

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2022

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.2335 of 2020, WP(MD)Nos.24479 & 24480 of 2022
WMP(MD)Nos.18556, 18557, 18558 & 18559 of 2022

In WP(MD)No.2335 of 2020 : -

K.Rajendran

... Petitioner

vs.

1.The Chief Executive Engineer,
Tamil Nadu Khadi and Village Industries
Board,
Kuralagam, Chennai – 108.

2.The Assistant Director,
Tamil Nadu Khadi and Village Industries
Board,
Ambalpuram 2nd Street,
Pudukottai District – 622 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to take necessary steps to disburse the pensionary benefits and gratuity along with interest for arrears to the petitioner, in par with the permanent employees of the respondent board having regard to their scale of pay within a time frame to be stipulated by this Court.

For Petitioner : Mr.A.K.Hemaraj

For Respondents : Mr.Raguvaran Gopalan

In WP(MD)No.24479 & 24480 of 2022 : -

The Assistant Director,
Tamil Nadu Khadi and Village Industries
Board,
Ambalpuram 2nd Street,
Pudukottai District – 622 001. ... Petitioner in both cases

vs.

K.Rajendran ... Respondent in both cases

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the impugned award in C.P Nos.7 of 2016 & 28 of 2003 dated 22.10.2018 on the file of the Labour Court, Trichy (Pudukkottai Camp) and quash the same as arbitrary, illegal and contrary to the principles of natural justice.

in both cases :

For Petitioner : Mr.Raguvaran Gopalan

For Respondent : Mr.A.K.Hemaraj

COMMON ORDER

The litigation between the parties has a long history. Thiru.K.Rajendran and others were working as Mixers in the soap unit run under the aegis of Tamil Nadu Khadi & Village Industries Board at Pudukootai. He was working from 01.08.1979 as a daily wage labourer. The soap mixers demanded conferment of permanent status. The Deputy Chief Inspector of Factories, Trichy vide order dated 05.02.1998 conferred permanent status on the workman with effect from 18.01.1981. Questioning the same, the board filed writ petitions before the Madras High Court. They were dismissed. Aggrieved by the same, the board filed WA Nos.662 to 664 of 2001. The writ appeals were also dismissed. In the meanwhile, the Pudukkottai unit itself was closed and it was shifted to Sivagangai District. Since Pudukkottai unit was closed without following the procedure laid down in Industrial Disputes Act, Thiru.K.Rajendran raised an industrial dispute in I.D No.43 of 2008 on the file of the Labour Court, Trichirappalli. The I.D was allowed and the board was directed to reinstate the workman in

service. The board was directed to pay 25% of back wages. Since the award was not complied with, he filed C.P No.28 of 2003 for directing the board to pay a sum of Rs.4,66,138/- towards arrears of wages and earned leave wages for the period from 23.11.1980 to 31.03.2003 with interest. The C.P was dismissed vide order dated 27.09.2012. Challenging the same, Thiru.K.Rajendran filed WP(MD)No.11304 of 2015. Vide order dated 19.03.2018, the order passed by the Labour Court was quashed and the matter was remitted to the file of the Labour Court for fresh consideration. Following the same, the Labour Court, Trichirappalli passed an award dated 22.10.2018 in C.P No.28 of 2003 and directed the board to pay a sum of Rs.4,66,138/- with 6% interest. The period covered in C.P No.28 of 2003 was up to the year 2003. Thiru.K.Rajendran filed C.P No.7 of 2016 for the period from 01.10.2012 to 30.11.2015. The said C.P was allowed on the same date and the board was directed to pay a sum of Rs.17,26,470/-. Seeking enforcement of the aforesaid awards dated 22.10.2018, WP(MD)No.2335 of 2020 has been filed. Challenging the said awards, the board has filed WP(MD)Nos.24479 & 24480 of 2022.

2. Heard the learned counsel on either side who projected the contentions set out in the respective pleadings.

3. I carefully considered the rival contentions and went through the materials on record. There is no dispute that Thiru.K.Rajendran was conferred the status of permanent workman with effect from 18.01.1981. The unit in which he was working was illegally closed and an award came to be passed in his favour on 27.09.2012 in I.D No.43 of 2008. He reached the age of superannuation on 31.07.2016. Therefore, the period for which arrears of pay will have to be paid can be divided into 3. They are as follows :

“1. 23.11.1980 to 31.03.2003

2. 01.01.2004 to 27.09.2012

3. 28.09.2012 to 31.07.2016”.

The manner in which the board had conducted the litigation leaves a lot to be desired. During C.P proceedings, the workman took out applications for causing production of certain

documents. The board did not comply with the same and I will not fault the Labour Court for having drawn adverse inference and going by the materials placed by the workman. The board even failed to place the relevant materials. The learned counsel appearing for the petitioner relied on the order dated 04.01.2016 made in Review Application No.17 of 2013 (The Management, rep.by its Secretary, Industrial Estate General Workers Union v. The Presiding Officer, Labour Court, Chennai) and contended that the writ petitions filed by the board must be dismissed and the writ petition filed by the workman must be allowed.

4.While there is no dispute as regards the liability of the board to pay the arrears of pay and difference in wages, the only question that calls for consideration is the quantum of wages. This can be easily answered because the wages were fixed with time scale vide proceedings by the board in K.B.P Ms No.7 dated 29.07.2011. This board proceedings was specifically projected before the Hon'ble Division Bench in Cont P Nos.7, 304 and 398 of 2011. The order dated 25.08.2011 passed by the Hon'ble Division Bench makes a specific reference to this in paragraph No.4. The board proceedings are as follows :

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TAMILNADU KHADI AND VILLAGE INDUSTRIES BOARD
'KURALAGAM', CHENNAI - 108

ABSTRACT

Village Industries - Non-edible Oil and Soap Industry - Conferment of Permanent Status to the workers of Soap Units - fixing of time scale - Reg.

K.B.P. Ms. No. 7

Dated: 29.7.2011

1. Judgement of the Hon'ble High Court, Madras Dt: 23.11.2009.
2. Board's Lr.Rc.No. 40894/VII(2)/97, Dt: 6.4.2010, 9.2.2011 & 8.3.2011.

&&&

ORDER:-

In continuation of orders issued in the reference 2nd cited, the Soap Unit workers who have given permanent status in terms of Tamilnadu Industrial Establishment Act 1981 (Conferment of Permanent Status to Workmen Under Sec. 3 of I.D.Act 1981), with effect from the date of their completion of 480 days period, who were hitherto paid with wages is hereby ordered to fix with time scale as detailed below:-

1. The time scale chart is as follows:-

TIME SCALE

From 1979 TO 31.3.1995 : Rs. 300-20-600 ✓

(Pay revision once in five years)

From 1.4.95 to 31.3.2000 : Rs. 1200-50-1400

From 1.4.2000 to 31.3.2005 : Rs. 1700-75-2000

From 1.4.2005 to 31.3.2010 : Rs. 3500-100-3900

From 1.4.2010 to 31.3.2015 : Rs. 4200-125-4700

2. The workmen are eligible for D.A. as per Chennai City Consumer Price Index announced by the Labour Department from time to time.

3. The workmen are also eligible to get medical allowances from the date of their permanency to 31.7.2011.

4. The Assistant Directors concerned are directed to apply ESI Code No. to the workers from 1.8.2011 onwards to avail ESI benefit.

5. The Assistant Development Officer (Soap) Tirukalikundram and the Assistant Directors incharge of Soap Units are directed to fix the basic pay as per the time scale indicated at para 2 above, from the date of their permanency ordered on 9.2.2011 and 8.3.2011 respectively and to issue necessary orders and send a copy of the fixation statement to the Board by next post.

6. While fixing the basic pay for each individual, the procedure indicated in the chart should be scrupulously followed.

7. The receipt of this proceedings should be acknowledged immediately.

// By order of the President//

Enc: Working Sheet of
time scale chart.

CHANDRAKANT B. KAMBLE,
CHIEF EXECUTIVE OFFICER.

To
The Assistant Director (KVI), Salem/Kancheepuram/Karur/Erode/
Cuddalore/Dindugal/Thanjavur/Tirupur/Trichy/Tirunelveli/
The Assistant Development Officer (Soap), Tirukalikundram.
Copy to the Regional Deputy Director (KVI), Madurai/Trichy/Tirupur
Copy to General Manager (Khadi Kraft), Chennai.
Copy to Stock-file./Spare.

// Forwarded / by order //

[Signature]
29/7
SUPERINTENDENT.

24/6/1

**WORKING SHEET OF PROPOSED TIME SCALE FOR THE SOAP
UNIT WORKERS.**

Year	As per minimum wages			Proposed Time Scale			
	Minimum wages	D.A.	Total	Basic Pay	D.A. as per Consumer Index	Medical Allow.	Total
	Rs	Rs	Rs.	Rs.	Rs.	Rs.	Rs.
1.4.83	300/-	13.50	313.50	380/-	13.50	10/-	403.50
1.4.84	300/-	51.00	351.00	400/-	51.00	10/-	461.00
1.4.85	300/-	66.50	366.50	420/-	66.50	10/-	496.00
1.4.86	300/-	90.00	390.00	440/-	90.00	10/-	540.00
1.4.87	300/-	116.50	416.50	460/-	116.50	10/-	586.50
1.4.88	300/-	150.00	450.00	480/-	150.00	10/-	640.00
1.4.89	300/-	193.00	493.00	500/-	193.00	10/-	703.00
1.4.90	450/-	245.00	695.00	520/-	245.00	20/-	785.00
1.4.91	450/-	309.00	759.00	540/-	309.00	20/-	869.00
1.4.92	450/-	436.00	886.00	560/-	436.00	20/-	1016.00
1.4.93	450/-	589.00	1039.00	580/-	589.00	20/-	1189.00
1.4.94	450/-	686.00	1136.00	600/-	686.00	20/-	1306.00
1.4.95	450/-	836.00	1286.00	1200/-	360.00	30/-	1590.00
1.4.96	1140/-	555.30	1695.30	1250/-	555.00	30/-	1835.00
1.4.97	1140/-	674.10	1814.00	1300/-	674.10	30/-	2004.10
1.4.98	1140/-	791.10	1931.10	1350/-	791.10	30/-	2171.10
1.4.99	1140/-	983.70	2123.70	1400/-	983.70	30/-	2413.70
1.4.00	1620/-	996.40	2616.40	1700/-	996.40	50/-	2746.40
1.4.01	1620/-	1150.10	2770.10	1775/-	1150.10	50/-	2975.10
1.4.02	1620/-	1213.50	2833.70	1850/-	1213.70	50/-	3113.70

1.4.03	1620/-	1351.50	2971.50	1925/-	1351.50	50/-	3326.50
1.4.04	1620/-	1351.50	2971.50	2000/-	1351.50	50/-	3401.50
1.4.05	3390/-	451.40	3841.40	3500/-	451.40	70/-	4021.40
1.4.06	3390/-	549.00	3939.00	3600/-	549.00	70/-	4219.00
1.4.07	3390/-	652.70	4042.70	3700/-	652.70	70/-	4422.70
1.4.08	3390/-	854.00	4244.00	3800/-	854.00	70/-	4724.00
1.4.09	3900/-	1365.00	5265.00	3900/-	1365.00	70/-	5335.00
1.4.10	3900/-	1848.00	5748.00	4200/-	1848.00	100/-	6148.00
1.4.11	3900/-	2254.00	6154.00	4325/-	2254.00	100/-	6679.00

TIME SCALE

From 1979 TO 31.3.1995 : Rs. 300-20-600

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CHANDRAKANT B. KAMBLE,
CHIEF EXECUTIVE OFFICER.

//forwarded//by order//

SUPERINTENDENT.

5.What is payable to the workman will have to be determined with reference to the aforesaid proceedings. He has to be paid the difference in wages for the first period from 23.11.1980 to 31.03.2003. As far as the second period is

concerned, the workman has to be paid 25% of the back wages as computed with reference to the aforesaid proceedings. He has to be paid the full wages for the third period commencing from 28.09.2012 to 31.07.2016. Of course, the sum of Rs.2,35,921/- paid on 28.10.2022 can be adjusted. The arrears will carry interest at the rate of 6% per annum. The interest will start running from the respective dates when the wages in question were liable to be paid. The deduction of the sum already paid will be only after quantifying the arrears together with interest. The differential amount and the arrears payable to the workman together with interest shall first be quantified. Only from the said quantified amount, the sum of rupees already paid before this Court shall be deducted. I hope calculation of interest will not turn out to be an accountant's nightmare.

6.The orders passed by the labour court will have to be necessarily set aside. This is because, the labour court was not appraised of the issuance of board proceedings dated 29.07.2011 that was referred into in the order passed by the Hon'ble Division Bench. I would not fault the labour court. Rather I would fault the board. Be that as it may, in as much as the most material and relevant fact was not taken into account,

the awards impugned in WP(MD)Nos.24479 & 24480 of 2022 are set aside. The prayer of the workman for enforcement of the awards of the labour court cannot be countenanced, because, the prior determination of the wages was not taken note of. The writ petitions filed by the board as well as the workman ie., WP(MD)No.2335 of 2020, WP(MD)Nos.24479 & 24480 of 2022 are disposed of with the directions set out above. The amount payable to Thiru.K.Rajendran shall be disbursed by the board within a period of ten weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petitions are closed.

03.11.2022

Index : Yes / No
Internet : Yes/ No
skm

To

- 1.The Chief Executive Engineer,
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- 2.The Assistant Director,
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- 3.The Labour Court, Trichy (Pudukkottai Camp).

G.R.SWAMINATHAN, J.

skm

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