



WEB COPY

W.P.(MD)No.15967 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.15967 of 2014

and

M.P. (MD)Nos.1 & 2 of 2014

N.Anbarasan

... Petitioner

vs

1. The Secretary to Government,
Tamilnadu Khadi and Village Industries Board,
Fort St. George,
Chennai - 600 009.

2. The Chief Executive Officer,
Tamilnadu Khadi and Village Industries Board,
Kuralagam,
Chennai - 600 108.

3. The Assistant Director,
Khadi and Village Industries,
Siluvathur Road,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No.9600/E2(1)/2012 dated 05.09.2014 and quash the same as illegal and consequently, direct the second respondent to re-fix the basic pay scale of petitioner in his service as Soap Chemist as per Table-2 of Khadi Board Proceedings No.124 dated 26.10.1998 with effect from 12.09.2003 with all arrears by absorbing his service as Soap Chemist within time stipulated by this Court.

For Petitioner : Mr.J.Lawrance

For Respondent R1 : Mr.N.Ramesh Arumugam
Government Advocate (Civil side)

For R2 & R3 : M/s.Raguvaran Gopalan

O R D E R

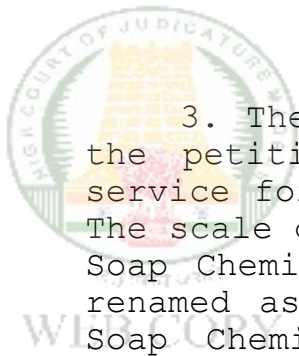
The petitioner has prayed to quash the impugned order dated 05.09.2014 and consequently, direct the second respondent to re-fix the basic pay scale of the petitioner in the service as Soap Chemist as per Table-2 of Khadi Board proceedings No.124 dated 26.10.1998 with effect 12.09.2003.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The brief facts of the case are that the petitioner was appointed through Employment Exchange as Junior Beefieldman on 28.12.1988. In the year 1993, the petitioner was promoted as Apiarist Grade III with pay scale of 950-1150-25-1500 which was revised as per 6th Pay Commission with pay scale of 3050-75-3950-80-4500. Thereafter, the petitioner was conferred Selection Grade Apiarist Grade III from 13.05.2003 with the increased pay scale. The contention of the petitioner is that as per the Service Rule, the person eligible to be appointed as Technician Grade III (Soap Chemist) are eligible to get Cosmetic License for manufacturing toilet soap. Since the petitioner is possessing B.Sc., Chemistry, the second respondent, vide proceedings, dated 10.06.2002 deputed the petitioner in the Technical category as Soap Chemist in the Soap Unit, Vedapatti. Thereafter, the petitioner underwent three months training from 29.06.2002 in manufacturing toilet soap varieties, the petitioner is manufacturing for the past 13 years and the license granted to the petitioner was periodically revised. On 02.01.2012. The petitioner submitted a representation requesting to regularize his service as Technical Staff in the Soap Unit, since from 29.06.2002 he is service as Technical Staff for the past 12 years without any promotion. The second respondent, vide proceedings, dated 23.01.2012 rejected the claim of the petitioner stating that the pay scale of Apiarist III and Soap Chemist are the same and there is not monetary loss for not holding the post as Soap Chemist and also stated that there is no provision in the service rules for regularizing the Soap Chemist at present. Prior to 6th Pay Commission, the salary of Apiarist III and the Soap Chemist are one and the same. The contention of the petitioner is since there is difference of pay scale between the Apiarist III and the Soap Chemist, after 6th Pay Commission, as per Rule 15(2) of Tamilnadu Khadi and Village Industries Board Service Regulation, the petitioner is entitled for appointment either by transfer or by promotion from one Apiarist category to Soap Chemist category, more so when the petitioner is possessing educational qualification. The petitioner's claim was rejected, hence he preferred a writ petition in W.P.(MD)No.12033 of 2012, to re-fix his pay scale with effect from 21.09.2003 with all arrears and this Court directs the respondents to consider the claim of the petitioner in the light of Rule 15(2) of Tamilnadu Khadi and Village Industries Board Service Regulation and G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2009 read with Khadi Board Proceedings Ms.No.124, dated 26.10.1998. The second respondent conducted an enquiry and vide proceedings, dated 05.09.2014, rejected the claim of the petitioner since the said Government Order is applicable only to the Technical staff and the post Apiarist III cannot be treated as Technical post. The Khadi Board Proceedings Ms.No.124 dated 26.10.1998 is applicable only to Soap Chemist. Based on G.O.Ms.No.154 and G.O.Ms.No.125 new recruitment cannot be carried out. Therefore, the claim of regularization was rejected. Aggrieved over the same, the present

<https://www.services.mys.gov.in/services/> filed.



3. The respondents have filed a counter affidavit stating that the petitioner was appointed as Apiarist and was continuing in service for more than ten years and he was granted Selection Grade. The scale of pay of Soap Chemist was merged with the scale of pay of Soap Chemist Grade-II and the nomenclature of both the posts were renamed as Soap Chemist. No separate pay was made to the post of Soap Chemist Grade-II which carries identical scale of pay of Apiarist Grade-III. As per Rule 15(2) proviso, the selection under this clause for appointment to a category shall be considered for the claimants of all eligible persons in a category from which the selection is made shall be considered and the selection shall be approved by the Government.

4. The petitioner previously was posted to work as Apiarist Grade II in Dindigul Unit, thereafter, he was deputed to work in the Soap Unit at Vedapatti, he was never posted as Soap Chemist. The Cosmetic license was issued in the name of the Unit / Board and the petitioner name was mentioned as technical person and not as Soap Chemist. Since the petitioner was never posted as Soap Chemist, he cannot claim for regularization in the post of Soap Chemist. For the averments in para 7 and 8 of the affidavit, the respondents submitted that as per G.O. Ms. No. 557 Finance (Pay Cell) Department dated 28.09.1998 the scale pay of Soap Chemist Grade III was merged with Soap Chemist Grade II and renamed as Soap Chemist and no separate pay enhancement was made to the post of Soap Chemist Grade II which carries identical scale of pay to Apiarist Grade III. The petitioner is misleading the court. The respondents also submitted that the petitioner was posted in Ooty Unit on 11.12.2018. As per the regulation of Tamil Nadu Khadi and Village Industries Board, there is no provision to transfer a person working in the post of Apiarist Grade III to the post of Soap Chemist. Since the bee keeping industry is not going good, the petitioner's services could not be utilized and in order to provide employment instead of sending him out, he was deputed to work in the Soap Unit to assist the production activities. Hence prayed to dismiss the writ petition.

5. Heard Mr.J.Lawrance, learned Counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents.

6. It is seen from the records that the petitioner was appointed as Beefield man and then promoted as Apiarist Grade-III. The petitioner was granted Selection Grade Apiarist Grade-III from 13.05.2003 onwards. The petitioner was also granted Special Grade on 13.05.2013. The contention of the petitioner is since he has been deputed to Soap Chemist post in Vedapatti Unit, he is entitled to be regularized in Soap Chemist post based on his educational qualification. The petitioner was granted Selection Grade in the year 2003, which means without promotion he was working in the same post for more than ten years. Thereafter, the petitioner was



granted Special Grade on 13.05.2013. The petitioner either can claim promotion to Soap Chemist post or he can claim Selection Grade and Special Grade. Since the Selection Grade and Special Grade are granted to the petitioner, he is not entitled to promotion to the Soap Chemist post. The selection grade is granted if the employee is stagnating in the same post without any promotion for 10 years and special grade is granted if the employee is stagnating in the same post without any promotion for 20 years. Therefore, the petitioner cannot claim promotion.

7. The claim arises because the petitioner was deputed to Soap Chemist post. According to the respondents, if the claim is accepted then the entire Apiarist will claim for the same relief and for the Administration would be difficult. But the petitioner contented that there is no other Apiarist in the Khadi Unit with the qualification, therefore, this will not affect the Administration. This contention cannot be agreed because if the Rule permits only then, it can be considered. The petitioner relied on proviso stating that the proviso is allowed, if there is any eligible persons in the category for which the selection has made and the same shall be considered.

8. This Court is of the considered opinion that the eligible candidate in the Apiarist category can be considered, only if there is any panel prepared for the Apiarist and the petitioner cannot be considered independently. The respondents may consider the claim of the petitioner along with the other Apiarists, who has qualification with necessary experience. If the qualification and other experience are there, if service rules provide to such promotion, then the petitioner's claim may be considered. As rightly pointed out by the respondents the petitioner was initially appointed as Beefieldman, the Bee Unit is not functioning profitably and the petitioner was deputed to Soap Unit in order to protect in employment. The petitioner cannot claim promotion dehors rules and other eligible claimants.

9. The next claim of the petitioner is that he was working as Soap Chemist but he is receiving the salary of Apiarist. It is seen from records prior to 2009, the salary payable to Soap Chemist is lesser than the salary payable to Apiarist. Therefore, the petitioner would be eligible for the pay protection from 2009 onwards. On 2009 onwards, under G.O.Ms.No.234, the pay scale applicable to Soap Chemist is higher. According to the respondents, the petitioner's higher pay scale in Soap Chemist is from 01.08.2010 but according to the petitioner it ought to be revised from 01.06.2009, based on the Government Order. Therefore, this Court is of the considered opinion that the petitioner is entitled to the pay scale applicable to Soap Chemist from 01.06.2009 onwards. Therefore, this Court is directing the respondents to pay the Soap Chemist salary from 01.06.2009 onwards.



10. With this above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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+1 CC to M/s.J.LAWRANCE, Advocate (SR-8567[F] dated 25/02/2022)

+1 CC to M/s.RAGUVARAN GOPALAN, Advocate (SR-8532[F] dated 24/02/2022)

+1 CC to M/s.SPL GP (SR-8744[F] dated 25/02/2022)

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