



WEB COPY

W.P.No.11920 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11920 of 2018

G.Abdul Muthalif

... Petitioner

Vs.

1.The Secretary to Government,
Handlooms, Handicrafts, Textiles and Khadi Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.

2.The Chief Executive Officer,
Tamil Nadu Khadi & Village Industries Board,
Kuralagam Buildings,
Chennai – 600 108.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to revise the pay of the petitioner (Khadi Inspector) at Rs.5300-8300 on par with the post of Designer on basis of the G.O.Ms.No.557 Finance (Pay Cell) Department dated 28.09.1998 effective from 01.09.1998 and consequently to revise the pension suitably on the basis of the above revision of scales of pay.



For Petitioner : Mr.K.Premkumar
For R1 : Mr.M.Rajendiran
Additional Government Pleader
For R2 : Mr.S.K.Bose

ORDER

The writ of Mandamus has been filed to direct the respondents to revise the pay of the writ petitioner (Khadi Inspector) at Rs.5300-8300 on par with the post of Designer on basis of the G.O.Ms.No.557 Finance (Pay Cell) Department dated 28.09.1998 effective from 01.09.1998 and consequently to revise the pension suitably on the basis of the above revision of scales of pay.

2. The petitioner filed the writ petition at the age of 69 years and after a lapse of about 11 years from the date of his retirement.

3. The grievance of the writ petitioner is that the post of Khadi Inspector and Designer were granted identical scale of pay prior to the implementation of 6th Pay Commission. During the implementation of 6th



Pay Commission, the authorities have discriminated the pay between the cadres of Khadi Inspector and Designer and accordingly, the persons working in the cadre of Designers were getting higher scale of pay. The petitioner submitted a representation while he was in service to equate the scale of pay between the post of Khadi Inspector and Designer and the said representation was not considered. Thus, the petitioner is constrained to move the present writ petition.

4. It is not in dispute that the petitioner served as a Khadi Inspector and retired from service. Comparison is made with the post of Designer, which is not identical. Thus, the principles of 'equal pay for equal work' cannot be adopted. The authorities have rejected the claim on the ground that the duties and responsibilities attached to the posts of Khadi Inspectors and Designers are distinct and different and thus, the request made to equalise the pay cannot be granted. Once the posts are different and carrying distinct duties and responsibilities, question of granting equal pay would not arise at all. Fixation of pay is a policy decision of the Government and if at all any patent illegality or violation of rules then alone the High Court can interfere in exercise of power of judicial review under Article 226 of the



Constitution of India, but not otherwise.

5. Unequals cannot be equated. Equal pay for equal work is applicable only if the person claiming is able to establish that posts are identical and the duties and responsibilities, are one and the same.

6. The principles of 'equal pay for equal work' cannot be merely applied based on the cadre. The various factors leading to the nature of the appointment, service conditions and other aspects are to be considered by the Courts, while dealing with the principles of the equal pay for equal work.

7. In the case of ***State of Haryana and Others Vs. Charanjit Singh and Others*** reported in ***[(2006) 9 SCC 321]***, the three Judges Bench of the Honourable Supreme Court of India held that “The application of the principles of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made



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

8. In the case of *Union of India and Others Vs. Dineshan.K.K* reported in *[Manu/SC/0395/2008]*, the Honourable Supreme Court of India observed that “It has been observed that equation of posts and equation of pay structure, being complex matters, are generally left to the Executive and expert bodies like the Pay Commission etc. It has been emphasized that a carefully evolved pay structure ought not to be ordinarily disturbed by the Court as it may upset the balance and cause unavoidable ripples in other cadres as well”.

9. The Doctrine of equal pay for equal work is not an abstract doctrine. The principles for equal pay for equal work has no mechanical application in every case. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference. Thus, the application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. Granting pay scale 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.

10. In the present case, the petitioner filed the writ petition at the age of 69 years and more so, after a lapse of about 11 years from the date of retirement. Revision of pay was granted pursuant to the implementation of the 6th Pay Commission with effect from 01.01.2006. Thus, he has approached the Court belatedly and the writ petition is liable to be rejected on the ground of laches also.

11. Accordingly, the Writ Petition stands dismissed. No costs.

11.10.2022

Jeni
Index : Yes
Speaking order



To

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S.M.SUBRAMANIAM, J.

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