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W.P.No.14186 of 2020 and W.P.Nos.11222, 11225, 11229
& 14269 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.14186 of 2020 and W.P.Nos.11222, 11225, 11229
& 14269 of 2021 and

WMP.No.17659 of 2020 and W.P.Nos.11875, 11877, 11879
& 15181 of 2021

N.Arumugam	..Petitioner in W.P.No.14186/2020
R.Rajaselvan	..Petitioner in W.P.No.11222/2021
V.Sagadevan	..Petitioner in W.P.No.11225/2021
M.Paramantham	..Petitioner in W.P.No.11229/2021
N.Devaraja	..Petitioner in W.P.No.14269/2021

Vs.

1. Tamil Nadu Khadi and Village Industries Board,
Rep. its Chief Executive Officer,
Kuralagam, Chennai – 600 108. ..1st respondent in all W.Ps.

2. The Assistant Director,
Tamil Nadu Khadi and Village Industries Board,
Kumar Nagar,
Thirupur – 641 603.
Tamil Naud ..2nd Respondent in W.P.No.14186/2020

The Assistant Director,
Tamil Nadu Khadi and Village Industries Board,
Carpentry and Blacksmith Unit,
Pettai, Tirunelveli,
Tamil Nadu ... 2nd Respondent in W.P.No.14269/2021



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The Assistant Director,
Tamil Nadu Khadi and Village Industries Board,
Kancheepuram Unit,
Veeraragavapuram,
Chennai – 600 077.
Tamil Nadu.

...2nd Respondent in W.P.Nos.11222,
11225& 11229/2021.

COMMON PRAYER:Writ Petitions filed under Article 226 of the Constitution of India for Writ of Mandamus, directing the respondents to continue the petitioner in service until he attains 60 years pursuant to GO.(Ms)No.51 dated 07.05.2020 and G.O(Ms)No.29, dated 25.02.2021 issued by Personnel Administrative Reforms(S) Department Government of Tamil Nadu, award costs.

For Petitioner [in all W.Ps.]	: Ms.Anna Mathew
For Respondents [in all W.Ps.]	: Mr.S.K.Bose Standing Counsel for Khadi Board

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, with the consent of learned counsel appearing for both sides, all these writ petitions were heard together and are disposed of by this common order.



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2. These writ petitioners are the employees of the Tamil Nadu Industries Board. During the year 2020, they were about to retire due to superannuation as the superannuation age of the employees, as per the Rule which was in vogue, was 58 years.

3. In the year 2020, the State Government had come forward to take a policy decision and issued a Government Order in G.O.Ms.No.51, Personnel and Administrative Reforms(s), under which, the Government decided to increase the age of superannuation of Government servants from 58 to 59 years and ordered accordingly. In the said G.O., at paragraph 2, it was further stated that, the Government Order shall also be applicable to all teaching and non teaching staff working in Aided Educational Institutions and employees of all Constitutional/Statutory Bodies, Public Sector Undertakings including all State Corporations, Local Bodies, Boards, Commissions, Societies etc.

4. Subsequently, the Government in the next year, i.e., in the year 2021, has come forward to issue another Government Order in G.O.(Ms).No.29 by the very same Personnel and Administrative



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Reforms(s) Department dated 25.02.2021, under which, the superannuation age was further increased from 59 to 60. Therefore, it has become clear that by virtue of these two Government Orders, since the Rule which is in vogue having been amended and the import of the G.O was directed to be applied by the Public Sector undertakings, Local Bodies, Boards, Commissions, Societies etc.,. The superannuation age of these employees, since has been increased from 58 to 59 initially and 59 to 60 subsequently, they are entitled to work till 60 years.

5. In that background, these petitioners, since are entitled to get such extension since the respondent is one of the Government Board viz., Tamil Nadu Khadi and Village Industries Board, such extension should have been automatically issued in respect of the service of the petitioner to superannuate at the age of completion of 60 years only. However since the same has not been given effect and one of the writ petitioner viz., N.Arumugam in W.P.NO.14186 of 2020, since attained the age of 58 years, he was directed to retire and accordingly, he was made to retire on 24.10.2020.



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6. Only at that juncture, apprehending that similar consequence would come to the other petitioners also, all these petitioners had filed writ petitions. These writ petitioners initially sought for mandamus and subsequently, the prayer has been amended with a mandamus directing the respondent to permit the petitioner to continue in service until they attain the age of 60 years, pursuant to the said two Government orders.

7. Heard M/s.Anna Mathew, learned Senior Counsel appearing for the petitioners, who would submit that by virtue of the two Government Orders, since the superannuation age of all Government employees of the State Government as well as the employees of the Public Sector undertakings of the State Government Board, Institution etc. has been increased initially from 58 to 59 and subsequently to 60, these petitioners are entitled to work till the age of 60 years.

8. In this regard, the learned counsel would further submit that during the pendency of these writ petitions, four writ petitioners except one N.Arumugam having been permitted to serve till the age of 60 years, and accordingly, they are still working at the respondent Board. Insofar



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as the case of Arumugam is concerned, though he was made to retire by 24.10.2020, he has been reinstated on 01.09.2022 and at present, he is working, but soon, he also will retire on attaining the age of superannuation at the end of 60 years of his age.

9. Therefore, the learned counsel appearing for the petitioner would submit that, insofar as the four other writ petitioners are concerned, there could be no further grievance for them, as they have been permitted to work till the age of 60 years. In respect of one N.Arumugam since he was made to retire on 24.10.2020 and was reinstated on 01.09.2022, the salary for the said period till October 2021 has already been paid to the said Arumugam also. However, from November 2021 till August 2022, that salary has not been paid to the said petitioner. Therefore, the said salary arrears from November 2021 to August 2022 may be directed to be paid to the said petitioner, that is the only grievance left unresolved, the learned counsel contended.

10. *Per contra*, Mr.S.K.Bose, learned Standing Counsel appearing for the respondents would contend that insofar as the Arumugam's case is



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concerned, though he retired on attaining the age of 58 years, subsequently by realizing the fact that his service had to be extended upto 60 years because of the two Government Orders, under which, the superannuation age has been increased to 60 years, the said Arumugam has been reinstated only on 01.09.2022. Therefore, admittedly, the said Arumugam did not work for the respondent Board from 24.10.2020 till 31.08.2022 and for the said period, it can only be treated as “No Work No Pay”, for which, the said Arumugam is not entitled for any salary. Insofar as the salary paid from October 2020 to October 2021 is concerned, it was the wrong payment made by the respondents. Therefore that cannot be treated as a reason or precedent for claiming of further pay of salary from November 2021 to August 2022, he contended.

11. I have considered the rival submission made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

12. Now the only issue to be decided is whether the petitioner in W.P.No.14186 of 2020 i.e., N.Arumugam, is entitled to get salary for the



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period from 24.10.2020 till 31.08.2022, out of which, he has already received the salary upto October 2021, therefore, for the remaining period such a salary would be payable to the petitioner or not.

13. The objection raised by the learned Standing Counsel appearing for the respondent Board was that since for the said period the said Arumugam has not worked, hence it can be treated only as “No Work No Pay”. Hence he would not be entitled to get the salary arrears.

14. In order to meet the said argument, learned counsel appearing for the petitioner relied on the following judgments of the Hon'ble Supreme Court:

1. *Ramesh Kumar Vs. Union of India and Ors.* [(2015) 14 SCC 335].
2. *Punjab National Bank Vs. Virender Kumar Goel and Ors.* [(2004) 2 SCC 193].
3. *State of Keral and Ors. Vs. E.K.Bhaskaran Pillai* [(2007) 6 SCC 524]



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15. In **Ramesh Kumar's** case (Cited supra), the learned counsel appearing for the petitioner relies upon the following averments:

“15. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a Court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 1.08.1997 and maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.”

16. Insofar as the objection raised by the learned Standing Counsel appearing for the respondent Board for denying the salary payable to the petitioner Arumugam for the period from 24.10.2020 till August 2022 is concerned, by projecting the theory "No Work No Pay", if it is considered in the light of the decision referred to above, it is a mistake committed by



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the respondents/employer in not allowing the said Arumugam for continuing his service till he attained the age of 59 years initially and subsequently till the age of 60 years in view of the two Government Orders, under which, all the employees of the State Government as well as the Public Sector undertakings including all State Corporations, Local bodies, Boards, Commissions, Societies etc., are entitled to work till they complete the age of 60 years, therefore, because of the mistake committed by them, the petitioner Arumugam cannot be punished. Moreover, once they committed mistake by making the said Arumugam to retire at the age of 58 years, after realizing that superannuation age has been increased to 60 years immediately he should have been reinstated, but it was done belatedly only on 01.09.2022 i.e., almost at the verge of his superannuation at the age of 60 years.

17. Moreover, the superannuation age, since has been increased to 60 years, it is a statutory right conferred under the Service Rule that every employee has to retire on the completion of after 60 years, before which, without any procedure established under law for any other reason like disciplinary proceedings, no one can be sent out from the employment.



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Therefore, the theory of "No Work No Pay" cannot be implemented in the present case. In view of the aforesaid facts and circumstances, the submission made by the learned Standing Counsel appearing for the respondent Board is liable to be rejected and accordingly, it is rejected.

18. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

- ◆ That insofar as these writ petitioners are concerned, except the writ petitioner in W.P.No.14186 of 2020, all other writ petitioners, since were permitted to continue in their respective job till they attained the age of superannuation i.e., 60 years, there could be no further grievance from that petitioners to be redressed.
- ◆ Insofar as W.P.No.14186 of 2020 filed by one Arumugam is concerned, he was made to retire by 24.10.2020 in spite of increasing the superannuation age and has been reinstated belatedly only on 01.09.2022. For the said period, the said petitioner is entitled to get the entire salary i.e., backwages, for which, already the salary upto October 2021, admittedly since has



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been paid, the remaining salary from November 2021 till August 2022 shall be calculated and be paid to the said petitioner viz., Arumugam, by the respondents Board, within a period of eight(8) weeks from the date of receipt of a copy of this order.

With these directions, these writ petitions are disposed of. No costs. Connected miscellaneous petitions are closed.

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Index : Yes/No
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