



WEB COPY

W.P.(MD)Nos.9696 of 2014 and 23692 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
23.03.2021	25.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) Nos.9696 of 2014 and 23692 of 2017

W.P. (MD)No.9696 of 2014:

Pushkala Kumari

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by its Secretary,
Finance (Pay Cell) Department,
Fort St.George,
Chennai-9.

2.The Tamil Nadu Water Supply and
Drainage Board(TWAD),
represented by its Managing Director,
Chepauck,
Chennai-600 005.

3.The Executive Engineer,
Maintenance Division,
Tamil Nadu Water Supply and Drainage
Board(TWAD),
Shanthi Nagar
Tirunelveli-627 002.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records from the second Respondent relating to the impugned order dated 11.03.14 passed in proceedings No. Ko.74465/ET4/Tha A/2008 by the second Respondent quash the same and consequently to direct the Respondents 2 and 3 to revise the scale of pay of the petitioner as per G.O. Ms. No. 762 dated 20.08.86 of the first Respondent and B.P.Ms. NO. 505 dated 12.12.86 of the second Respondent Board and in the scale of pay payable as mentioned in the G.O. Ms. No. 762 dated 20.08.86 of the first Respondent for the trade posts which require the qualification of SSLC passed plus I.T.I certificate and to pay her the arrears of pay and all the consequential benefits.



W.P. (MD) No.23692 of 2017:

R.Mahenthiran

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by its Secretary,
Finance (Pay Cell) Department,
Fort St.George, Chennai-9.

2.The Tamil Nadu Water Supply and
Drainage Board(TWAD),
represented by its Managing Director,
Chepauck, Chennai-600 005.

3.The Secretary cum General Manager,
Tamil Nadu Water Supply and Drainage
Board(TWAD),
Chepauck, Chennai-600 005.

4.The Executive Engineer,
Tamil Nadu Water Supply and Drainage
Board(TWAD),
Maintenance Division,
Trichy-23.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus to direct the respondents 2 to 4 to revise the scale of pay of the petitioner as per G.O.Ms.No.762, dated 26.08.86 of the first respondent and B.P. Ms.No.505 dated 12.12.86 of the second respondent and fix his scale of pay as mentioned in G.O.Ms.No.762, dated 26.08.86 of the first respondent for the trade posts which required the qualification of SSLC passed plus ITI certificate with effect from 12.12.86 and to pay him all the consequential benefits including arrears of pay and also to pay him the balance/arrears of all his terminal/pension benefits after revising the same based on such scale of pay payable to him on the month of his retirement, together with 18% interest p.a.

For Petitioner

in both petitions: Mr.S.Arunachalam

For Respondents : Mr.Muthugeethaiyan
Special Government Pleader
for R.1

: Mrs.Porkodi Karnan
Standing Counsel
for R.2 and R.3 in W.P.(MD)No.9696 of 2017
for R.2 to R.4 in W.P.(MD)No.23692 of 2017

* * * * *



COMMON ORDER

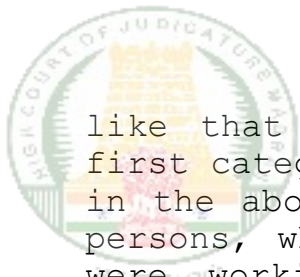
Since the issue involved in both the writ petitions are being interconnected, both the writ petitions are disposed of by this common order.

2. The petitioners are having the qualified technical education of ITI (Draughtsman Civil) and based on their qualification, they were appointed as "Assistant Draughtsman" and joined duty and they were continuously working in their respective post. While so, the second respondent Board is constituted under Tamil Nadu Water and Drainage Board Act and it is owned and run by the Government of Tamil Nadu and the conditions of services of the employees working in the second respondent Board have been determined by the second respondent by its Board Proceedings as per the Tamil Nadu Water and Drainage Board Act.

3. Further the case of the petitioners is that the employees of Government of Tamil Nadu, who were appointed, based on their qualification of I.I.T., trade certificate and working in trade posts in various departments of Government of Tamil Nadu, such as Fitters, Welders, Electricians and etc., were receiving lower and different scales of pay and hence, they were having grievances on the reason that though they were all having same technical education qualification ie., I.T.I., but paid lower and different scales pay. Considering their grievances, the Government of Tamil Nadu appointed One Man Committee to look into the issue and to give its recommendation to the Government.

4. The State Government accepted the report of the One Man Committee and issued a Government Order in G.O.Ms.No.762, dated 26.08.1986, whereby the Heads of Department were directed to send necessary proposals for revision of pay scales of trade posts where the present scale of pay were lower than the one indicated in the Government Order itself. Subsequently, the second respondent Board also adopted the above said Government Order by issuing its Board Proceedings in B.P.Ms.No.505, dated 12.12.1986 and directed to implement the same to its employees also. Further, the second respondent implemented the above said Government Order and the said Board Proceedings and gave the benefit of uniform pay scale to the employees working in particular trade posts alone and they have not given the same to other employees who were working in different trade posts for the reasons best known to them.

5. It is the further case of the petitioners that the I.T.I. (Draughtsman Civil) is 2 years course and the qualification for admission for the same is SSLC passed. Hence, the employees, who were appointed in the second respondent Board as "Assistant Draftsman" based on their I.T.I. (Draughtsman Civil) qualification,



like that of the petitioners, should have been brought into the first category of employees and given the scale of pay as prescribed in the above said Government Order and Board Proceedings. The persons, who were similarly placed to that of the petitioners, who were working in different posts namely Driller, Air-Compressor Operator, Re-winder, Auto Electrician etc., approached the Labour Court through their trade union and raised an industrial dispute in I.A.No.147 of 1993 and the Labour Court passed an award in favour of the union and granted relief to the similarly placed persons like that of the petitioners.

6. In order to avail the said benefit, the petitioner in W.P. (MD)No.9696 of 2014 approached this Court by filing a writ petition in W.P.No.8539 of 208 seeking for issuance of a writ of mandamus to direct the second respondent to consider the petitioner's representation dated 02.07.2008 and in compliance of the said order, the second respondent passed the impugned order by stating that the Government Order as well as the Board Proceedings are not applicable to the petitioner. Challenging the same, the writ petition in W.P. (MD)No.9696 of 2014 is filed.

7. The petitioner in W.P.(MD)No.23692 of 2017 has filed the writ petition seeking for issuance of a writ of mandamus to direct the respondents 2 to 4 to revise the scale of pay of the petitioner as per G.O.Ms.No.762, dated 26.08.86 of the first respondent and B.P. Ms.No.505 dated 12.12.86 of the second respondent and fix his scale of pay as mentioned in G.O.Ms.No.762, dated 26.08.86 of the first respondent for the trade posts which required the qualification of SSLC passed plus ITI certificate with effect from 12.12.86 and to pay him all the consequential benefits including arrears of pay and also to pay him the balance/arrears of all his terminal/pension benefits after revising the same based on such scale of pay payable to him on the month of his retirement, together with 18% interest p.a.

8. Learned Counsel appearing for the petitioners would submit that initially the Government Order was issued in respect of two categories of posts and admittedly, the employees who were also appointed based on their I.T.I., qualifications, approached the Labour Court through their trade union and the Labour Court, considering the qualifications secured by the persons, who approached the Labour Court, like that of the petitioners, passed an award in favour of the similarly placed persons and in view of the said award, all the persons, who secured qualifications of SSLC and I.T.I., are entitled to the revised salary, based on the said Government Order as well as the Board Proceedings. Hence, the denial on the part of the respondents in favour of the petitioners is *non-est* in law. Therefore, the petitioners are entitled to consider for revision scale of pay as stated in the Government Order as well as in the Board Proceedings.

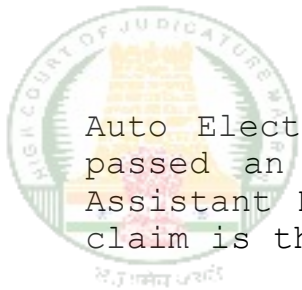


9. Per contra, the learned Special Government Pleader appearing for the first respondent would submit that admittedly, the petitioners' category was not mentioned in the Government Order as well as in the Board Proceedings. Further, the persons, who approached the Labour Court were also not in the category of the petitioners. In the absence of any mentioning with regard to the petitioners' post either in the Government Order or in the Board Proceedings, the claim made by the petitioners before this Court is *non-est* in law. Further, the Government Order was issued in the year 1986; the Board Proceedings was also issued in the year 1986 and the Labour Court passed the award in the year 1996, however, the petitioners filed the present writ petitions in the year 2014 and 2017 respectively and there was no proper explanation for such long delay in filing the writ petitions and in the absence of any explanation, the claim made by the petitioners cannot be considered and hence, he would pray for dismissal of the writ petitions.

10. Heard the learned Counsel appearing for the petitioner, the learned Special Government Pleader appearing for the first respondent and the learned Standing Counsel appearing for the Tamil Nadu Water Supply and Drainage Board and perused the materials placed on record.

11. The facts in the present case are not in dispute. Admittedly, the petitioners entered into service as Assistant Draughtsman and they filed writ petitions on the ground that they are entitled to get the revised scale of pay based on the Government Order in G.O.Ms.No.762, dated 26.08.1986 and the Board Proceedings in B.P.Ms.No.505, dated 12.12.1986. This Court perused the Government Order, dated 26.08.1986. On a perusal of the said Government Order, it would reveal that in the annexure, it is specified that for Group-I posts, the minimum qualification is SSLC pass + I.T.I., certificate and for Group-II posts, the minimum qualification is SSLC fail + I.T.I., certificate. There are two groups of posts in the said Government Order, however, in those two groups of posts, the petitioners' post of Assistant Draughtsman is not available. The said Government Order was issued to various departments. The petitioners are the employees of the TWAD Board and the TWAD decided to implement the said Government Order by way of issuing Board Proceedings in B.P.Ms.No.505, dated 12.12.1986. This Court also perused the Board Proceedings of the TWAD Board, dated 12.12.1986. The TWAD Board, in its meeting held on 05.12.1986 and its resolution dated 05.12.1986, has resolved to adopt the said Government Order to the employees of TWAD Board to similar cadres as in the Annexure-III of the same.

12. Further, this Court also perused the award passed by the Labour Court. The trade union consisting of employees who are holding the posts of Driller, Air-Compressor Operator, Re-Winder,



Auto Electrician approached the Labour Court and the Labour Court passed an award in favour of the Union and in that posts, the Assistant Draughtsman was not available. However, the petitioners' claim is that based on their educational

qualifications, they are entitled to have the revised scale of pay. Hence, the claim made by the petitioners is misconceived.

13. It is relevant to note that with the regard to fixing the pay scales and revising the pay scales, it is absolutely with the domain of the Government and normally, this Court did not interfere with the powers of the Government with regard to pay and revision of pay of their employees, unless that decision is contrary to the settled position and the same is arbitrary. In the present case, based on the report of One Man Committee, the State Government issued the above said Government Order, dated 26.08.1986 and the same was accepted by the respondent Board by its Board Proceedings in B.P.Ms.No.505, dated 12.12.1986. When the said Government Order and the Board Proceedings are silent with regard to the petitioners' post, this Court cannot extend such benefit by interpreting the award passed by the Labour Court. Further the Labour Court passed the order in favour of the members of the union, which is applicable to the persons, who approached the Labour Court and that cannot be extended to all the persons, who are not parties before the Labour Court. Hence, the prayer seeking to extend the said benefits to the petitioners is misconceived.

14. Further, the Government Order as well as the Board Proceedings are issued in the year 1986 and the Labour Court passed the award in the year 1996, however, the petitioners filed the present writ petitions in the year 2014 and 2017 respectively and there is no proper explanation for such long delay in filing the writ petitions and in the absence of any explanation, the claim made by the petitioners cannot be considered. The settled things cannot be unsettled after a considerable period.

15. For the reasons aforesaid, both the Writ Petitions *san* merit and, accordingly, the same are dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar

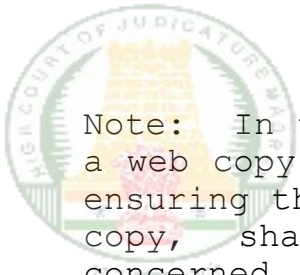
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/ /2021

Sub Assistant Registrar(CS)

SSL

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To

- 1.The Secretary,
Government of Tamil Nadu,
Finance (Pay Cell) Department,
Fort St.George, Chennai-9.
- 2.The Tamil Nadu Water Supply and
Drainage Board(TWAD),
represented by its Managing Director,
Chepauck, Chennai-600 005.
- 3.The Secretary cum General Manager,
Tamil Nadu Water Supply and Drainage
Board(TWAD),
Chepauck, Chennai-600 005.
- 4.The Executive Engineer,
Tamil Nadu Water Supply and Drainage
Board(TWAD),
Maintenance Division,
Trichy-23.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-13723[F] dated 25/03/2021)

ORDER IN

W.P. (MD)Nos.9696 of 2014 and 23692 of 2017

25.03.2021

CN(03.05.2021) 7P 6C