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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	03.09.2021
DELIVERED ON	29.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Writ Appeal Nos.2497 and 497 of 2018
and CMP Nos.20244/2018 and 4624 of 2018

Writ Appeal No.2497 of 2018:

The State of Tamil Nadu,
Rep. by its Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi Department, Fort St. George,
Chennai 600 009.

... Appellant

vs.

1. Khadar Grama Thozhil Variya Soap Chemists
Paniyalargal Sangam,
(Regn.No.76/2012)
Represented by its President,
3/248, I Cross Street, ARS Nagar,
Kaveripattinam, Krishnagiri District.

2. Tamil Nadu Khadi and Village Industries Board,
Rep. by its Chief Executive Officer,
Kuralagam Buildings,
Chennai 600 108.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 26.07.2017 passed by this Court in
W.P.No.27848 of 2012.

Prayer in W.P.No.27848 of 2012:

Writ Petition filed under Article 226 of the Constitution
of India, praying for issuance of a Writ of Mandamus to direct
the respondents to revise the pay scale of the Soap Chemists in



the respondent Board to Rs.5,200-20,200+Grade Pay of Rs.2,800/- with effect from 01/01/2006 as per G.O.Ms.No.338 dated 26/08/2010 with future revision to Rs.9300-34,800 + Grade Pay of Rs.4,200/- with all Consequential arrears and other attendant benefits.

For Appellant : Mr.R.Neelakandan,
Additional Advocate General
assisted by
Mr.K.V.Sajeev Kumar,
Government Advocate
and Mr.K.Tippu Sulthan,
Government Advocate

For 1st Respondent: Mr.Balan Haridas

For 2nd Respondent: Mr.S.K.Bose

Writ Appeal No.497 of 2018 :

Tamil Nadu Khadi and Village Industries Board,
Rep. by its Chief Executive Officer,
Kuralagam Buildings,
Chennai 600 108. ... Appellant

vs.

1. Khadar Grama Thozhil Variya Soap Chemists
Paniyalargal Sangam,
(Regn.No.76/2012)
Represented by its President,
3/248, I Cross Street, ARS Nagar,
Kaveripattinam,
Krishnagiri District.
2. The State of Tamil Nadu,
rep. by its Secretary to Government,
Handlooms, Handicrafts, Textiles and
Khadi Department, Fort St. George,
Chennai 600 009. ... Respondents

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against the order dated 26.07.2017 passed by this Court in
W.P.No.27848 of 2012.



Prayer in W.P.No.27848 of 2012:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to revise the pay scale of the Soap Chemists in the respondent Board to Rs.5,200-20,200+Grade Pay of Rs.2,800/- with effect from 01/01/2006 as per G.O.Ms.No.338 dated 26/08/2010 with future revision to Rs.9300-34,800 + Grade Pay of Rs.4,200/- with all Consequential arrears and other attendant benefits.

For Appellant	:Mr.S.K.Bose
For 1st Respondent	:Mr.Balan Haridas
For 2 nd Respondent	:Mr.R.Neelakandan, Additional Advocate General assisted by Mr.K.V.Sajeelv Kumar, Government Advocate and Mr.K.Tippu Sulthan, Government Advocate

C O M M O N J U D G M E N T

S.VAIDYANATHAN, J.

Challenging the order dated 26.07.2017 passed by this Court in W.P.No.27848 of 2012 in favour of Khadar Grama Thozhil Variya Soap Chemists Paniyalargal Sangam (in short 'Soap Chemists Sangam'), the State Government has come up with Writ Appeal No.2497 of 2018 and Tamil Nadu Khadi and Village Industries Board (in short 'Khadi Board') has filed Writ Appeal No.497 of 2018.

2. The Writ Petitioner/Soap Chemists Sangam is a registered Association espousing the cause of Soap Chemists employed in Khadi Board. It is stated by the Writ Petitioner that, there are 35 Soap Chemists employed in the Khadi Board, whose qualification was, a pass in S.S.L.C. and training in soap making imparted either by Khadi and Village Industries Commission or Khadi Board.

3. According to the Writ Petitioner, the method of appointment and qualifications prescribed for the post of Soap Chemist in the State Government as well as in the Khadi Board,



is one and the same and that, all the instructions, Rules and scales applicable to Government Servants, have been extended to the employees of the Khadi Board also by G.O.Ms.No.147, dated 03.06.1989. In 1989, on the basis of the recommendation of the State Pay Commission, pay scale of Soap Chemist was revised to 1200-2040. However, as far as Soap Chemists employed in the Khadi Board are concerned, the same was revised in the lower pay scale of Rs.825-1200. Since there was an anomaly in the pay scale granted to Soap Chemists of Khadi Board, the Board forwarded a representation of the Writ Petitioner/Soap Chemists Sangam for revision and grant of higher scale of pay to the Soap Chemists of the Sangam.

4. In the meantime, on the basis of the recommendation by the Fifth Central Pay Commission, the State Government vide G.O.Ms.No.162, dated 13.04.1998, revised the pay scale of the employees, whereas, the pay of the Soap Chemists in the Khadi Board, once again was fixed in the lower pay scale, i.e. Rs.2750-4400. As a wide disparity existed between two sets of employees, who were identically placed, based on the representation of the Soap Chemists Sangam, a One Man Commission was appointed by the Government to rectify the pay anomaly. Before the One Man Commission, the Khadi Board represented that, Soap Chemists employed by them were entitled to pay revision in the pay scale of Rs.4000-6000, on par with the Government Servants.

5. Despite the recommendation of the One Man Commission, instead of re-fixing the pay scale as Rs.4500-7000 on par with the Government Servants, the Government revised the pay scale of the employees of the Khadi Board as Rs.3050-4590 vide G.O.No.557, dated 28.09.1998. Thereafter, on the basis of recommendation of the Sixth Central Pay Commission, the State Government issued Revised Scale of Pay Rules, 2009 vide G.O.Ms.No.234, dated 01.06.2009, whereby, the pay scale of Soap Chemists in Government service, was revised to Rs.5200-20200, with Grade Pay of Rs.2400 in Pay Band I, whereas, the pay scale of Soap Chemists employed in the Khadi Board was revised to Rs.5200-20200, with a Grade Pay of Rs.1900 in the same Pay Band I.

6. Aggrieved by the grant of lower grade pay, a few Soap Chemists filed a Writ Petition in W.P.(MD) No.8180 of 2009, and the same came to be disposed of by an order dated 19.08.2009, directing the Respondents therein to consider the representation of the Writ Petitioners and pass orders within a period of eight weeks. However, by a communication dated



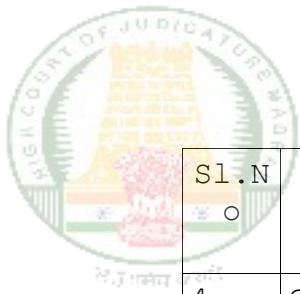
31.10.2009, the claim of the Writ Petitioners in the said Writ Petition, came to be rejected. It was the grievance of the Writ Petitioners therein that, while passing the said rejection order, the Government had not taken into consideration the specific recommendation of the Khadi Board, which was conveyed through their letter dated 27.10.2009 that, the Soap Chemists in the Khadi Board had been denied parity in the pay scale.

7. By an order dated 09.09.2009 vide G.O.Ms.No.444, another One Man Commission was appointed by the Government, to look into the pay anomalies arising out of G.O.Ms.No.444, dated 01.06.2009 and a Report dated 26.08.2010 was submitted by the One Man Commission. The Government accepted the said Report and issued G.O.Ms.No.338, dated 26.08.2010 for notional revision of pay and monetary benefits with effect from 01.01.2006 and 01.08.2010, respectively. The One Man Commission recommended pre-existing disparities to be set right and step up the pay first, so that, parity can be achieved. Those in the technical posts, like Soap Chemists were considered as Supervisory posts and were recommended a revision to Rs.5200-20200 with Grade Pay of Rs.2800/- and a future revision of Rs.9300-34800 with Grade Pay of Rs.4200/-. Relevant portion of G.O.Ms.No.338, dated 26.08.2010 is extracted below:

"3. ...

The Government has carefully examined the above recommendations of the One Man Commission and decided to accept the same. Accordingly, Government direct that the scales of pay of the Technical categories (Trade posts) in all Government departments/Local bodies shall be uniformly revised and re-designated as shown below:

Sl.No	Name of the Posts	Existing scale of pay + Grade pay	Revised scale of pay + Grade pay
1.	Supervisory posts in the pre-revised scale of pay of Rs.4500-7000 re-designated as Supervisor.	5200-20200 + 2800	9300-34800 + 4200
2.	Special Grade Trade Posts in the pre-revised scale of pay of Rs.4300 - 6000	5200-20200 + 2800	5200-20200 + 2800
3.	Re-designated as Special Artisan	5200-20200 + 2400	5200-20200 + 2600



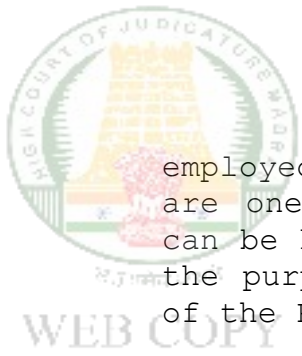
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Sl.N	Name of the Posts	Existing scale of pay + Grade pay	Revised scale of pay + Grade pay
4.	Grade-I (promotion posts) in the pre-revised scale of pay of Rs.4000-6000 re-designated as Skilled Assistant Grade-I	5200-20200 + 1900	5200-20200 + 2000
5.	Grade-II (entry level posts) in the pre-revised scale of pay of Rs.3050-4590 re-designated as skilled Assistant Grade-II Other Trade Posts in the pre-revised scales of pay of Rs.2750-4400 Rs.2650-4000 Rs.2610-3540 Rs.2550-3200 re-designated as Unskilled	5200-20200 + 1800 4800-10000 + 1650 4800-10000 + 1400 4800-10000 + 1300	5200-20200 + 1900

8. The grievance of the Writ Petitioner/Soap Chemists Sangam was that, in spite of issuance of the said Government Order, benefits contemplated therein have not been extended to the members of the Sangam, who are the employees of the Khadi Board.

9. Before the learned Single Judge, learned counsel appearing for the Khadi Board contended that, G.O.Ms.No.338, dated 26.08.2010 would apply only to Soap Chemists, who are possessing requisite qualification of Diploma and as such, the same cannot be made applicable to the members of the Writ Petitioner/Sangam. In the absence of Diploma qualification, members of the Writ Petitioner/Sangam cannot validly claim that, they are also entitled to the benefits contemplated in the said Government Order.

10. While so, learned counsel for the Writ Petitioner/Sangam represented before the learned Single Judge that, the Khadi Board has time and again recommended the claim of the Writ Petitioner/Sangam, as the method of recruitment, qualification, responsibilities and duties of Soap Chemists



employed in the Khadi Board as well as in the Government service are one and the same, and there is no valid difference, which can be held to be only in favour of the Government employees for the purpose of grant of higher pay scale ignoring the employees of the Khadi Board.

11. Taking note of the submissions of the learned counsel on either side, the learned Single Judge interfered with the matter and allowed the Writ Petition with a direction to the Respondents therein to revise the pay scale of Soap Chemists in the Khadi Board to Rs.5200-20200 with Grade Pay of Rs.2800 with effect from 01.01.2006 as per G.O.Ms.No.338, dated 26.08.2010 with future revision to Rs.9300-34800 with Grade Pay of Rs.4200 and grant all consequential arrears and other attendant benefits thereof, within a period of three months from the date of receipt of a copy of the order.

12. Learned Additional Advocate General appearing for the Appellant in W.P.No.2497 of 2018, i.e. the State Government, contended that, the learned Single Judge ought to have considered the fact that, the Writ Petitioner/Soap Chemists Sangam are not entitled for revision of scale of pay as per G.O.Ms.No.338, dated 26.08.2010, since they had not acquired the 'Diploma' qualification, which was a pre-requisite qualification for enjoying the benefits extended in the said Government Order. He further contended that, the learned Single Judge ought to have considered the fact that, the scale of pay of Soap Chemists in the Social Welfare Department and the Prisons Department, are identical.

13. In the same lines, learned counsel for the Appellant in W.P.No.497 of 2018, i.e. the Khadi Board, contended that, learned Single Judge ought to have considered the fact that, the method of recruitment, qualification, responsibilities and duties of Soap Chemists employed in the Khadi Board and the Government are not one and the same.

14. It is the contention of the learned counsel appearing for the 1st Respondent/Soap Chemists Sangam that, the learned Single Judge has not considered G.O.Ms.No.73, Handlooms, Handicrafts, Textiles and Khadi (F1) Department, dated 08.04.2013, wherein, it has been categorically stated that, the Government has given concurrence for the revision of scale of pay of the post of Soap Chemist as Rs.5200-20200 + Grade Pay of Rs.2400, as against the existing pay of Rs.5200-20200 + Grade Pay of Rs.1900, from the date of issuance of the order.



15. Learned counsel appearing for the 1st Respondent/Soap Chemists Sangam went on to contend that, the qualification prescribed in the Government Order is applicable only for future recruitments and it cannot be applied to the members of the Sangam, who have already joined the service, as G.O.Ms.No.338, dated 26.08.2010 is clear that, all the Soap Chemists have been treated as holding supervisory technical posts and the Government cannot deprive the benefits extended vide G.O.Ms.No.338, dated 26.08.2010 and that, G.O.(Ms) No.73, dated 08.04.2013 cannot be put against the members of the Sangam, as requisite qualification of Diploma would be available only for future recruits and not to the existing ones. '

16. With reference to the Affidavit filed by the Soap Chemists Sangam, learned counsel appearing for the 1st Respondent in both Writ Appeals, i.e. the Soap Chemists Sangam, submitted that, the number of Soap Chemists concerned in this case are 31. In the process of litigation, 3 Soap Chemists died while in service even before the year 2016 and 13 Soap Chemists have retired even before the year 2016. As of now, only 15 Soap Chemists are in service, of which, two will retire in the course of 2021. As the Khadi Board did not give effect to G.O.Ms.No.338 dated 26.08.2010 and as the Service Rules have not been amended in terms of the said Government Order, promotional avenue to the post of Assistant Director is also denied. The other categories of employees in the post of Assistant, who were drawing identical pay scale of Soap Chemists, have secured two promotions and now they are in the pay scale of Rs.15600-39100+Grade pay of Rs.5400. Thus, Soap Chemists, even after revision of pay are placed in the pay scale of Rs.9300-34800 + Grade Pay of Rs.4200.

17. Heard the learned counsel on either side and perused the material documents available on record.

18. In the Additional Affidavit filed by the Government, the qualification prescribed for the post of Soap Chemists in Tamil Nadu Khadi and Village Industries Board as per Tamil Nadu Khadi and Village Industries Board's Service Regulation and as per Service Rules in Social Welfare and Nutritious Meal Programme Department are enlisted as follows:



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Qualifications for the post of Soap Chemist in Tamil Nadu Khadi and Village Industries Board	Qualifications prescribed for the post of Soap Chemist in social Welfare and Nutritious Meal Programme Department
BY DIRECT RECRUITMENT (a) Must have passed SSLC and (b) (i) Must have undergone Artisans Training in Soap Industry Conducted by any one of the Vidyalayas run by the Khadi and Village Industries Commission or any institute recognized by the said Commission or State Board or (ii) Must have worked in any one of the Soap Units under the Board for a period of not less than THREE years.	BY DIRECT RECRUITMENT (i) Must possess the Minimum General Educational Qualification prescribed in Schedule-I to the General Rules for the Tamil Nadu State and Subordinate Service and (ii) Must have practical experience in a soap factory for a period of not less than one year: or (iii) Must have undergone training in soap making in any of the Vidyalayas run by the Khadi and Village Industries Commission or by the State Khadi and Village Industries Board.
BY PROMOTION (a) From the category of Helper Grade II (Soap); (b) Must have put in not less than five years of service in the post of Helper Grade II (Soap); and (c) Must have undergone artisans training in Soap Industry conducted by any one of the Vidyalayas run by the Khadi and Village Industries Commission or any institute recognized by the Commission or by Board.	BY PROMOTION OR RECRUITMENT BY TRANSFER (1) Must possess Minimum General Education Qualification prescribed in Schedule-I to the General Rules for the Tamil Nadu State and Sub-ordinate Services; and (2) Must have practical experience for a period of not less than six month in a Soap Factory or Soap Unit run by the Khadi and Village Industries Commission or Institution recognized by the said Commission or by the State Khadi and Village Industries Board.



19. Thus, it is the stand of the Government that, the qualification prescribed for appointment to the post of Soap Chemists both in Khadi Board and Social Welfare and Nutritious Meal Programme Department are not one and the same.

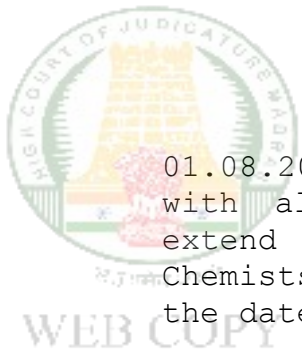
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20. On going through the tabular column pertaining to the qualifications for the post of Soap Chemists in Khadi Board and Social Welfare and Nutritious Meal Programme Department, it appears that, the qualification for Soap Chemists appears to be almost identical in both Departments, except that it has been worded differently.

21. Though, the learned Additional Advocate General appearing for the Government contended that, the learned Single Judge has not taken note of G.O.Ms.No.73, dated 08.04.2013, it is the categorical averment of the Government in their Additional Affidavit that, the said Government Order was not brought to the attention of the learned Single Judge as could be seen from paragraph 6 of the Additional Affidavit. It is further stated by the learned Additional Advocate General that, pursuant to the said Government Order, pay anomaly has been set right and that, the pay scale of Soap Chemists in Khadi Board and in the Social Welfare and Nutritious Meal Programme Department, is identical.

22. Thus, when there is a categorical averment by the Government that, pursuant to G.O.Ms.No.73, dated 08.04.2013, pay scale of Soap Chemists employed in Khadi Board and Social Welfare and Nutritious Meal Programme Department, is identical, and that, the pay anomaly has been rectified, the contention of the Government that, there is no violation of Article 14 of the Constitution of India, may not be correct, as admittedly, revised pay scale has not been implemented to Soap Chemists employed in Khadi Board. Requisite qualification prescribed for the post of Soap Chemist is a Diploma and it can be applied only for future recruitments. When the nature of work of Soap Chemists employed in Khadi Board is similar to that of those employed in Social Welfare and Nutritious Meal Programme Department, the plea of the 1st Respondent/Soap Chemists Sangam is perfectly justified.

23. However, in view of the Affidavit, dated 03.09.2021 filed by the 1st Respondent/Soap Chemists Sangam, to the effect that, 'in order to avoid further litigation in the matter, they are willing for giving effect to the pay scale of Rs.9300-34800 + Grade Pay of Rs.4200 to the Soap Chemists in terms of G.O.Ms.No.338, dated 26.08.2010 with effect from



01.08.2006 on notional basis and with effect from 01.01.2016 with all monetary benefits', the Government is expected to extend the benefits of pay revision to the members of the Soap Chemists Sangam, forthwith, within a period of four months from the date of receipt of a copy of this judgment.

24. In view of the foregoing, this Court finds no reason to interfere with the order of the learned Single Judge and the Writ Appeals fail and stand dismissed. No costs. Consequently, connected C.M.P.No.20244 of 2018 in W.A.No.2497 of 2018 and C.M.P.No.4624 of 2018 in W.A.No.497 of 2018 are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

(vm/aeb)

To:

1. The Secretary to Government,
State of Tamil Nadu,
Handlooms, Handicrafts, Textiles and
Khadi Department, Fort St.George,
Chennai 600 009.
2. The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam Buildings,
Chennai 600 108.

+1cc to Mr.Balan Haridas, Advocate Sr.56476

W.A.Nos.2497 and 497 of 2018
and CMP Nos.20244/2018 and 4624 of 2018

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