8000-275-13500 with effect from 1.1.96 (5th Pay Commission) and in Rs.15600-39100+Grade Pay 5700 with effect from 1.1.2006 (6th Pay Commission).

Also resolved not to recommend to Government for his upgradation as EDP Manager, since there is no post of EDP Manager in Arasu Rubber Corporation Limited."

22.It is clear from the above said Resolution that the Petitioner alone was doing tremendous work single handedly than that of the other Computer Programmers, working in the other Departments. The number of workers in the 2nd Respondent Corporation is also very greater than the number of workers in the TAF CORN. It is also admitted that the appointments of the Computer Programmers, both in TAF CORN and Arasu Rubber Corporation, were done on the basis of the same educational qualification. Since in the 2nd Respondent Corporation, the numbers of employees is more than that of the TAF CORN, it goes without saying that the work load and responsibility of the Petitioner would be more than that of the Employees of the TAF CORN, where higher Pay Scale than that of the Petitioner is being paid.

23.At this juncture, it is also pertinent to note that by, GO.Ms.NO.535, Environment and Forest Department, dated 27.08.1991, three posts of Computers Programmers had been sanctioned in the Pay Scale of Rs.2200-75-2800-100-4000 and by another GO.Ms.No.241, dated 01.07.1997, one post of Computer Programmer was sanctioned in the same Scale of Pay. Even it is admitted in the counter affidavit filed by the 1st Respondent in the Writ Petition, that the Board itself had revised the Pay Scale for certain employees, without any reference to the Government. It is also admitted that the Board is empowered to create or upgrade posts carrying Pay Scales less than Rs.3000-4500.

24.Rule 34 of the Service Rules of the 2nd Respondent



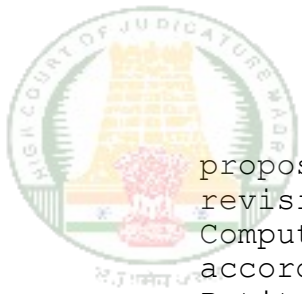
Corporation reads as under:-

"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."

25. On a scrutiny of the above said Rule 34, this Court is able to find that in view of the said Rule 34, certainly the Petitioner would be entitled to get the Pay Scale and other allowances, etc. on par with the State Government Employees from time to time. This fact has not been considered by the 1st Respondent Government. The interpretation given by the 1st Respondent Government and the 2nd Respondent Corporation to Rule 34, cannot be accepted, as the said Rule, not only covers 'Pay', but also all other 'Allowances', etc. Hence, in the opinion of this Court, on receiving the proposal of the 2nd Respondent Corporation, the 1st Respondent Government ought to have approved the same in favour of the Petitioner, in the light of Rule 34 of the Service Rules of the 2nd Respondent Corporation and the principle of 'Equal Pay' for Equal Work', leaving the 2nd Respondent Corporation to bear the financial burden, but the 1st Respondent Government had miserably failed to do so.

26. Though as per the Article 33 of the Articles of Association, the 2nd Respondent Board is entitled to refer any matter to the Government, when the Board itself had resolved to recommend to the 1st Respondent Government to revise the Pay Scale of the Petitioner to Rs.2200-75-2800-100-4000, with effect from 05.09.1991 and when the Rule 34 of the Services Rules of the 2nd Respondent Corporation empowers the Corporation to grant Pay and Allowances to its employees, at the rates applicable to the State Government Employees, from time to time, and when the Corporation itself had admittedly revised the Pay Scale for certain employees without any reference to the 1st Respondent Government, it is not known as to what prevented the 2nd Respondent Corporation to revise the Pay Scale of the Petitioner, without sending the proposal to the 1st Respondent. The 1st Respondent Government has also miserably failed to appreciate the said aspects and consider the pay anomalies in all the Departments for similar posts.

27. The learned Single Judge of this Court, finding that the educational qualification possessed by the Petitioner is equal to the educational qualifications possessed by the other Computer Programmers in TAF CORN and various other departments, EPFO etc., had opined that there will not be any impediment to give a direction to the 1st Respondent, to sanction the



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proposal already made by the 2nd Respondent Corporation, for revision of the Pay Scale of the Petitioner, working as the Computer Programmer, in the 2nd Respondent Corporation and accordingly, set aside the orders, impugned in the Writ Petition and issued directions accordingly, to the 1st Respondent, by the impugned order.

28. Keeping in view the afore said reasons and discussions made by this Court and in the light of the Rule 34 of the Service Rules of the 2nd Respondent Corporation and the principles of 'Equal Pay' for Equal Work', which has been duly established by the Writ Petitioners, it cannot be stated that the impugned order of the learned Single Judge of this Court suffers from any infirmity or perversity, warranting interference by this Court.

29. In so far as the promotion to the post of EDP Manager is concerned, it need not be discussed in detail, since admittedly there is no such post in the 2nd Respondent Corporation and as such, the said relief cannot be granted, as has been rightly concluded by the learned Single Judge of this Court, by the impugned order, which finding does not warrant any interference by this Court.

30. In fine, these Writ Appeals are dismissed. No costs. Consequently, the connected MPs are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

The Secretary to Government,
Government of Tamil Nadu
Environment
and Forests Department fort St. George
Chennai-600 009

WA.No.484 of 2014 and 2183 of 2021

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