

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8686 of 2021

1. The Union of India through the Secretary Ministry of Finance, Department of Expenditure, Government of India, New Delhi.
2. The Additional Secretary and Development Commissioner (MSME), Ministry of Micro Small and Medium Enterprises Development Institute, Government of India, 7th Floor, A- Wing, Nirman Bhawan, Maulana Azad Road, New Delhi- 110108.
3. The Director cum Cadre Controlling Authority, MSME, Ministry of Micro Small and Medium Enterprises Development Institute, Government of India, Patna (Bihar).
4. The Director, MSME, Ministry of Micro Small and Medium Enterprises Development Institute, Government of India, Goushala Road, Post - Ramna, District- Muzaffarpur (Bihar)

... .. Petitioner/s

Versus

Sidheshwar Kumar Jha Son of Sri - Tej Narayan Jha Skilled Worker Grade- II,
Office of the Director, Ministry of MSME, Government of India, Goushala
Road, P.S. Ramna, District- Muzaffarpur (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Dr. K.N. Singh, ASG Mr. Anshuman Singh, CGC
For the Respondent/s	:	Mr. Anjani Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 02-05-2023

Heard learned counsels for the respective parties.

2. Matter was heard from time to time. Core issue involved in the present *lis* is whether respondent while holding the post of Skilled Worker Grade - II is entitled to pay scale attached to the post of Highly Skilled Worker Grade - II or not?



3. Respondent has not produced any material to show that the competent authority has taken a policy decision in upgrading the post of Skilled Worker Grade – II to that of Highly Skilled Worker Grade - II. In identical matter, it is learnt that one of the Skilled Workers Grade – II had approached the Central Administrative Tribunal, Madras Bench, Madras (hereinafter referred to as ‘CAT, Madras’). CAT, Madras is stated to have extended the benefits of Instructor scale which is promotion cadre and it was upgraded to Highly Skilled Worker Grade - I. The same has been taken note of by the respondent and he had also filed O.A. before Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as ‘CAT, Patna’) claiming that he is also entitled to pay scale of Highly Skilled Worker Grade - II. CAT, Patna has taken note of CAT, Madras decision read with its implementation *vide* Annexure - A/15 to the counter affidavit filed on behalf of the respondent dated 21.01.2014 by which Micro Small and Medium Enterprises (for short ‘MSME’) has implemented the CAT, Madras order and extended pay scale of Instructor which is stated to be upgraded scale in Highly Skilled Worker Grade – I. This communication dated 21.01.2014 reads as under:

“No.C-18013/3/2010-A (NG)

Dated 21.01.2014

The Director,



MSME-Development Institute,
65/1, GST Road,
Chennai - 600032.

Sub: - Implementation of order dated 09.11.2012 passed by CAT, Madras Bench in O.A. No. 702/2010 filed by Shri A. John Dominic Xavier & 16 others, against Department of Expenditure & others in the matter of upgraded pay scale.

Sir.

The undersigned is directed to refer to the order. dated 09.11.2012 passed by CAT Madras Bench in O.A. No. 702/2010 filed by Shri A. John Dominic Xavier & 16 other Instructors, against Department of Expenditure & others in the matter of upgraded pay scale.

2. Ministry of Finance, Department of Expenditure vide its Notification No. 1/1/2008-IC dated 28.07.2009 revised the pay scales of the posts of Highly Skilled Worker from Rs. 4000-6000 to Rs. 4500-7000 (pre-revised) corresponding to Grade Pay of Rs. 2,800 in Pay Band PB-1 w.e.f. 01.01.2006. Accordingly, this office sent a proposal to Department of Expenditure to grant the above revised pay structure in respect of Highly Skilled Workers (Instructors) working in MSME-DO. After considering the proposal, Department of Expenditure not agreed to the proposal stating that the revised pay structure notified is applicable in the case of those workshop staff whose primary and sole duties are to work with their hands and that their skills of hand acquired over a life-time are utilized by the Government in workshop only. The same was brought to the notice of all applicants for their information.

3. Aggrieve by this, Shri A. John Dominic Xavier & 16 other Instructors of MSME-DI, Chennai filed O.A. No. 720/2010 in CAT Madras Bench praying to extend the scale of pay granted to Highly Skilled Workers of Workshop Staff in Notification No. G.I. M.F. F.No. 1/1/2008-IC dated 28.07.2009 (i.e. present scale of pay of Rs. 4000-6000 to revised scale Rs. 4500-7000 with PB-1 plus GP Rs. 2800/-) with all consequential benefits.

4. The Tribunal allowed the OA and directed the respondents to extend the applicant the scale of pay of Highly Skilled Workers as per Notification dated 28.07.2009 as per the details provided therein. The applicants will be eligible for all the consequential benefits.



5 The matter has been examined in consultation with Department of Expenditure. Department of Expenditure has agreed to implement the order of CAT dated 09.11.2012 in OA No. 702/2010 for the petitioners and if there are any other similarly placed persons, who have not yet approached Court, they may also be considered for similar benefit provided they are exactly similar in all respects.

6. In view of the above, the competent authority has decided to implement the order of CAT dated 09.11.2012 in OA No. 702/2010 to all existing Instructors in MSME-DO and revise their pay scale Rs. 4000-6000 to Rs. 4500-7000 (pre-revised) corresponding to Pay band Rs. 5200-20200 PB-1 plus Grade pay Rs. 2800/- with all consequential benefits w.e.f. 01.01.2006.

7. This issues with the approval of the Department of Expenditure vide U.O. No. 25(1)/E.III(B)/2010 dated 29.11.2013..

Yours faithfully,

sd/-

(Surender Kumar)
Dy. Director (Admn)

Copy to:-

The Director,
All MSME-DIS/Branch MSME-DIS/TCS/TIS.”

4. Respondent counsel could not apprise this Court by which document MSME has taken policy decision to upgrade or re-designate all Instructors or Skilled Workers Grade - II posts to that of Highly Skilled Worker Grade - II so as to apprise decisions of CAT, Madras and CAT, Patna. Infact, CAT, Patna has not taken note of policy decisions of the MSME insofar as upgradation to that of Highly Skilled Workers Grade - I from the post of Instructor or re-designation of the post of Highly Skilled Workers Grade – II or I to that of Instructors. Instructors are entitled to



Highly Skilled Workers Grade - I higher pay scale than what they were getting as Instructor or Highly Skilled Workers Grade – I. In other words, they are entitled to Instructor pay scale. On the other hand, petitioners all along contended that there were no post of Highly Skilled Worker Grade - II in MSME. In the absence of such scheme of upgradation or re-designation of Skilled Worker Grade II to that of Highly Skilled Worker Grade - II read with pay scale of Rs. 3050-4590 = 5200-20200 Grade Pay of Rs. 1900 and revised to Rs. 5200-22000 PB I Grade Pay of Rs. 2400, the respondent is not entitled. On the other hand, *prima facie*, CAT, Patna has committed error in simply taking note of decision of the CAT, Madras without examining whether the Highly Skilled Worker Grade II post is existing in the MSME or not? Paragraph No. 4 of the second supplementary affidavit filed on behalf of the petitioners reads as under:

“4. That it is humbly stated that the Skilled Worker Gr-II with eight years of regular service in the grade is eligible for promotion to the post of Instructor (Skilled Worker Gr-I) in the pay scale of Rs.4000-100-6000 (pre-revised) (**Annexure-4 herein**), subject to availability of vacancy. The promotional hierarchy of Skilled Worker Gr-II, in Ministry of MSME, as provided by Cadre Controlling Authority (CCA), (**Annexure-6 Series**), as tabulated below:

S.No.	Name of the Post	Pay Level & Pay as per 7 th CPC	Pay Band & Grade Pay as per 6 th CPC	Pay Scale as per 5 th CPC
1.	Skilled Worker GR.-II	Level 2 (Rs. 19,900-63,200)	PB-1 (Rs. 5, 200- 20,200) & Grade Pay Rs. 1,900	Rs. 3050-75-4590



2.	Instructor (Skilled worker Gr – I re-designated w.e.f. 07.11.2008.)	Level 5 (Rs. 29,200-92,300)	PB-1 (Rs. 5,200- 20,200) & Grade Pay Rs. 2,800	Rs. 4,000-100-6000 revised to Rs. 4500-125-7000
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It is clear from the above that the post of Highly Skilled Worker in the Pay Scale of Rs.4000-100-6000 as per 5th CPC and revised to Rs.5,200-20,200 PB-1 Grade Pay of 2400/- is not in existence in the Ministry of MSME. Further, the post Highly Skilled Worker was split in the ratio of 50:50 while re-designating the post of Highly Skilled Worker as Grade-II and Grade-I in the Grade Pay of Rs.2400/- and Rs.2800/- respectively is not in existence in Ministry of MSME. However, the pay scale of Skilled Worker Grade-I (redesignated as Instructor w.e.f. 07.11.2008) was revised from Rs.4500-125-7000 (pre-revised) PB-1 plus Grade Pay of Rs.4000-100-6000 to corresponding to pay band Rs.5200-20200 Rs.2800/- with all consequential benefits w.e.f. 01.01.2006, vide Office of DC (MSME) Order No.C-18013/3/2010-A(NG) dated 21.01.2014 (Annexure-6 Series), in compliance to Hon'ble CAT, Madras Bench Order dated 09.11.2012.”

5. In the light of these facts and circumstances, the respondent is not entitled to pay scale of Highly Skilled Worker Grade II merely on the ground that CAT, Madras has passed an order and so also CAT, Patna has passed an order. In the absence of material information to the extent that the post of Highly Skilled Worker Grade II is existing in the MSME or Skilled Worker Grade II in MSME has been upgraded or re-designated so as to claim pay scale of Highly Skilled Worker Grade II by the petitioner, therefore, the CAT, Patna has committed error in extending benefit to the respondent without examining whether the Highly Skilled Worker Grade II post is existing in the MSME or not, since respondent is an employee of MSME.



6. Accordingly petitioners have made out a case. Hence, order dated 01.01.2019 stands set aside. Writ petition stands allowed.

7. It is noticed that respondent is in the cadre of Skilled Worker Grade II. Unless and until respondent enters into next cadre of Instructor, he is not entitled to have the benefit of CAT, Madras Bench decision also.

8. Pending I.A.(s), if any, stand disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.05.2023
Transmission Date	NA

